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* Application for *Pro Hac Vice* Forthcoming
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Arizona Alliance for Retired Americans;
Voto Latino,

Plaintiffs,

v.

Clean Elections USA; Melody Jennings;
Doe Defendants 1–10,

Defendants.

No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs Arizona Alliance for Retired Americans and Voto Latino hereby allege as follows:

INTRODUCTION

1. At least five times last week, supporters of Defendant Clean Elections USA (“CEUSA”), an organization founded by Defendant Melody Jennings, gathered at ballot drop boxes in Maricopa County with the express purpose of deterring voters—who Defendants irrationally fear are “ballot mules”—from depositing their ballots. And things are getting worse: on Friday, two of the drop box watchers were armed and wearing tactical gear, and again on Saturday, armed and masked individuals were gathered near drop boxes. Defendants’ activities have already prompted three voter intimidation complaints that have been referred to the Department of Justice, as well as responses and investigations by the Maricopa County Sheriff’s Department.

2. Defendants boast that they are just getting started. Defendant Jennings says she has organized thousands of supporters, with more joining every day. Defendants marshal large groups—“you don’t want to have less than eight people,” Defendant Jennings has explained¹—to prominently post themselves near ballot drop boxes where they conspicuously video-record and photograph voters as they return their ballots. Defendant Jennings admits that CEUSA’s “goal is to be a deterrent.”² To achieve that goal, Defendants engage in conduct that is clearly meant to intimidate. In addition to sending crowds to loom over voters, Defendant Jennings has threatened to use the images and video captured by those crowds to “dox” people; that is posting online a person’s personal information, opening them up to harassment by the general public. “We can zoom right in we can get your face, so we’ve got you,” Defendant Jennings boasted of the group’s work.³

¹ *What's on your Mind: 9-01-22 What's On Your Mind Hour 1* at 30:25, WZFG The Flag (Sept. 1, 2022).

² *Dark to Light: Melody Jennings From Clean Elections USA* at 2:42, Radio Influence Digital Media, (July 18, 2022).

³ *Steve Bannon's War Room: Episode 2231* at 31:45, (Oct. 17, 2022)

1 3. Defendants assert that these vigilante groups are a response to “mules,” a
2 term arising from a debunked conspiracy theory in which a shadowy, sprawling political
3 cabal collects or forges absentee ballots and deposits them in drop boxes. But such
4 “mules” do not exist, and the people Defendants are intimidating are simply voters. As
5 the Maricopa County Elections Department explained on Saturday: “Uninformed
6 vigilantes outside Maricopa County’s drop boxes are not increasing election integrity.
7 Instead they are leading to voter intimidation complaints. . . . Don’t dress in body armor
8 to intimidate voters as they are legally returning their ballots.”⁴

9 4. Defendants have already achieved their goal of intimidating Arizona voters.
10 Defendant Jennings has openly bragged about at least one incident in which a group of
11 Arizona vigilantes “saw a couple of mules come up [to a drop box] and . . . they didn’t
12 stop; they turned around and went the other way.”⁵ This is a classic example of voter
13 intimidation. A voter approached a drop box to deposit their ballot, saw a threatening
14 group gathered nearby, and in response, fearfully retreated without casting a vote. As
15 Defendant Jennings said of these intimidation tactics, “it’s working.”⁶

16 5. Defendants’ coordinated campaign of vigilante voter intimidation violates
17 the Voting Rights Act of 1965 and the Ku Klux Klan Act of 1871. In the aftermath of
18 previous voter suppression efforts in the Reconstruction and Civil Rights Eras, Congress
19 responded forcefully by enacting laws that unequivocally prohibit voter intimidation. In
20 the 1870s, in response to threats of political violence and harassment against former
21 slaves and their white supporters by the newly formed Ku Klux Klan, Congress banned
22 private conspiracies to intimidate or threaten voters. In the 1960s, in response to the
23

24 [https://warroom.org/2022/10/17/episode-2231-farage-on-the-death-of-the-british-](https://warroom.org/2022/10/17/episode-2231-farage-on-the-death-of-the-british-conservative-party-more-states-are-in-play-for-maga/)
25 [conservative-party-more-states-are-in-play-for-maga/](https://warroom.org/2022/10/17/episode-2231-farage-on-the-death-of-the-british-conservative-party-more-states-are-in-play-for-maga/) (last visited 10/23/2022).

26 ⁴ @MaricopaVote, Twitter (Oct. 22, 2022) <https://twitter.com/maricopavote/status/1583976792062185472>.

27 ⁵ The Nader Narrative, *Nader Narrative Interview with Melody Jennings*, YouTube (Sept.
1, 2022), <https://www.youtube.com/watch?v=C1EFEjR6tlU> (at 8:00).

28 ⁶ *Id.*

1 menacing of African Americans who sought their full rights at the ballot box, Congress
2 prohibited any threats or intimidation against people engaged in the democratic process.

3 6. Immediate relief is necessary. Voting is already underway, and there are
4 only 15 days left until election day. Defendants' organized vigilante groups have already
5 turned away voters. Under any circumstance, Defendants' conduct would be objectively
6 intimidating. But, in the current charged political climate, Defendants' actions carry with
7 them exacerbated threats. There is no guarantee that the crowds that Defendants have
8 mobilized and are continuing to stoke will remain peaceful. But even a false accusation
9 that a voter is a "mule" can have broad, irreversible consequences. In 2020, election
10 workers who were wrongfully accused of misconduct faced unrelenting harassment,
11 including death threats, with some relocating themselves and their families out of fears
12 for their safety. Defendants' conduct—both at the drop box locations themselves, and
13 beyond, as they threaten to publicize the names and faces of voters who they suspect to
14 be bad actors—risks similarly unacceptable outcomes. Unless enjoined, Defendants will
15 continue to bully and intimidate lawful Arizona voters—including through using armed
16 presences—who are attempting to do nothing more than vote in accordance with Arizona
17 law. Plaintiffs, their constituents and members, and untold numbers of Arizona voters
18 will suffer irreparable harm if the right to vote is imperiled by the same forms of virulent
19 harassment that federal law has prohibited since after the Civil War.

20 **PARTIES**

21 7. Plaintiff Arizona Alliance for Retired Americans, Inc. (the "Alliance") is a
22 nonprofit corporation organized under section 501(c)(4) of the Internal Revenue Code.
23 The Arizona Alliance's membership includes approximately 50,000 retirees, most of
24 whom are over the age of 65, from public and private sector unions, community
25 organizations, and individual activists in every county in Arizona. The Arizona Alliance
26 is a chartered affiliate of the Alliance for Retired Americans, which is one of the
27 country's leading grassroots senior organizations and engages in important political
28 efforts to protect and preserve programs vital to the health and economic security of older

1 Americans.

2 8. The Alliance's mission is to ensure social and economic justice and to
3 protect the civil rights of retirees after a lifetime of work. Defendants' vigilante
4 intimidation of voters using drop boxes threatens the Alliance's efforts to ensure its
5 members have adequate access to the franchise.

6 9. If Defendants' actions targeting drop boxes in Arizona continue, the
7 Alliance will have to divert its limited resources to combat these harms, such as by
8 shifting staff time and funds away from other projects to quelling members' anxieties
9 about using drop boxes, to devising and executing plans to educate the Alliance's
10 membership about how to safely navigate the voting process, and to finding other (more
11 burdensome) alternatives for submitting mail ballots.

12 10. The Alliance also brings this action on behalf of its members. Most of the
13 Alliance's members are between 55 and 90 years of age and many have disabilities.
14 Arizona is a state that relies heavily on vote-by-mail ballots, with almost 90% of the
15 votes in the 2020 general election being early ballots, and many of the Alliance's
16 members similarly vote using mail ballots in large numbers. The Alliance's members
17 therefore also rely on access to drop boxes to return their ballots, and inability to easily
18 and safely access drop boxes, especially when taking into account many members'
19 individual circumstances such as age and physical abilities, has created additional hurdles
20 that simply did not exist before. Moreover, many of the Alliance's members use drop
21 boxes to ensure that their ballots are received in time to be counted, and their right to vote
22 not subject to issues with mail delivery. Thus, the Alliance's members are particularly
23 likely to be subject to Defendants' intimidation tactics, which are targeting voters using
24 drop boxes to vote in the 2022 November elections.

25 11. Plaintiff Voto Latino is a nonprofit corporation organized under section
26 501(c)(4) of the Internal Revenue Code. Voto Latino is dedicated to growing political
27 engagement in historically underrepresented communities, specifically young and Latinx
28 voters. Voto Latino has made, and will continue to make, expenditures to educate,

1 mobilize, and turn out voters in Arizona. Voto Latino employees and volunteers engage
2 in voter registration drives and conduct email and social media advertising campaigns to
3 remind voters—particularly Voto Latino’s core constituency, young and Latino voters—
4 to vote through get-out-the-vote efforts, including text banking and advertising
5 campaigns, to encourage voters to vote, remind them to update their voter registrations,
6 and inform them about available means of voting, such as early in-person voting or
7 voting by mail, including via drop boxes. Voto Latino frequently engages with college
8 students and new residents of Arizona during its voter education and mobilization efforts.

9 12. If Defendants’ voter intimidation efforts in Arizona continue, Voto Latino
10 will need to divert resources from other mission-critical work to spending time educating
11 its constituents about the new, hostile environment which voters must navigate just to
12 return their validly voted ballot, to reduce the harm that Defendants’ actions will
13 otherwise inflict on Voto Latino’s organizational goal of empowering Latinx voters.

14 13. Defendant Clean Elections USA (“CEUSA”) is an organization whose
15 stated purpose is a commitment to election integrity to prevent fraudulent use of drop
16 boxes for mail-in ballots. The organization is responsible for coordinating a network of
17 thousands of individuals who intend to serve as vigilante drop box monitors across the
18 country, including in Arizona. CEUSA has actively recruited individuals to participate in
19 its campaign for drop box monitoring during early voting and for election day via
20 websites, podcast and online show appearances, and social media posts, all of which are
21 readily accessible in Arizona via the internet.

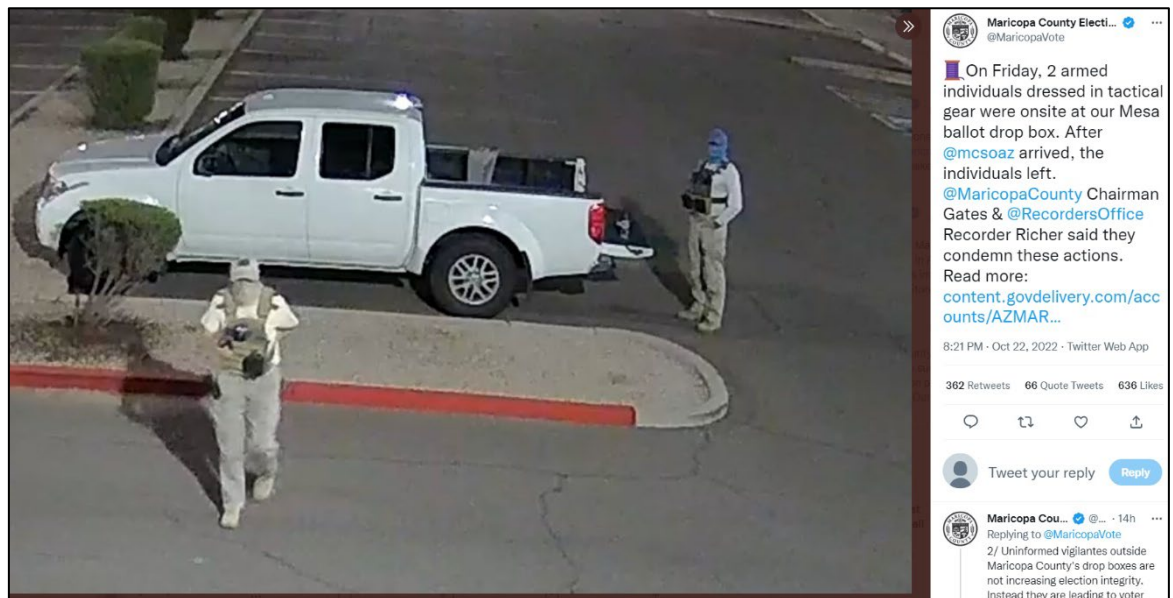
22 14. On information and belief, CEUSA is an unincorporated association
23 without formal legal status.

24 15. Defendant Melody Jennings identifies herself as the founder of CEUSA and
25 the organizer of a campaign known as the “Drop Box Initiative 2022,” which has
26 recruited and organized individuals in Arizona to go to ballot drop boxes and track,
27 monitor, photograph, and video-record voters as they use drop boxes to return their
28 ballots.

1 16. Defendant Jennings uses the username “TrumperMel” on the social media
2 platform Truth Social, where she has nearly 35,000 followers.

3 17. On information and belief, Defendant Jennings is a resident of Oklahoma,
4 and is acting in concert with others affiliated with CEUSA to coordinate the systematic
5 network of monitors and monitoring activities.

6 18. Doe Defendants 1 to 10 are individuals who have been recruited or
7 encouraged by Defendants CEUSA and Jennings to go to drop boxes in Arizona to track,
8 monitor, photograph, and video-record voters as they use drop boxes to return their
9 ballots. They include but are not limited to the individuals pictured in the following
10 photographs, along with all others who gathered at the drop box in Mesa, Arizona on
11 October 17, 20, 21, and 22, and who gathered at the drop box in front of the Maricopa
12 County Tabulation and Election Center on October 19, 2022:



24 *Figure 1: Image of Doe Defendants in tactical gear by Mesa, AZ drop boxes*

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Figure 2: Image of armed Doe Defendants by Mesa, AZ drop boxes



Figure 3: Image of Doe Defendants gathered to monitor drop boxes (redactions original)



Figure 4: Image of Doe Defendants gathered to monitor drop boxes

19. The Doe Defendants have assisted and acted in concert with CEUSA and Defendant Jennings in efforts to systematically monitor voter activity at drop boxes in Arizona through large, multi-person groups that situate themselves in the vicinity of the drop boxes. The identities and precise residences of all Doe Defendants are presently unknown to Plaintiffs and could not be ascertained prior to filing this Complaint. Plaintiffs will amend this Complaint to add the true names of the Doe Defendants when their identities are known.

20. In social media posts and interviews, Defendant Jennings speaking on behalf of CEUSA has repeatedly claimed responsibility for the Doe Defendants and their actions, referring to the Doe Defendants as “our people,” “my people,” “our beautiful box watchers,” and “us,” including in the following post on October 22:



Figure 4: Defendant Jennings post about armed Doe Defendants wearing tactical gear

JURISDICTION AND VENUE

21. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because this action arises under federal law, specifically Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b), and Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3).

22. Personal jurisdiction exists over Defendants because they have caused and will continue to cause harm or tortious injury by an act in this State or directed to this State. *See* Ariz. R. Civ. P. 4.2; *Meyers v. Hamilton Corp.*, 143 Ariz. 249, 251–52 (1984).

23. Specifically, Defendant Jennings, on her own behalf and on behalf of CEUSA, has repeatedly recruited and encouraged individuals in Arizona, including the Doe Defendants, to go to particular drop boxes in Arizona to monitor them, and thereby to intimidate and attempt to intimidate voters in Arizona in violation of federal law. And CEUSA has further acted in Arizona via the actions of the Doe Defendants, who have engaged in unlawful voter intimidation in Arizona on CEUSA's and Defendant Jennings' behalf.

24. The Alliance has standing in this action because part of its mission is

1 ensuring their members have access to the franchise and can cast their ballot, including at
2 drop boxes, without fear of danger, physical or otherwise. Both the Alliance as an
3 organization and its members are threatened with immediate and irreparable injury if the
4 vigilante voter intimidation campaign by Defendants succeeds in disrupting the peaceful
5 operations of the election by means of unlawful voter intimidation and unlawful
6 conspiracy. Thus, the Alliance has standing on behalf of itself and its members.

7 25. Voto Latino also has standing because Defendants' actions to intimidate
8 voters will cause the organization to divert resources away from traditional activities of
9 mobilizing and turning out voters in Arizona towards having to educate voters about how
10 to navigate the intimidating circumstances around drop box usage in Arizona.

11 26. Venue is proper in this district under 28 U.S.C. § 1391(e) because
12 significant events giving rise to this action occurred in this district, namely, Defendants'
13 unlawful actions at drop boxes in Arizona.

14 **FACTUAL ALLEGATIONS**

15 **A. Defendant Jennings formed CEUSA to intimidate voters.**

16 27. The inspiration for CEUSA arose from the stew of disproven conspiracy
17 theories about the 2020 election. On April 17, 2022, Defendant Jennings learned of 2000
18 Mules,⁷ a propaganda film produced by right-wing commentator Dinesh D'Souza. Based
19 primarily on an analysis of anonymized cellphone location data, the film imagines a
20 shadowy, underground network of "ballot mules" who collected fraudulent absentee
21 ballots and deposited them, *en masse*, in drop boxes across several key states during the
22 2020 election.

23 28. The claims in 2000 Mules have been roundly debunked. The Associated
24 Press explained that the film was based on "false assumptions" about cellphone tracking
25 data and engaged in "pure speculation."⁸ Questioned about the film under oath, Attorney

26 ⁷ Gregg Phillips, *Patriot Games: Ground Games* at 6:00–7:50.

27 ⁸ Ali Swenson, *Fact Focus: Gaping holes in the claim of 2k ballot 'mules'*, Associated
28 Press (May 3, 2022), <https://apnews.com/article/2022-midterm-elections-covid->

1 General Bill Barr laughed and explained that the cellphone data is “singularly
2 unimpressive” and that the premise that it shows the existence of “ballot mules” was “just
3 indefensible.” When there are millions of cell phones in a city, Barr explained, there will
4 almost “by definition” be some that repeatedly pass by particular places over any given
5 time period.⁹

6 29. Defendant Jennings, however, was convinced even before she saw the film.
7 After seeing just the *previews* for 2000 Mules, she decided that “[w]e’re going to take
8 this into our own hands,”¹⁰ formed Defendant CEUSA, and initiated a campaign she has
9 called the #Dropboxinitiative2022, which recruits volunteers and then coordinates large
10 groups to assemble at drop boxes and proceed to film and photograph the box and harass
11 voters that try to deposit their ballots under the pretext of preventing “mules” from
12 “stuff[ing] drop boxes.”¹¹ See *infra* Figure 6.

13 30. Defendant Jennings has repeatedly and openly said that the purpose behind
14 CEUSA and the #Dropboxinitiative2022 is to discourage the use of drop boxes. She has
15 emphasized that participants should gather in large groups because they are more
16 intimidating. As Jennings has explained, “you’re not really a deterrent with two or three
17 people. Ten is going to be a dynamic deterrent. It’s harder to say, ‘yeah, I’m fine walking
18 up in that crowd.’”¹²

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20 technology-health-arizona-e1b49d2311bf900f44fa5c6dac406762.

21 ⁹ @dcexaminer, Twitter (Jun. 13, 2022), <https://twitter.com/dcexaminer/status/1536423348141441031>.

22 ¹⁰ *Patriot Games: Ground Games* at 12:15 (Defendant Jennings stating “[w]e’re going to
23 take this into our own hands”).

24 ¹¹ *Id.* (Jennings describing the effort as “put[ting] ten people—ten patriots—around boxes
25 and guard the boxes.”); see also *What’s On Your Mind: 9-01-22 What’s on your Mind*
26 *Hour 1*, WZFG The Flag (Sept. 1, 2022), <https://www.am1100theflag.com/show-episodes/53269-9-01-22-whats-on-your-mind-hour-1>; The Nader Narrative, *Nader*
27 *Narrative Interview with Melody Jennings*, YouTube (Sept. 1, 2022),
28 <https://www.youtube.com/watch?v=C1EFEjR6tIU>.

¹² The Flag podcast at 30:20; @TrumperMel, Truth (Sept. 23, 2022),
<https://truthsocial.com/@TrumperMel/posts/109047737221831005>.

31. This notion of “deterrence” appears across several of Defendant Jennings’ public posts encouraging drop box monitoring. For instance, on August 11, Defendant Jennings posted that groups to monitor drop boxes should be “[n]o less than 8 people” because “[j]ust your presence alone & the mule knowing they will be caught on ur [sic] multiple cameras *is enough deterrent to make them shrink back into the darkness*. Be aware they will head to another box, so you might as well go ahead & recruit more folks to be at those as well.” (emphasis added).

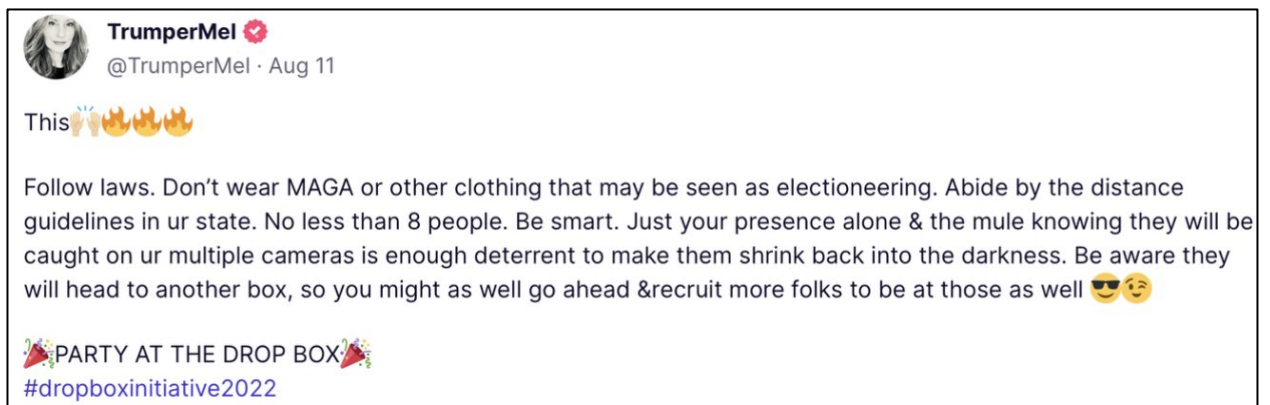


Figure 5: Defendant Jennings post from Aug. 11, 2022

32. Similarly, on September 23, Defendant Jennings called for monitors to gather “10 people in grounds around every drop box! Not 2 people. That’s not a deterrent”:



Figure 6: Defendant Jennings post from Sept. 23, 2022

1 33. The purpose of recruiting a network of large groups deployed across
2 Arizona at drop boxes is clear—to prevent voters from approaching drop boxes and using
3 those tools to vote. And that deterrent effect is made even stronger where Defendants
4 engage in drop box monitoring with the intent of signaling to voters that their personal
5 identity and information could be publicly disclosed and thus the target of public
6 harassment. In other words, voters would decide not to use drop boxes because they were
7 being monitored by Defendants and because “these people don’t want to be doxed.”¹³

8 34. To be sure, Defendants say that they are just trying to deter “ballot mules.”
9 But “ballot mules” are an invention of a debunked propaganda film; they do not exist.
10 The people that Defendants are actually seeking to intimidate to prevent them from using
11 ballot drop boxes are simply voters.

12 35. Defendants’ threat to publicly disclose the identities of voters who use drop
13 boxes, and to falsely accuse them of being “mules,” is extraordinarily dangerous in the
14 current political environment, where angry individuals have repeatedly threatened to kill
15 election workers and party officials in Arizona and elsewhere. Just weeks ago, an Iowa
16 man was arrested for sending such death threats to election officials in Maricopa
17 County.¹⁴ And as explained below, Defendants themselves have promoted a group, Ben
18 Sent Us, that has sent threatening communications to Democratic Party officials in
19 Arizona. *See infra* ¶¶ 55-56.

20 36. Moreover, Defendants’ efforts to suppress the use of drop boxes do not stop
21 with passive monitoring. Defendant Jennings has described building a system to allow
22 CEUSA volunteers to capture high quality video and pictures and “immediately upload”
23 those images to a data center in real time, where it could be shared with local sheriffs¹⁵

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25 ¹³ *Patriot Games: Ground Games* at 13:27 and 18:50.

26 ¹⁴ U.S. Dep’t of Justice, *Man Arrested for Making Threats to Maricopa County Election*
27 *Official and to Official with Office of Arizona Attorney General* (Oct. 6, 2022),
28 <https://www.justice.gov/opa/pr/man-arrested-making-threats-maricopa-county-election-official-and-official-office-arizona>.

¹⁵ *Patriot Games: Ground Games* at 19:10.

1 through ProtectAmerica.vote,¹⁶ a website where she has recruited sheriffs sympathetic to
2 election fraud conspiracy theories. In a September 1 interview, Defendant Jennings also
3 referred to reporting voters suspected of being “ballot mules” to “constitutional sheriffs”
4 for an immediate response.¹⁷

5 37. Consistent with this, Defendant Jennings has suggested through her posts
6 on social media that there is more to Defendants’ plan than mere observation, assuring a
7 questioner who wanted to know whether “films and info” would be “given immediately
8 to the sheriffs in order to pay the perpetrator a visit,” simply for using a drop box to vote,
9 that she “would love to tell you all the sauce” but that she did not “think that’s wise to do
10 in an open forum”:



22 *Figure 7: Defendant Jennings response to post by user @jdanelle*

23 **B. Drop boxes are commonly used to return ballots in Arizona.**

24 38. Voters in Arizona mostly vote using early vote-by-mail ballots. Most
25 recently, during the 2020 general election, approximately 89% of all ballots cast in the

26 ¹⁶ ProtectAmerica.vote, <https://protectamerica.vote/> (last visited Oct. 24, 2022).

27 ¹⁷ The Nader Narrative, *Nader Interview with Melody Jennings*, YouTube (Sept. 1, 2022),
28 <https://www.youtube.com/watch?v=C1EFEjR6tIU> (at 13:30).

1 state were early ballots, and 91% of the ballots cast in Maricopa County were early
2 ballots.¹⁸

3 39. After voters have received their early ballot in the mail, they have various
4 options for how to return that ballot. One of the most common options is drop boxes. For
5 instance, Maricopa County has the highest number of drop boxes in the state and 34% of
6 voters used drop boxes the 2020 general election, and in Yavapai County, the county with
7 the second-most number of drop boxes in Arizona, 51% of voters used drop boxes for the
8 2022 primary elections, and 59% of voters used drop boxes for the 2020 general
9 election.¹⁹

10 40. Drop boxes across Arizona are also highly secure—they must be located in
11 secure locations, such as inside or in front of government buildings, and county election
12 officials must comply with a series of detailed procedures designed to prevent tampering
13 or access to the ballots by unauthorized individuals based on whether the drop boxes are
14 staffed or not.²⁰ Additionally, drop boxes are often already under video surveillance,
15 including in Maricopa County.²¹

16 ¹⁸ *Vote by Mail*, Arizona Citizens Clean Elections Commission,
17 <https://www.azcleelections.gov/how-to-vote/early-voting/vote-by-mail>; *November*
18 *General Election Canvass*, Maricopa County Elections Department 3 (Nov. 3, 2020),
19 <https://recorder.maricopa.gov/pdf/11-03-2020-0%20Canvass%20BOS%20SUMMARY%20NOV2020-two-sided%20print.pdf>.

20 ¹⁹ Rachel Leingang, *Ballot Drop Boxes Remain Popular, Despite Attacks and*
21 *Misinformation*, AZ Mirror (Sept. 23, 2022), [https://www.azmirror.com/2022/09/23/](https://www.azmirror.com/2022/09/23/ballot-drop-boxes-remain-popular-despite-attacks-and-misinformation/)
22 *ballot-drop-boxes-remain-popular-despite-attacks-and-misinformation/*; Jen Fifield, *This*
23 *Republican Bastion of Arizona Loves Ballot Drop Boxes, The Far Right's Latest Target*,
Votebeat (Aug. 12, 2022), [https://arizona.votebeat.org/2022/6/3/23153797/ballot-drop-](https://arizona.votebeat.org/2022/6/3/23153797/ballot-drop-boxes-yavapai-county-2000-mules)
boxes-yavapai-county-2000-mules.

24 ²⁰ Sec'y Katie Hobbs, 2019 Elections Procedures Manual 60–62 (2019),
25 https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP
PROVED.pdf; A.R.S. § 16-452(C) (Elections Procedures Manual carry the force of law).

26 ²¹ *Live Video Feeds*, Maricopa County, [https://recorder.maricopa.gov/elections/](https://recorder.maricopa.gov/elections/electionlivevideo/)
27 *electionlivevideo/* (last visited Oct. 23, 2022); Rachel Leingang, *Early voters in Arizona*
28 *midterms report harassment by poll watchers* (Oct. 20, 2022),
[https://www.theguardian.com/us-news/2022/oct/20/arizona-early-voters-harassment-](https://www.theguardian.com/us-news/2022/oct/20/arizona-early-voters-harassment-drop-box-monitors)
drop-box-monitors.

1 41. One of the main benefits of returning ballots in drop boxes is that they are
2 much more reliable than returning ballots by mail. During the 2022 primary election,
3 more than 3,000 Maricopa County voters had their ballots rejected when they were
4 delivered too late to be counted.²²

5 **C. Defendants are intimidating Arizona voters at drop boxes.**

6 42. Early voting began in Arizona on October 12, 2022.

7 43. Defendants, who claim to have a network of 1,500 volunteers across the
8 country, with an unspecified number in Arizona,²³ quickly mobilized and converted their
9 plan into action.

10 44. Individuals identifying themselves as affiliated with CEUSA began setting
11 up their large-group operations in plain view of voters using the drop box at various
12 ballot drop boxes.

13 45. CEUSA's presence has led to repeated complaints of voter intimidation. On
14 October 17, 2022, a voter sent a complaint to the Arizona Secretary of State reporting
15 that a group of individuals were filming and photographing voters as they approached the
16 drop box outside of the Maricopa County's Mesa Juvenile Court. These drop box
17 monitors also accused these voters of being "a mule." These monitors also took
18 photographs of the voters' license plate, of the voters, and followed the voters into the
19 parking lot all while continuing to film.

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26 ²² Maricopa County, *August Primary Election Canvass* 144 (Aug. 2, 2022),
27 [https://elections.maricopa.gov/asset/jcr:b3aa9d0b-750e-40ec-9f39-f4b238767f59/08-02-](https://elections.maricopa.gov/asset/jcr:b3aa9d0b-750e-40ec-9f39-f4b238767f59/08-02-2022-0%20Canvass%20COMPLETE%20AUG2022.pdf)
28 [2022-0%20Canvass%20COMPLETE%20AUG2022.pdf](https://elections.maricopa.gov/asset/jcr:b3aa9d0b-750e-40ec-9f39-f4b238767f59/08-02-2022-0%20Canvass%20COMPLETE%20AUG2022.pdf) (last visited Oct. 23, 2022).

²³ *Patriot Games: Ground Games*, at 8:00.

-----Original Message-----

From: webmaster@azsos.gov <webmaster@azsos.gov>

Sent: Monday, October 17, 2022 7:29 PM

To: Christine Dyster <[REDACTED]>

Subject: Webform: Voting Incident --240

CAUTION: The following message contains information provided by an anonymous user through an online webform. Please treat the below message with caution, avoid clicking links, downloading attachments, or replying with personal information.

Submitted values are:

==Incident==

Date of incident: Mon, 10/17/2022

Approximate time of the incident: 6:40 pm

County where incident occurred: Maricopa

Polling location where incident occurred: Mesa juvenile court drop box

Describe the incident: There's a group of people hanging out near the ballot dropbox filming and photographing my wife and I as we approached the dropbox and accusing us of being a mule. They took a photographs of our license plate and of us and then followed us out the parking lot in one of their cars continuing to film.

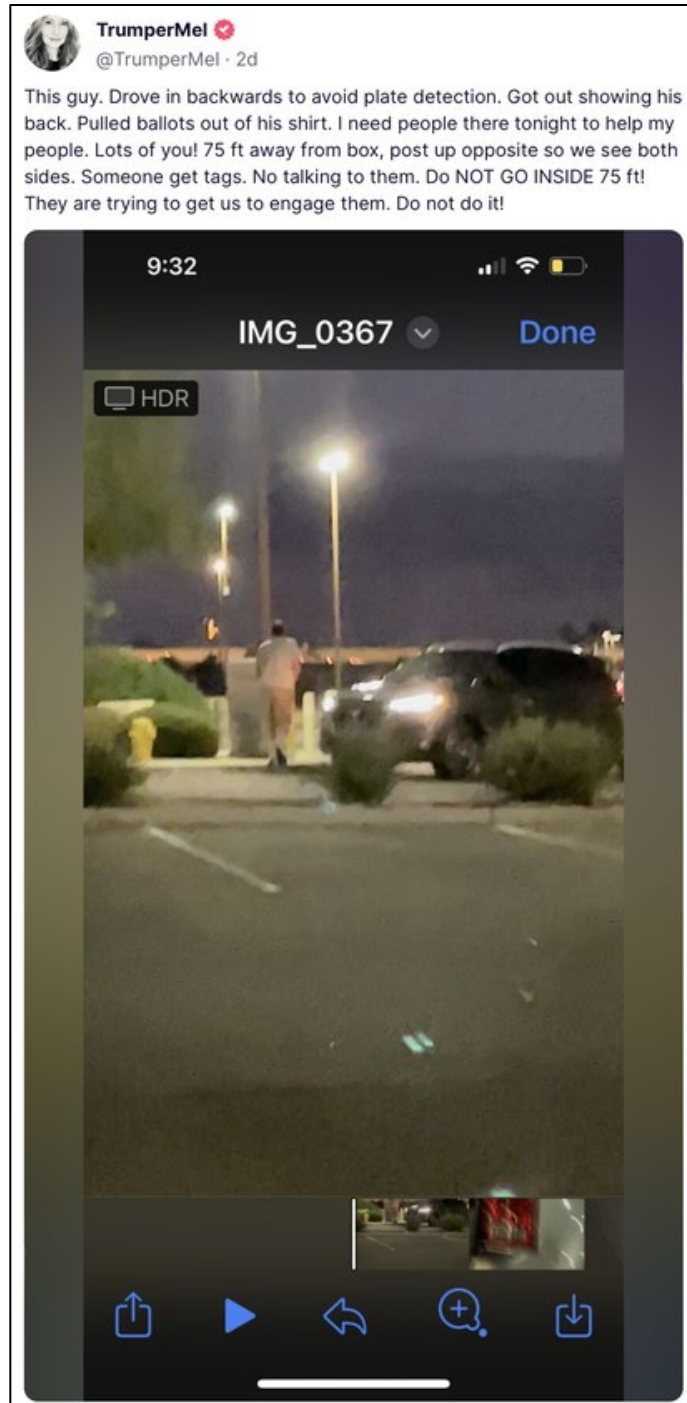
Were you able to report this incident to the poll workers or county officials?

Current status of the incident: Ongoing

Files: No, I don't have any additional information.

Figure 8: Oct. 17, 2022 voter complaint (obtained through Oct. 21, 2022 Public Records Request)

1 46. This incident can be traced directly to CEUSA, where a post from
2 Defendant Jennings shows an image of the voter who, based on publicly release video
3 footage, appears to be the harassed voter, and other posts reference this Mesa drop box as
4 a direct target of drop box monitoring.



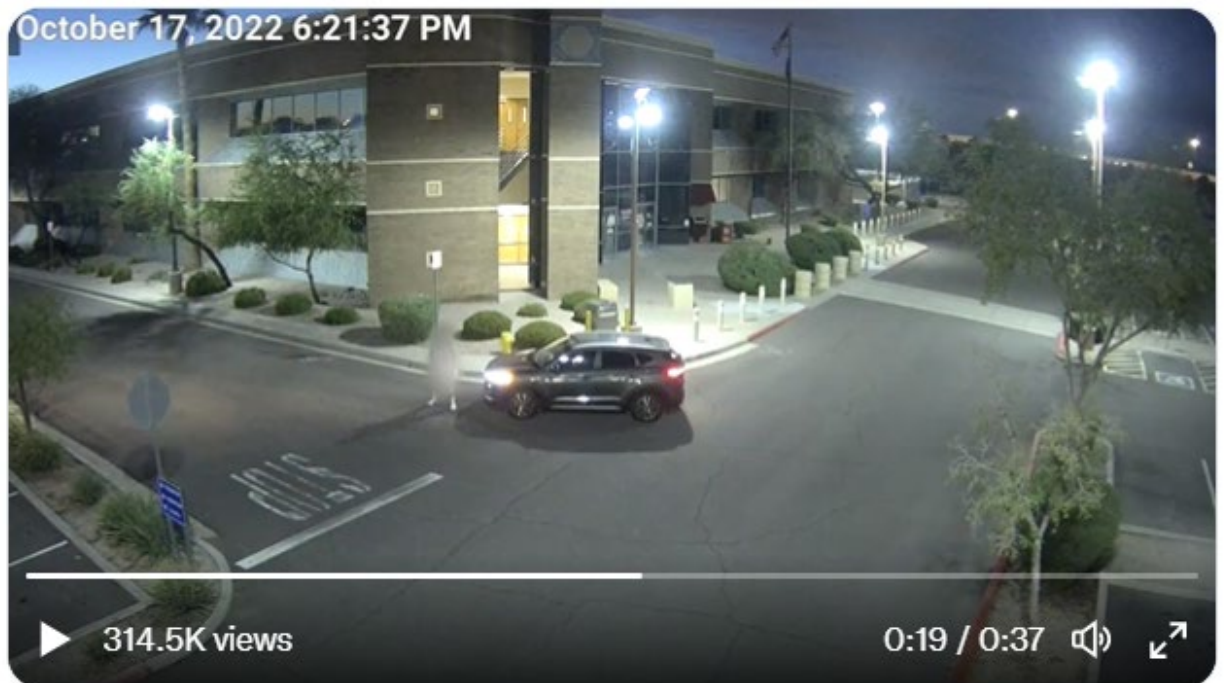
28 *Figure 9: Defendant Jennings post with image of voter at drop box*



The AZ - abc15 - Data Guru 
@Garrett_Archer



DEVELOPING: @abc15 has obtained the security footage of alleged voter intimidation at Mesa drop box. Full video is 20 minutes long, we have edited it and blurred the voter. There's no audio on original video, but voter claims he was photographed and accused of being a mule.



8:56 PM · Oct 20, 2022 · Twitter Web App

Figure 10: Post with video footage of voter who filed a voter complaint



TrumperMel ✓

@TrumperMel · 2d

↻ **TrumperMel** ReTruthed

All Arizona patriots get to either the Mesa box or the Phoenix box ...the only 2 that are outdoors... Right now.
There are mules getting there and doing their thing even with my people there. Here's what you DO NOT DO!! Do not go within 75 ft of the box. I need someone to park up on the opposite side of my crew there. A mule drove up moments ago backwards so we couldn't see his plate. Kept his back to us the whole time. Who will go now?
DO NOT ENGAGE THEM @greggphillips

💬 298 ↻ 3.2k ❤️ 7.17k ↑ ...

Figure 11: Defendant Jennings post regarding targeted drop box locations

47. In fact, after initially denying responsibility, Defendant Jennings admitted in an interview that Defendants' members and supporters were present at the Mesa drop box on October 17 and saw, photographed, and recorded the voter in question.²⁴

48. On October 19, 2022, a second report was made regarding a drop box in Phoenix where a voter described "[c]amo clad people" photographing him and his car as he submitted his ballot in a Phoenix drop box. *See infra* Figure 12.

49. The October 19 complaint included photographs of the individuals in question, who exactly match two of the Doe Defendants who Defendant Jennings referred to as "[o]ur beautiful box watchers" in Maricopa County that same day:

²⁴ Bannons War Room, *Matriano Stands Up for Pennsylvania Families*, rumble (Oct. 21, 2022), <https://rumble.com/v1p2xof-episode-2243-mastriano-stands-up-for-pennsylvania-families.html> (at 42:50).

1 **From:** [REDACTED] via Arizona Secretary of State <webmaster@azsos.gov>

2 **Sent:** Wednesday, October 19, 2022 7:03 PM

3 **To:** Jason Chavez [REDACTED] >

4 **Subject:** Webform: Voting Incident - -241

5 CAUTION: The following message contains information provided by an anonymous
6 user through an online webform. Please treat the below message with caution,
7 avoid clicking links, downloading attachments, or replying with personal
8 information.

Submitted values are:

9 ==Incident==

10 Date of incident: Wed, 10/19/2022

11 Approximate time of the incident: 2:30 pm

12 County where incident occurred: Maricopa

13 Polling location where incident occurred: 501 S 3rd Ave, Phoenix
14 AZ

15 Describe the incident: Camo clad people taking pictures of me, my
16 license plate as I dropped our mail in ballots in the box. When
17 I approached them asking names, group they're with, they wouldn't
18 give anything. They asked why I wanted to know, well it's
19 because it's a personal attack. They basically said they're
20 taking pictures looking for some fantasy BS on the voting
21 citizenry. Inside record office the ladies said it was worse
22 last year when they all had guns!! Some workers had quit due
23 to these conspiracy idiots. I don't appreciate the harassment. I'm
24 curious if they're staying 75 ft away too

Were you able to report this incident to the poll workers or
county officials? Yes

Current status of the incident: Ongoing

Files: Yes, I'm emailing info to elections@azsos.gov.

24 *Figure 12: Oct. 19, 2022 voter complaint (obtained through Oct. 21, 2022 Public Record*
25 *Request)*



Figure 13: Images accompanying Oct. 19, 2022 voter complaint (obtained through Oct. 21, 2022 Public Record Request)



Figure 14: Defendant Jennings post about “our” drop box watchers

1 50. Those same individuals told a reporter that same day that they were with
2 CEUSA, and they otherwise declined to speak to the reporter, saying that they are “not
3 supposed to be having a discussion with anyone about anything” and that they would
4 “like to talk to [Clean Elections USA] before” speaking further to her.²⁵

5 51. On October 20, 2022, another complaint of intimidation was made to the
6 Secretary of State. Two voters, who were married senior citizens, were using the drop
7 box outside of the Mesa Superior Court’s Juvenile Department and reported another
8 independent incident where the voters found themselves and their license plate being
9 photographed by five or six men in their 20s or 30s. The behavior of the monitors in this
10 incident match that of the monitors from the October 17 voter complaint.

11 -----Original Message-----
12 From: webmaster@azsos.gov <webmaster@azsos.gov>
13 Sent: Thursday, October 20, 2022 1:47 PM
14 To: Christine Dyster <[REDACTED]>
15 Subject: Webform: Voting Incident - -243

16 CAUTION: The following message contains information provided by an anonymous user through an online webform.
17 Please treat the below message with caution, avoid clicking links, downloading attachments, or replying with personal
18 information.
19 Submitted values are:

20 ==Incident==
21 Date of incident: Thu, 10/20/2022
22 Approximate time of the incident: 12:30 pm
23 County where incident occurred: Maricopa
24 Polling location where incident occurred: Mesa Juvenile Court
Describe the incident:
My wife and I (70 yrs old) parked our car to each individually
drop our ballots in the drop boxes located outside the Juvenile
Court, there was a group of 5 or 6 20-30 yr old men standing in
the parking lot. We put our ballots in the drop box and walked
back to our car. As we were getting up to our car, two
individuals took pictures of our license plate and our car. I got
out and asked what they were doing. They claimed they were taking
pictures for "election security" and I took pictures of them to
report them to the DOJ for voter intimidation and harassments. As
we were pulling out, the continued to film my wife, myself and
our car.

25 *Figure 15: Oct. 20, 2022 voter complaint (obtained through Oct. 21, 2022 Public Record*
26 *Request)*

27 ²⁵ @NicoleSGrigg, Twitter (Oct. 19, 2022), [https://twitter.com/NicoleSGrigg/status/](https://twitter.com/NicoleSGrigg/status/1582904476393820160)
28 [1582904476393820160](https://twitter.com/NicoleSGrigg/status/1582904476393820160).

1 52. Defendants responded to these complaints by escalating their tactics. Friday
2 evening, October 21, the Maricopa County Sherriff's responded to complaints about two
3 individuals stationed around the Mesa drop box in the evening with full disguises, tactical
4 gear, and magazine clips.²⁶ The Maricopa County Sheriff's Office confirmed that both
5 individuals were armed.



24 *Figure 16: Post about armed individuals at drop boxes in Mesa, Arizona*

25 53. Defendant Jennings responded to this incident by reposting a social media
26 post claiming that “by the looks of this video, these people are not doing ANYTHING

27 ²⁶ @NicoleSGrigg, Twitter (Oct. 21, 2022), https://twitter.com/NicoleSGrigg/status/1583674573874032640?s=20&t=Rql372xHdnQDdUg_XksrsA.
28

illegal”:

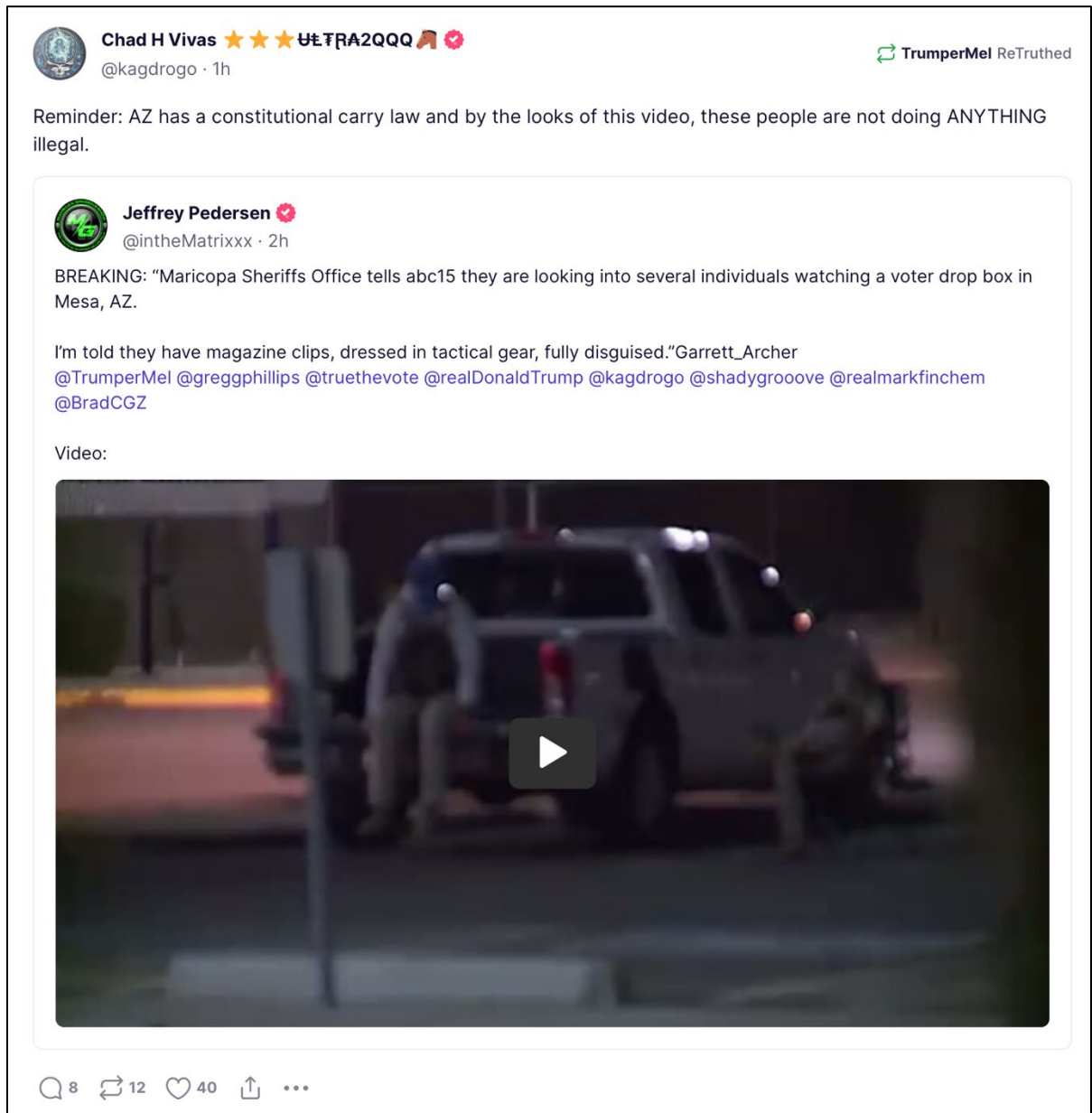


Figure 17: Defendant Jennings re-post about armed individuals at Mesa drop box

54. Defendant Jennings then directly confirmed that the armed individuals, who she referred to as “two of our people,” were affiliated with Defendants:



10 *Figure 18: Defendant Jennings post referring to armed Doe Defendants as “our people”*

11 55. On Saturday evening, October 22, armed and masked individuals again
12 gathered at the drop box in Mesa, prompting the Maricopa County Sheriff’s Office to
13 again deploy to the scene.

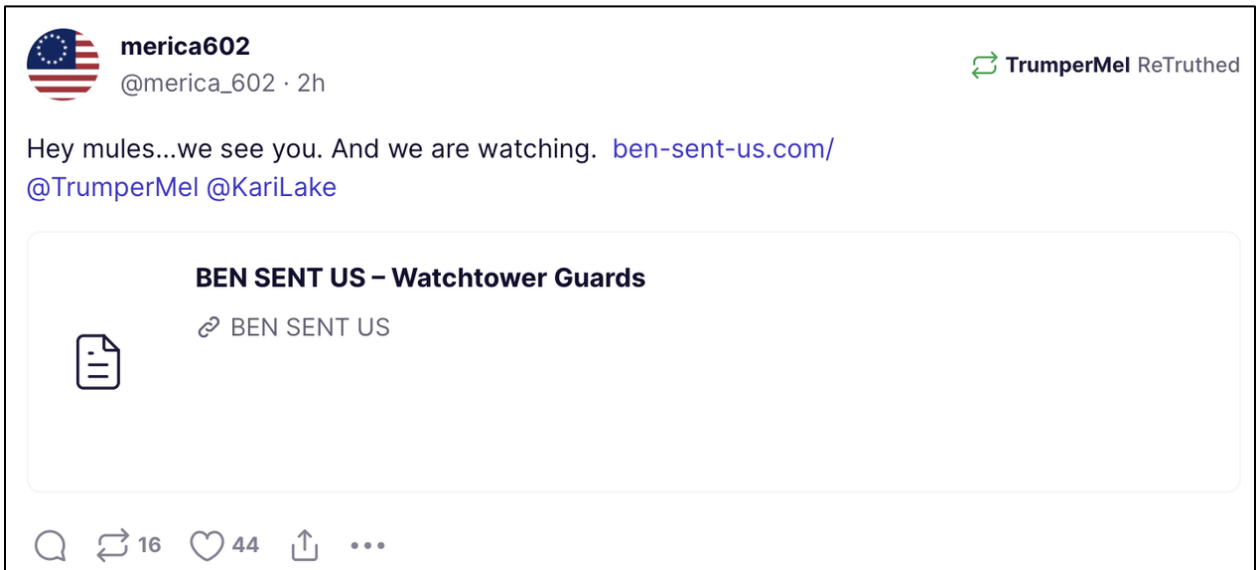
14 56. Defendants have also publicly admitted to other incidents that appear to
15 have gone unreported to state election officials. For instance, Defendant Jennings has
16 reported instances in which Arizona voters retreated from drop boxes after encountering
17 the groups she had coordinated. Defendants Jennings further reported that during the
18 primary election, one group of agents in Arizona saw people approach a drop box and
19 before casting a ballot “they turned around and went the other way.”²⁷ Defendant
20 Jennings described the people who approached the ballot box as “mules” but offered no
21 evidence that they were anything other than lawful Arizona voters.

22 57. And Defendants’ actions do not stop at intimidation at drop boxes.
23 Defendant Jennings has also promoted efforts by Ben Sent Us, an anonymous group
24 whose name appeared on threatening flyers posted in post offices and sent to local
25 members of the Democratic party. The flyer described a plan virtually identical to that
26 described by Defendants, promising to use “video and pictures of possible ballot, voting

27 ²⁷ The Nader Narrative, *Nader Interview with Melody Jennings*, YouTube (Sept. 1, 2022),
28 <https://www.youtube.com/watch?v=C1EFEjR6tIU> (at 8:00).

1 and dropbox fraud,” to dox its targets, and to share the “evidence” of fraud with local
2 sheriffs. *See infra* Figure 20.

3 58. Defendant Jennings reposted a social media post publicizing these efforts,
4 and the flyer itself contained a pair of leering eyes which are identical to those used by
5 Defendant Jennings in one of her posts.



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16 *Figure 19: Ben Sent Us post Reposted By Defendant Jennings*
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ITAA Indivisible Tucson Action Alliance
@ItaaTucson

...

This is not your father's GOP. This is not the Conservative party. It is extremism at its worst in AZ.
[@AZCEBVus](#) [@IndivisibleofAZ](#) [@IndivisPrescott](#) [@axios](#)



9:55 PM · Oct 22, 2022 · Twitter for iPhone

Figure 20: Ben Sent Us flyers sent to “Democratic party members”



TrumperMel ✓

@TrumperMel · Oct 7

Washington, California, Nevada, Illinois, Virginia, Michigan, New York, Arizona, Ohio, Colorado, New Jersey, all NE above NY, are you watching a drop box? Get eyes on. Take pictures/video. 8-10 ppl per box. Tailgate party, Bible study, whatever. Shine your headlights on the box.

All states, park at front & back entrances of early voting buildings. Record who goes in & out. Watch for return voters & for someone entering buildings after business hours.

Every patriot, EYES ON!

Yes, you!



8 86 131

Figure 21: Defendant Jennings post regarding “eyes on”

1 **D. Federal law prohibits the type of voter intimidation vigilantism perpetrated**
2 **by Defendants.**

3 59. Defendants’ tactic of gathering in groups at polling places to intimidate
4 voters is nothing new. Congress long ago enacted two broad statutes to specifically
5 prevent the types of voter intimidation affecting Arizona voters today.

6 60. The Ku Klux Klan Act of 1871 (the “Klan Act”) was the last of the
7 Enforcement Acts—legislation passed during Reconstruction to protect the suffrage
8 rights of newly freed slaves, including by protecting them and their supporters from
9 violence and harassment. President Grant requested the legislation in order to empower
10 him to stamp out the first generation of the Ku Klux Klan, which Congress granted within
11 a month of the request.

12 61. While the Klan Act is most well known for making state officials liable in
13 federal court if they deprive anyone of their civil rights or the equal protection of the law,
14 *see* 42 U.S.C. § 1983, it also prohibits private actors from engaging in conspiracies to
15 intimidate voters. *See* 42 U.S.C. § 1985(3).

16 62. Section 1985(3) of the Klan Act provides for damages and equitable relief
17 “if two or more persons conspire to prevent by force, intimidation, or threat, any citizen
18 who is lawfully entitled to vote, from giving his support or advocacy in a legal manner,
19 toward or in favor of . . . an elector for President or Vice President, or as a Member of
20 Congress of the United States . . .” *Id.* The Act further provides that an action will lie
21 against the conspirators so long as “one or more persons engaged” in the conspiracy “do,
22 or cause to be done, any act in furtherance of the object of such conspiracy.” *Id.* As the
23 Supreme Court made clear in *Ex parte Yarbrough*, 110 U.S. 651 (1884), the
24 constitutional basis for this broad provision—whose text requires no showing of racial
25 intent or animus, only a conspiracy to intimidate voters—is the Constitution’s Elections
26 Clause.

27 63. Congress later reaffirmed its commitment to outlawing voter intimidation
28 in the Civil Rights Act of 1957. That Act, now codified at 52 U.S.C. § 10101(b),

1 prohibited any person from intimidating voters, or attempting to intimidate voters, “for
2 the purpose of interfering with [the right to vote].” In the years following the Civil Rights
3 Act, courts interpreted that provision to require purposeful intent to intimidate voters and
4 to discriminate on the basis of race. *See, e.g., United States v. McLeod*, 385 F.2d 734, 750
5 (5th Cir. 1967) (holding plaintiffs failed to prove voter intimidation under the Civil
6 Rights Act because there was a good-faith, “legitimate” motive for the Defendants’
7 actions).

8 64. Nearly a century after enacting the Klan Act, Congress again invoked its
9 broad Elections Clause power to protect the franchise in 1965. Responding to numerous
10 instances of intimidation in both elections and registration efforts in the Jim Crow South,
11 including the killing of black and white activists seeking to register African Americans to
12 vote, Congress passed Section 11(b) of the Voting Rights Act, which authorizes private
13 suits against private actors, even in the absence of any action by a state or state official.

14 65. The text of § 11(b) reads: “No person, whether acting under color of law or
15 otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or
16 coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or
17 attempt to intimidate, threaten, or coerce any person for urging or aiding any person to
18 vote or attempt to vote” 52 U.S.C. § 10307(b).

19 66. In enacting this provision, Congress recognized that voter intimidation
20 would be difficult to prove under § 10101(b) of the Civil Rights Act of 1957, and thus the
21 plain text of Section 11(b) removed the word “purpose,” thus eliminating the requirement
22 that plaintiffs demonstrate a specific purpose to intimidate voters to bring a successful
23 cause of action for voter intimidation.

24 67. Indeed, in testimony before the Senate Judiciary Committee, then-Attorney
25 General Katzenbach explained that § 11(b) “represents a substantial improvement over
26 [the Civil Rights Act],” which now prohibits voting intimidation. *Voting Rights, Part 1:
27 Hearings on S. 1564 Before the S. Comm. on the Judiciary*, 89th Cong. 16 (1965). As
28 Katzenbach further explained, “under [the VRA] no subjective ‘purpose’ need be shown,

1 in either civil or criminal proceedings, in order to prove intimidation . . . Rather,
2 defendants would be deemed to intend the natural consequences of their acts.” *Id.* The
3 House Report went on to adopt this reasoning, explaining: “The prohibited acts of
4 intimidation need not be racially motivated; indeed, unlike [the Civil Rights Act] (which
5 requires proof of a ‘purpose’ to interfere with the right to vote) no subjective purpose or
6 intent need be shown.” H. Rep. No. 89-439 at 30, 89th Congress, 1st Sess. 32 (1965).

7 68. As a result, although Section 11(b) targets actions that make voters “timid
8 or fearful,” or that “inspire or affect with fear,” or “threaten” through “promise [of]
9 punishment, reprisal, or other distress,” *Nat’l Coal. on Black Civic Participation v. Wohl*
10 (“*Wohl I*”), 512 F. Supp. 3d 500, 509 (S.D.N.Y. 2021) (quoting *United States v.*
11 *Piervinanzi*, 23 F.3d 670, 677 (2d Cir. 1994)), Plaintiffs need not show that Defendants
12 have any specific, purposeful intent to intimidate voters (against voters of color or
13 otherwise) to demonstrate a violation of § 11(b). Rather, the legal test is whether
14 Defendants’ conduct is objectively intimidating or threatening to voters. *See also League*
15 *of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Int. Legal Found.*,
16 No. 1:18-CV-00423, 2018 WL 3848404, at *3–4 (E.D. Va. Aug. 13, 2018) (analyzing the
17 text of Section 11(b) against similar statutes that explicitly require a showing of intent);
18 *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 485 (S.D.N.Y.
19 2020) (“*Wohl I*”), *reconsideration denied*, No. 20 CIV. 8668 (VM), 2020 WL 6365336
20 (S.D.N.Y. Oct. 29, 2020) (finding that the plain language of Section 11(b) does not
21 contain an intent requirement); Order at 23, *Fair Fight v. True the Vote*, No. 2:20-cv-
22 00302-SCJ (N.D. Ga. Jan. 1, 2021), ECF No. 29 (finding Section 11(b) does not have an
23 intent requirement, and thus “a plaintiff need not show animus or an intent to harass or
24 intimidate in order to succeed on a Section 11(b) claim”).

25 **E. Defendants’ actions clearly violate federal laws prohibiting voter**
26 **intimidation.**

27 69. Defendants’ actions violate Section 11(b) several times over. The Doe
28 Defendants, monitoring drop boxes wearing full tactical gear and bearing arms, are

1 intimidating voters by their presence through a clear threat of physical violence. Such a
2 “presence of armed ‘guards’ at [voting locations] with no connection to state government
3 is certainly likely to intimidate voters.” *Council on Am.-Islamic Rels.-Minn. v. Atlas*
4 *Aegis, LLC*, 497 F. Supp. 3d 371, 379 (D. Minn. 2020); *cf. United States v. Clark*, 249 F.
5 Supp. 720, 725 (S.D. Ala. 1965) (the presence of groups of deputies and “possemen”
6 stationed around areas within the community were found to be intimidating to voters).

7 70. Beyond physical threats to a voter’s life, “[c]onduct that ‘put[s] [an
8 individual] in fear of harassment and interference with their right to vote’” is also
9 “sufficient to support [a] § 11(b) claim.” *Wohl II*, 512 F. Supp. 3d at 509 (citation
10 omitted). For instance, the encouragement of voters to monitor voting locations and
11 related voting activities, as Defendant Jennings has done repeatedly and across various
12 platforms, has been previously enjoined as voter intimidation under Section 11(b). *See*
13 *Ohio Democratic Party v. Ohio Republican Party*, No. 16-CV-02645, 2016 WL 6542486,
14 at *2 (N.D. Ohio Nov. 4, 2016) (granting injunction against Defendants who encouraged
15 rally attendees to monitor and “aggressively patrol polling places”), *stay granted*, No. 16-
16 4268, 2016 WL 6608962 (6th Cir. Nov. 6, 2016).

17 71. Similarly, accusing voters of criminal conduct—as Defendant and their
18 agents have when accusing voter of being “mules”—or suggesting that they are otherwise
19 ineligible to vote also can also constitute voter intimidation under Section 11(b). *Pub. Int.*
20 *Legal Found.*, 2018 WL 3848404, at *4.

21 72. The same is true of “actions or communications that inspire fear of . . .
22 privacy violations, and even surveillance,” all of which “constitute unlawful threats or
23 intimidation under the statute.” *Wohl II*, 512 F. Supp. 3d. at 509. Defendants have done
24 far more than merely inspire a fear of surveillance—they conspicuously display their
25 surveillance tools to ensure that voters know voters’ ballot submission activities are not
26 private. Similarly, Defendants’ intimidation strategy of threatening, through their
27 presence, the doxing of voters, which would reveal personal information to the public and
28 subject voters to harassment, constitutes intimidation under Section 11(b). *Wohl I*, 498 F.

1 Supp. 3d at 482-84.

2 73. Following voters around, recording information associated with the identity
3 of the voter, verbalizing disruptive noises and sounds around the voter, and threatening
4 prosecution for voting all constitute violations of Section 11(b). *See, e.g., Ohio*
5 *Democratic Party*, 2016 WL 6542486, at *2 (enjoining defendants from “[f]ollowing,
6 taking photos of, or otherwise recording voters or prospective voters, those assisting
7 voters or prospective voters, or their vehicles at or around a polling place, or training,
8 organizing, or directing others to do the same”); *see also DNC v. RNC*, 671 F. Supp. 2d
9 575, 622–23 (D.N.J. 2009) (modifying consent decree entered to resolve Section 11(b)
10 claims but maintaining provision that RNC could not “videotape, photograph, or
11 otherwise make visual records of voters or their vehicles”).

12 74. Here, voters have complained about Defendants’ harassing voters by
13 calling them “mules,” have reported being followed, and report having their license plate
14 photographed. These experiences mirror those of the voters who successfully obtained a
15 Temporary Restraining Order in *Daschle* on the basis of voter intimidation. *See also Ohio*
16 *Democratic Party*, 2016 WL 6542486, at *2 (“[i]nterrogating, admonishing, interfering
17 with, or verbally harassing voters or prospective voters,” “gathering or loitering . . .
18 without the intention to vote,” and “[f]ollowing, taking photos of, or otherwise recording
19 voters or prospective voters . . . or their vehicles” as actions that violate Section 11(b) and
20 thus were enjoined).

21 75. And even as to those persons who do not directly participate in those
22 activities, the Klan Act makes it unlawful to conspire with others to promote, organize,
23 and facilitate those efforts, and here Defendants’ broad network of volunteers to
24 monitor—and intimidate—voters across Arizona who use drop boxes to return their
25 ballots are directly probative of such an illegal conspiracy to deter voting in Arizona.

26 COUNT ONE

27 Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b)

28 76. Plaintiffs incorporate by reference the allegations of the preceding

1 paragraphs.

2 77. Defendants, through coordinated efforts, have developed a network of
3 volunteers and resources to cause individuals to gather in large groups at drop boxes to
4 try to deter “mules,” who are merely voters, from using them. In some cases, Defendants
5 have escalated their efforts by encouraging individuals to show up armed, masked, and
6 wearing tactical gear.

7 78. All of these activities constitute a violation of Section 11(b) of the Voting
8 Rights Act, which prohibits all actual or attempted “intimidation,” “threats,” or
9 “coercion” against a person, either “for voting or attempting to vote.” 52 U.S.C. §
10 10307(b).

11 79. Absent declaratory and injunctive relief, voters will be subjected to
12 intimidation, threats, and perhaps even force or physical harm at the hands of vigilante
13 drop box watchers, and many may suffer unwarranted delays or denials of their right to
14 cast a ballot in the approaching elections.

15 80. Plaintiffs are entitled to a declaration that Defendants have violated Section
16 11(b) of the Voting Rights Act, and a preliminary and permanent injunction prohibiting
17 further violations.

18 **COUNT TWO**

19 **Ku Klux Klan Act, 42 U.S.C. § 1985(3)**

20 81. Plaintiffs incorporate by reference the allegations of the preceding
21 paragraphs.

22 82. Defendants, including Defendant Jennings, have repeatedly called on her
23 co-conspirators to descend on drop boxes across the state through self-proclaimed efforts
24 to deter voting.

25 83. These co-conspirators have engaged in online organizing and mobilization
26 efforts to support their plan, including using Truth Social and the hashtag
27 #DropboxInitiative2022, as well as publicizing efforts through podcast and video
28 appearances.

84. These organized efforts violate the Ku Klux Klan Act, which prohibits “conspir[ing] to prevent, by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner,” and provides a cause of action against any of the conspirators to anyone “deprived of having and exercising any right or privilege of a citizen of the United States.” 42 U.S.C. § 1985(3).

85. Absent declaratory and injunctive relief, voters will be subjected to intimidation, threats, and perhaps even force or physical harm at the hands of vigilante drop box watchers, and many may suffer unwarranted delays or denials of their right to cast a ballot in the approaching elections.

86. Plaintiffs are entitled to a declaration that the Defendants and their affiliates have violated the Ku Klux Klan Act through their conspiracy to intimidate voters, an injunction enjoining Defendants and others from any further activity to advance their conspiracy, and actual and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, and:

- A. Declare that Defendants have violated § 11(b) of the Voting Rights Act.
- B. Declare that Defendants have violated § 1985(3) of the Ku Klux Klan Act.
- C. Temporarily and permanently enjoin the Defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from:
 - i. Gathering within sight of drop boxes;
 - ii. Following, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles at or around a drop box;
 - iii. Training, organizing, or directing others to do the same.
- D. Award nominal, compensatory and statutory damages in an amount to be determined.

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- E. Award punitive damages in an amount to be determined.
- F. Award Plaintiffs their costs, disbursements, and reasonable attorneys’ fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- G. Grant such other and further relief as the Court deems just and proper.

1
2 Dated: October 24, 2022

Respectfully submitted,

3
4 /s/ Daniel A. Arellano

Roy Herrera (No. 032901)

Daniel A. Arellano (No. 032304)

Austin T. Marshall (No. 036582)

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16 * Application for *Pro Hac Vice*

17 Forthcoming

18 *Counsel for Plaintiffs*

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* Application for *Pro Hac Vice* Forthcoming
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Arizona Alliance for Retired Americans;
Voto Latino,

Plaintiffs,

v.

Clean Elections USA; Melody Jennings;
Doe Defendants 1-10,

Defendants.

No. _____

**PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

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INTRODUCTION

Inspired by a universally debunked propaganda film about the 2020 election, Defendant Clean Elections USA (“CEUSA”) and its founder, Defendant Melody Jennings, have recruited groups of people (the Doe Defendants) to stake out ballot drop boxes in Arizona with the express purpose of deterring voters from casting ballots. Defendants openly brag that they have already scared away voters. Last week alone, their activities in Maricopa County led to three voter intimidation complaints that have been referred to the Department of Justice. And the Maricopa County Sheriff’s Office has repeatedly had to respond to reports by scared voters when armed individuals, sometimes masked and in tactical gear, gathered near a drop box at night. Defendants say they have recruited thousands and are just getting started.

With Election Day just two weeks away and voting already well under way, a temporary restraining order and preliminary injunction are urgently needed to stop Defendants’ lawless conduct before it gets even worse. Plaintiffs are likely to succeed on the merits of their claims. While Defendants’ use of social media websites and online media to organize and promote their activities is relatively new, their basic tactic of gathering in large groups to surveil and intimidate voters is a longstanding one that is directly prohibited both by Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and by the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3). Absent immediate relief, Plaintiffs—and voters across Arizona—will suffer irreparable harm. And the balance of the equities and the public interest strongly weigh in favor of protecting Arizona voters from harassment and intimidation, particularly where Defendants’ activities are inspired entirely by debunked theories about “ballot mules” that do not exist and never have, and where election officials already monitor drop boxes and have not reported any issues.

The Court should therefore enter a temporary restraining order and preliminary injunction prohibiting Defendants from gathering within sight of drop boxes; from following, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles at or around a drop box; and from

1 training, organizing, or directing others to do those activities.

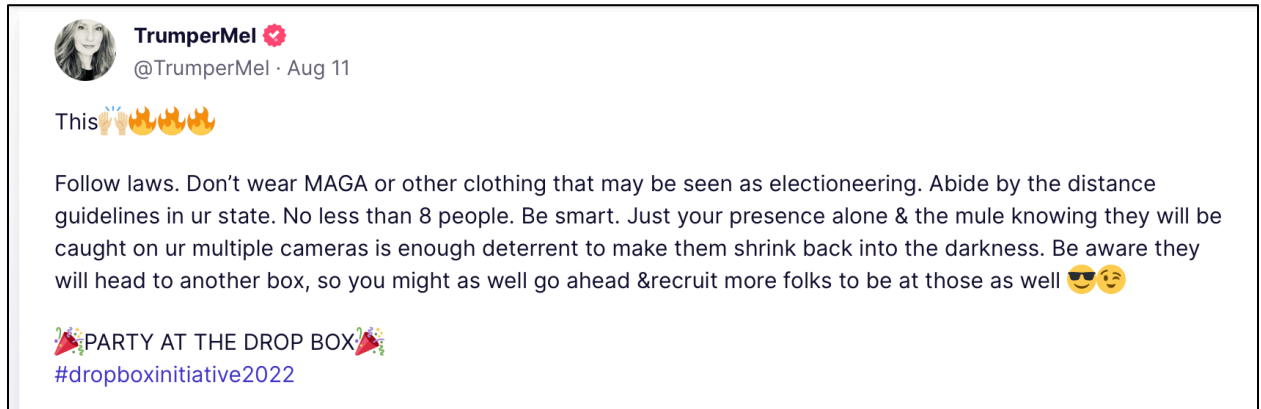
2 BACKGROUND

3 In the wake of the 2020 election, right-wing commentator Dinesh D’Souza released
4 “2000 Mules,” a propaganda film which purported to demonstrate using cellphone location
5 data that thousands of so-called “ballot mules” had delivered stacks of ballots to drop boxes
6 in several states. The film’s claims are simply false. Even former Attorney General Bill
7 Barr guffawed when asked about them under oath, explaining that the cellphone data is
8 “singularly unimpressive” and that the premise that it shows the existence of ballot mules
9 was “just indefensible.” Declaration of Daniel Arellano (Oct. 23, 2022) (“Arellano Decl.”)
10 Ex. A. When there are millions of cell phones in a city, Barr explained, there will almost
11 “by definition” be some that repeatedly pass by particular places over any given time
12 period. *Id.*

13 Unfortunately, the film’s unfounded conspiracy theories proved influential among
14 many credulous election deniers, including Defendant Melody Jennings, the founder of
15 Defendant CEUSA. Convinced by the “teasers” for 2000 Mules that “ballot mules” had
16 stolen the 2020 election by “stuffing” drop boxes with fraudulent ballots, Defendant
17 Jennings came up with a plan: she would recruit others on the Trump-owned social media
18 platform Truth Social, where she posts using the username “TrumperMel,” with a goal of
19 placing groups of people around every drop box, to deter “mules” from using the drop
20 boxes. *See* Arellano Decl. Ex. B. But there are no “mules”—they are a paranoid
21 conspiracy—so the people Defendant Jennings is targeting are simply voters. She
22 nevertheless founded Defendant CEUSA and initiated a campaign titled
23 “#Dropboxinitiative2022” to put her plan into action. *See id.*

24 Defendants say that they are just watching and photographing voters, not engaging
25 with them. But they openly admit that their purpose is to deter “mules”—which, again, just
26 means voters—from using the drop boxes. As early as August, Defendant Jennings urged
27 Defendants’ members and supporters to gather with “[n]o less than 8 people” to watch drop
28 boxes, explaining that “just your presence alone & the mule knowing they will be caught

on ur [sic] multiple cameras is enough deterrent to make them shrink back into the darkness”:



Arellano Decl. Ex. C. The next month, Jennings further emphasized: “10 people in groups around every drop box! Not 2 people. That’s not a deterrent. . . . Video, take pics.” Arellano Decl. Ex. D. And just last week, Defendant Jennings urged “[a]ll Arizona patriots get to either the Mesa box or the Phoenix box . . . Right now,” explaining that more people were needed because “[t]here are mules getting there and doing their thing even with my people there.” Arellano Decl. Ex. E.

Defendants’ presence is therefore expressly intended to discourage voters from using drop boxes. And there is reason to believe that Defendants in fact do more than passively observe. When someone asked Defendant Jennings on social media just last week, “how are the boxes secured, if you’re just filming and getting info on the m[u]les? If the ballots still go in the box, how do we know which ballots are their illegitimate ballots?,” Jennings tellingly responded: “Friend, while I would love to tell you all the sauce I don’t think that’s wise in an open forum.” Arellano Decl. Ex. F. In a September podcast appearance, Jennings threatened to dox suspected ballot mules, as well as to report them to a cadre of sheriffs who share Jennings’ election-related conspiracy theories. Arellano Decl. Ex. G at 13:27, 18:50, 19:10. And in an interview on October 19 with Steve Bannon, Jennings emphasized “we’re geotracking them, we’ve got cameras on the back-sides of them . . . We have the sauce, we’re just showing you that we’re out there, and people are coming and joining us.” Arellano Decl. Ex. H.

1 Defendants' plans have not been idle talk. Just last week, Defendants' members and
2 supporters repeatedly gathered outside Maricopa County drop boxes at Defendants' urging
3 to surveil voters. Defendant Jennings posted photographs of the gatherings and referred to
4 the people gathered as "my people," "my crew," "our people," "our beautiful box
5 watchers," and "us," Arellano Decl. Exs. E, I, J, K, and posted photographs of voters using
6 the box, Arellano Decl. Ex. L.

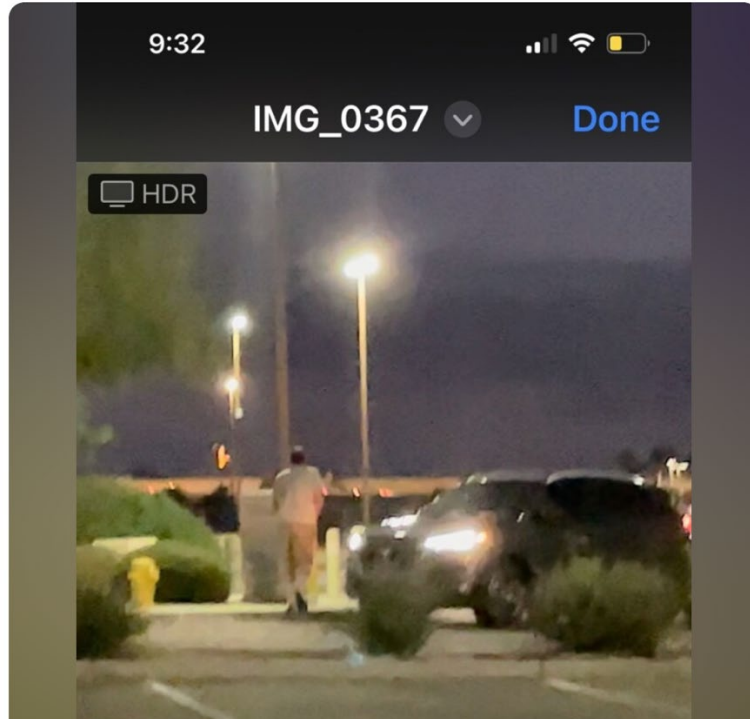
7 The effect on voters was immediate: over the span of four days, three Maricopa
8 County voters submitted complaints about voter intimidation near both of the county's two
9 outdoor drop boxes. *See* Arellano Decl. Ex. M (explaining that Maricopa's remaining drop
10 boxes are inside city and town facilities). The first complaint, filed on October 17,
11 described "a group of people hanging out near the [Mesa] ballot dropbox filing and
12 photographing my wife and I as we approached the dropbox and accusing us of being a
13 mule. They took photographs of our license plate and of us and then followed us out of the
14 parking lot in one of their cars continuing to film." Arellano Decl. Ex. N. When the
15 complaint was made public, Defendants at first denied responsibility. Arellano Decl. Ex.
16 O. But Defendant Jennings had already posted a photograph of a person that appears to be
17 the complainant using the drop box, along with bizarre accusations that he "pulled ballots
18 out of his shirt" and pleas that they "need people there tonight to help my people. Lots of
19 you!":



TrumperMel ✓

@TrumperMel · 2d

This guy. Drove in backwards to avoid plate detection. Got out showing his back. Pulled ballots out of his shirt. I need people there tonight to help my people. Lots of you! 75 ft away from box, post up opposite so we see both sides. Someone get tags. No talking to them. Do NOT GO INSIDE 75 ft! They are trying to get us to engage them. Do not do it!



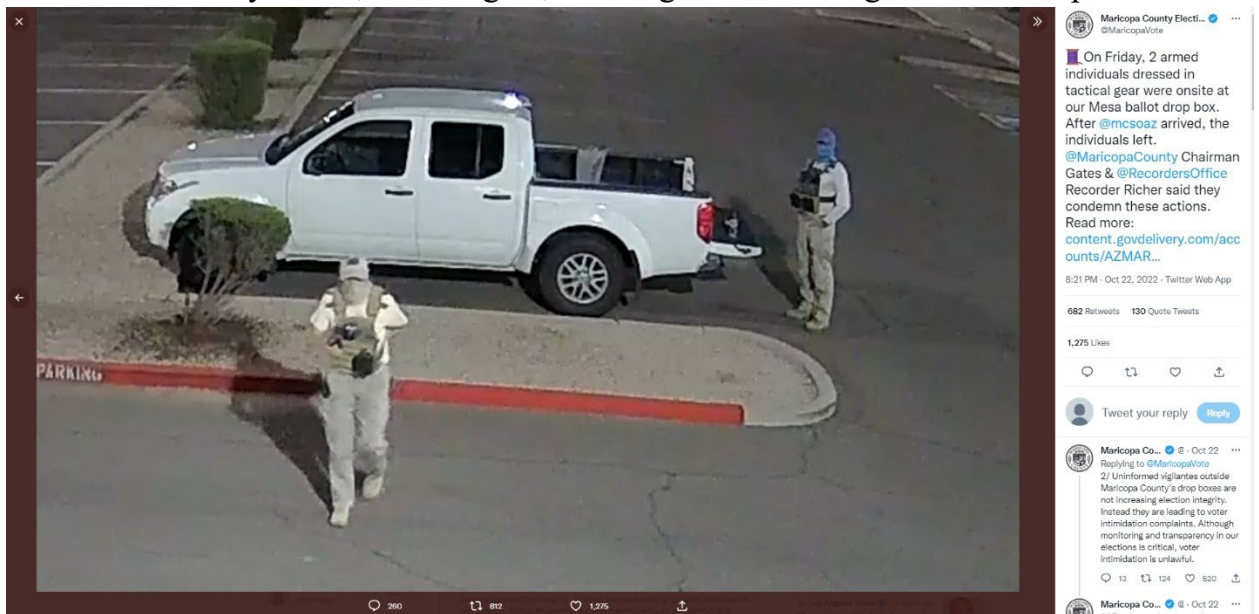
Arellano Decl. Ex. L. And in a video interview on Friday, Defendant Jennings admitted that Defendants' members and supporters were present at the Mesa drop box on October 17 and saw, photographed, and recorded the voter in question. *See* Arellano Decl. P.

The second intimidation complaint, filed on October 19, reported “[c]amo clad people taking pictures of me, my license plate as I dropped our mail in ballots in the box” in Phoenix. Arellano Decl. Ex. Q. The complaint included photographs of the individuals watching the drop box, and those same individuals had identified themselves to a local reporter on video as being affiliated with Defendant CEUSA. *See* Arellano Decl. Ex. R. They otherwise declined to speak to the reporter, saying that they are “not supposed to be having a discussion with anyone about anything” and that they would “like to talk to [CEUSA] before” speaking further to her. *See* Arellano Decl. Ex. S. Defendant Jennings

1 posted a photo of those same individuals and described them as “[o]ur beautiful box
2 watchers in Maricopa county” in an October 19 Truth Social post. Arellano Decl. Ex. J.

3 The third complaint described “a group of 5 or 6 20-30 yr old men standing in the
4 parking lot” near the Mesa drop box on October 20 who “took pictures of our license plate
5 and our car” and “claimed they were taking pictures for ‘election security.’” Arellano Decl.
6 Ex. Q. While the men did not further identify themselves, Defendants had referred to the
7 press “filming our people at the Mesa Arizona drop box” just the night before, and urged,
8 “Get out there people. Let’s go watch that box and make heads pop.” Arellano Decl. Ex. I.

9 Defendants responded to the complaints from voters by escalating the intimidation.
10 On Friday evening, October 21, the Maricopa County Sheriff’s Office investigated several
11 individuals in body armor, tactical gear, and disguises watching the Mesa drop box:



22 Arellano Decl. Ex. T. The Sheriff’s Office confirmed that two of those drop box watchers
23 were armed. *Id.* Defendant Jennings responded by reposting a social media post claiming
24 that “by the looks of this video, these people are not doing ANYTHING illegal.” Arellano
25 Decl. Ex. U. She proclaimed that “American citizens are still free to protect their elections
26 from enemies foreign and domestic. Winning!!!” Arellano Decl. Ex. W. She claimed
27 responsibility for the armed individuals in tactical gear, describing them as “our people”
28

and insisting they had done nothing wrong:



Arellano Decl. Ex. X. And she continued to post photographs of voters using Maricopa County drop boxes to her social media accounts. Arellano Decl. Ex Y. The next evening, Saturday October 22, masked and armed individuals once again stationed themselves near the Mesa drop box, prompting the Maricopa County Sheriff’s Office to deploy to the scene. Arellano Decl. Ex. Z.

LEGAL STANDARD

A temporary restraining order or preliminary injunction should issue where the moving party shows: (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm in the absence of relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Recovery Hous. Acad. LLC v. Candelario*, 562 F. Supp. 3d 333, 339 (D. Ariz. 2022) (same standard for temporary restraining order). Even if the moving party can only show that there are “serious questions going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips sharply in the [moving party’s] favor, and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quotation omitted).

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of their claims.

A. Plaintiffs have standing.

Plaintiffs Arizona Alliance for Retired Americans (the “Alliance”) and Voto Latino have sufficiently alleged standing, both as organizations and, for the Alliance, on behalf of its constituents. A plaintiff establishes standing by showing it has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

Both the Alliance and Voto Latino have established organizational standing. “[A]n organization has direct standing to sue where it establishes that the defendant’s behavior has frustrated its mission and caused it to divert resources in response to that frustration of purpose.” *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 879–80 (9th Cir. 2022) (citation omitted). Plaintiffs easily satisfy this standard. They help Arizona’s elderly, Latinx, and youth communities vote, and will have to divert mission-critical resources to attempt to counteract the negative impacts of Defendants’ actions if those actions continue. *See generally* Declaration of Saundra Cole (Oct. 24, 2022) (“Cole Decl.”); Declaration of Ameer Patel (Oct. 24, 2022) (“Patel Decl.”). For example, if Defendants’ activities continue, the Alliance will need to organize media events and member meetings to educate voters about intimidation at drop box sites, Cole Decl. ¶ 14, adjust the script for its regular phone banking activities to ensure voters are aware of potential intimidation, *id.* ¶ 15, and alter its social media and word-of-mouth campaigns to alert voters, *id.* Those resources would otherwise be directed towards the Alliance’s traditional voter mobilization efforts. *Id.* ¶ 16. Similarly, if Defendants’ activities continue, Voto Latino will need to divert resources to address them, such as by developing and launching an educational campaign on voters’ rights and how to respond to voter intimidation, an undertaking that would require significant staff time and resources. Patel Decl. ¶ 13. These types of injuries are sufficient to establish standing. *See Sabra*, 44 F.4th at 879 (finding organizational standing

1 where organization had to divert resources to create campaign correcting Islamophobic
 2 information in professor's course materials); *Nat'l Council of La Raza v. Cegavske*, 800
 3 F.3d 1032, 1039–41 (9th Cir. 2015) (finding organizational standing where plaintiff
 4 expended additional resources to register voters following change in the law); *Smith v. Pac.*
 5 *Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004) (finding organizational standing
 6 where plaintiff would have to divert scarce resources to promote awareness of laws).

7 The Alliance has also established standing on behalf of its members. To establish
 8 representational standing, a plaintiff “must demonstrate that (a) its members would
 9 otherwise have standing to sue in their own right; (b) the interests it seeks to vindicate are
 10 germane to the organization's purpose; and (c) neither the claim asserted nor the relief
 11 requested requires the participation of individual members in the lawsuit.” *Smith*, 358 F.3d
 12 at 1101–02 (quoting *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343
 13 (1977)). An organization need not identify by name its member or members injured
 14 “[w]here it is relatively clear . . . that one or more members have been or will be adversely
 15 affected by a defendant's action, and where the defendant need not know the identity of a
 16 particular member to understand and respond to an organization's claim of injury.” *Nat'l*
 17 *Council*, 800 F.3d at 1041. The Alliance has approximately 50,000 members spanning
 18 every county in Arizona. Cole Decl. ¶ 3. Most of the Alliance's members are between 55
 19 and 90 years of age and many have disabilities, and like most Arizona voters, many vote
 20 early by mail. *Id.* ¶ 14. The Alliance's members are therefore particularly likely to use drop
 21 boxes, and will be harmed by intimidation efforts at those drop boxes. *See id.*

22 **B. Defendants have violated Section 11(b) of the Voting Rights Act.**

23 Section 11(b) of the Voting Rights Act provides that no one, “whether acting under
 24 color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate,
 25 threaten, or coerce any person for voting or attempting to vote.” 52 U.S.C. § 10307(b). This
 26 “provision applies to private conduct and can be enforced through suit by a private
 27 individual.” *Nat'l Coal. on Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 509
 28 (S.D.N.Y. 2021) (“*Wohl II*”); *see also Ariz. Dem. Party v. Ariz. Rep. Party*, No. CV-16-

03752-PHX-JJT, 2016 WL 8669978, at *4 (D. Ariz. Nov. 4, 2016). It prohibits all actual and attempted voter intimidation, whether or not racially motivated, so a plaintiff need not “allege discrimination or racial targeting to prevail.” *Wohl II*, 512 F. Supp. 3d at 509.

Section 11(b) is a broad prohibition: any “actions or communications that inspire fear of economic harm, legal repercussions, privacy violations, and even surveillance can constitute unlawful threats or intimidation under the statute.” *Id.* at 509. Conduct that puts voters “in fear of harassment and interference with their right to vote” therefore violates Section 11(b). *LULAC – Richmond Region Council 4614 v. PILF*, No. 1:18-cv-00423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018). “The presence of armed ‘guards’ at the polls with no connection to the state government is certainly likely to intimidate voters.” *Council on Am.-Islamic Rels.-Minn. v. Atlas Aegis, LLC*, 497 F. Supp. 3d 371, 379 (D. Minn. 2020). But Section 11(b) also protects voters from “subtle, nonviolent forms of intimidation.” *Wohl II*, 512 F. Supp. 3d at 510. Courts enforcing Section 11(b) have therefore enjoined defendants from “[f]ollowing, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles at or around a polling place, or training, organizing, or directing others to do the same.” *Ohio Dem. Party v. Ohio Rep. Party*, No. 16-cv-02645, 2016 WL 6542486, at *2 (N.D. Ohio Nov. 4, 2016), *stay granted*, No. 16-4268, 2016 WL 6608962 (6th Cir. Nov. 6, 2016); *see also DNC v. RNC*, 671 F. Supp. 2d 575, 622–23 (D.N.J. 2009) (modifying consent decree entered to resolve VRA § 11(b) claims but maintaining provision that RNC could not “videotape, photograph, or otherwise make visual records of voters or their vehicles”). This is consistent with the ordinary meaning of Section 11(b)’s broad text. *See, e.g.*, “Intimidate,” Merriam-Webster.com, <https://www.m-w.com/dictionary/intimidate> (“to make timid or fearful”; “to compel or deter by or as if by threats”), “Threaten,” Merriam-Webster.com, <https://www.m-w.com/dictionary/threaten> (“to utter threats against”; “to hang over dangerously”; “to cause to feel insecure or anxious”); “Coerce,” Merriam-Webster.com, <https://www.m-w.com/dictionary/coerce> (“to restrain or dominate by force”; “to compel to an act or choice”; “to achieve by force or threat”).

Moreover, Section 11(b) prohibits intimidation whether or not defendants acted with the specific purpose of intimidating voters. “[T]he plain language of the statute does not require a particular *mens rea*.” *Ariz. Dem. Party*, 2016 WL 8669978, at *4 n.3. Indeed, when Congress enacted Section 11(b) in 1965, it specifically omitted language from a very similar provision in the Civil Rights Act of 1957, now codified at 52 U.S.C. § 10101(b), which already prohibited intimidation in nearly identical terms where it was done “for the purpose of interfering with the right of such other person to vote or to vote as he may choose.” 52 U.S.C. § 10101(b). “The text of § 11(b), unlike [the Civil Rights Act provision] plainly omits ‘for the purpose of,’ suggesting § 11(b)’s deliberately unqualified reach.” *LULAC – Richmond*, 2018 WL 3848404, at *4. As a result, “unlike [the Civil Rights Act] (which requires proof of a ‘purpose’ to interfere with the right to vote) no subjective purpose or intent need be shown.” H. Rep. No. 89-439 at 30, 89th Congress, 1st Sess. 32 (1965); *see also Voting Rights, Part 1: Hearings on S. 1564 Before the S. Comm. on the Judiciary*, 89th Cong. 16 (1965) (Attorney General Katzenbach: under Section 11(b), “no subjective ‘purpose’ need be shown . . . in order to prove intimidation Rather, defendants would be deemed to intend the natural consequences of their acts”).¹

Plaintiffs are likely to succeed in showing that Defendants have violated, and continue to violate, Section 11(b) by organizing and encouraging large groups of their supporters—sometimes armed and wearing tactical gear—to gather at Arizona drop boxes

¹ In *Olagues v. Russoniello*, 770 F.2d 791, 804 (9th Cir. 1985), the Ninth Circuit stated in dicta that section 11(b), then codified at 42 U.S.C. § 1973i(b), required proof that defendants “intend[ed] to intimidate” (emphasis omitted). But that statement was not essential to the court’s holding. Moreover, in making it, the court failed to distinguish between section 11(b) (then codified at § 1971i(b)) and § 10101(b) (then codified at § 1971(b)), even though only the latter has an express textual intent requirement, and it relied on the Fifth Circuit’s decision in *United States v. McLeod*, 385 F.2d 734, 738 (5th Cir. 1967), which was a decision under § 10101(b) only, and did not involve the VRA at all. *See LULAC-Richmond*, 2018 WL 3848404, at *4. In any event, Defendants here clearly intend to intimidate. *See Arellano Decl. Ex. C* (encouraging large groups to gather at drop boxes for “deterren[ce]”); *Arellano Decl. Ex. D* (same); *Arellano Decl. Ex. G* (threatening to dox individuals at drop box sites and report them to sheriff).

1 and photograph and videorecord voters casting their ballots. Indeed, intimidating voters to
 2 deter them from using drop boxes is the open purpose of Defendants' conduct. Defendants
 3 themselves have repeatedly boasted that their purpose is to deter suspected "ballot mules"
 4 from using drop boxes, and they acknowledge having deterred the submission of ballots.
 5 *See, e.g.,* Arellano Decl. Exs. G at 13:27, AA at 8:05. And Defendants have engaged in
 6 exactly the sort of conduct that courts have previously considered illegal voter intimidation,
 7 including photographing and video-recording voters and their vehicles. *Ohio Dem. Party*,
 8 2016 WL 6542486, at *2; *DNC*, 671 F. Supp. 2d at 622–23. Confirming the point, Arizona
 9 voters have repeatedly complained that Defendants' conduct is intimidating and an
 10 interference with their right to vote. Arellano Decl. Exs. N, Q. Based on this evidence and
 11 more, much of it the direct statements by Defendants themselves, Plaintiffs are likely to
 12 succeed in proving that Defendants have either actually or attempted to "intimidate,
 13 threaten, or coerce" Arizona voters for "voting or attempting to vote," in violation of
 14 Section 11(b).

15 **C. Defendants have violated the Support or Advocacy clause of the Klan**
 16 **Act.**

17 Plaintiffs are also likely to prevail on their claim under the Support or Advocacy
 18 clause of the Klan Act, 42 U.S.C. § 1985(3), which bars "conspiracy[ies] to interfere with
 19 federal elections," *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.3 (9th Cir. 1985) (en banc).
 20 That clause provides "an action for the recovery of damages" to an injured party where:

21 two or more persons conspire to prevent by force, intimidation
 22 or threat, any citizen who is lawfully entitled to vote, from
 23 giving his support or advocacy in a legal manner, toward or in
 24 favor of the election of any lawfully qualified person as an
 25 elector for President or Vice President, or as a Member of
 26 Congress of the United States; or to injure any citizen in person
 27 or property on account of such support or advocacy, . . . if one
 or more persons engaged therein do, or cause to be done, any
 act in furtherance of the object of such conspiracy, whereby
 another is injured in his person or property, or deprived of
 having and exercising any right or privilege of a citizen of the
 United States.

28 42 U.S.C. § 1985(3).

1 Plaintiffs are likely to succeed in making each of the required showings here. *First*,
 2 Plaintiffs are likely to succeed on the merits of their claim that Defendants have engaged
 3 in a conspiracy. A civil conspiracy is “a combination of two or more persons who, by some
 4 concerted action, intend to accomplish some unlawful objective for the purpose of harming
 5 another which results in damage.” *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 935 (9th Cir.
 6 2012). As the Ninth Circuit explained:

7 To be liable, each participant in the conspiracy need not know
 8 the exact details of the plan, but each participant must at least
 9 share the common objective of the conspiracy. A defendant’s
 10 knowledge of and participation in a conspiracy may be inferred
 from circumstantial evidence and from evidence of the
 defendant’s actions.

11 *Id.* Here, Defendants Jennings and CEUSA share a “common objective” with the Doe
 12 Defendants they have recruited and encouraged to surveil drop boxes: to intimidate voters
 13 from voting. Defendants have not only agreed on a common plan; they are boasting about
 14 it in public and recruiting others. Defendant Jennings has encouraged CEUSA’s supporters,
 15 including the Doe Defendants, to act as “deterrent[s]” at drop boxes by gathering in groups
 16 of “[n]o less than 8 people” at specific drop boxes in Arizona. Arellano Decl. Ex. C; *see*
 17 *also* Arellano Decl. Ex. D. This is objectively intimidating behavior. Moreover, Defendant
 18 Jennings has *admitted* that in some instances Arizona voters retreated from drop boxes
 19 after encountering Defendants’ coordinated gatherings. Arellano Decl. Ex. AA at 8:00.

20 *Second*, Plaintiffs will likely prove the conspiracy is directed at preventing lawful
 21 voters from voting “by force, intimidation, or threat.” For the reasons laid out above,
 22 Defendants’ efforts are plainly designed to threaten, coerce, and intimidate voters. And
 23 each co-conspirator has performed an act in furtherance of that conspiracy. Defendant
 24 Jennings has, personally and on behalf of CEUSA, encouraged volunteers to deter

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 27 of Section 1985(3)); Richard Primus & Cameron O. Kistler, *The Support-or-Advocacy*
 28 *Clauses*, 89 Fordham L. Rev. 145, 157 (2020) (explaining that due to reorganizations of
 the federal code since the passage of the Klan Act, “it is a mistake to treat § 1985(3) as a
 meaningful unit”).

1 individuals from using drop boxes. *See* Arellano Decl. Exs. C, D. Groups of individuals
 2 associated with CEUSA filmed, photographed, and followed voters approaching drop
 3 boxes and their vehicles. Arellano Decl. Exs. J, L, N, P, Q, R, S. Several stationed
 4 themselves near drop boxes in the evening with disguises, tactical gear, magazine clips,
 5 and firearms. Arellano Decl. Exs. T, U, X, Z. Each of these acts, and many others, have
 6 furthered the conspiracy to intimidate voters.

7 *Third and finally*, each of the acts described above are likely to injure Plaintiffs by
 8 forcing them to divert organizational resources to warn the communities they serve about
 9 the threat of intimidation, and in the case of the Arizona Alliance, by depriving its members
 10 of their legal right to vote without intimidation, Cole Decl. ¶¶ 12–13, 14–16; Patel Decl.
 11 ¶¶ 11–13.

12 **II. Plaintiffs will suffer irreparable harm in the absence of relief.**

13 Immediate injunctive relief is necessary to protect Plaintiffs (as well as countless
 14 other Arizona voters) against severe and irreparable harm that is threatened by Defendants’
 15 actions. First, the Arizona Alliance’s 50,000 members are among those whose voting rights
 16 are at risk. *Supra* Part I.A. Interference with the right to vote necessarily constitutes
 17 irreparable harm because it cannot be remedied after the election. *See, e.g., League of*
 18 *Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“once the
 19 election occurs, there can be no do-over and no redress”); *Council of Alternative Political*
 20 *Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997) (finding irreparable harm based on
 21 alleged denial of “voting and associational rights” because infringement of those rights
 22 “cannot be alleviated after the election”); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002
 23 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights
 24 ‘unquestionably constitutes irreparable injury.’”). “Consequently, if potential members of
 25 the electorate suffer intimidation, threatening conduct, or coercion such that their right to
 26 vote freely is abridged, or altogether extinguished,” that harm is irreparable. *Ariz. Dem.*
 27 *Party*, 2016 WL 8669978, at *11. And “if some potential voters are improperly dissuaded
 28 from exercising their franchise, it is unlikely those voters can be identified, their votes

cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact.” *Id.* Second, if Defendants’ intimidation continues, Plaintiffs will be forced to divert limited resources and staff time to educating voters about how to respond to and resist Defendants’ intimidation efforts, to ensure that Plaintiffs’ members and constituencies do not succumb to them. *Supra* Part I.A. The resulting “ongoing harms to their organizational missions,” too, is irreparable harm. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

III. The balance of the equities and the public interest favor Plaintiffs

Finally, the balance of the equities and the public interest also favor Plaintiffs. Defendants claim that their activities are needed to detect and deter so-called “ballot mules”—a reference to widely debunked conspiracy theories promoted by the right-wing film 2000 Mules. But 2000 Mules’ assertions about widespread ballot harvesting were based almost entirely on the claim—which even Bill Barr found literally laughable, *see* Arellano Decl. Exs. A, BB—that anyone who “went near a drop box more than 10 times and a nonprofit more than five times from Oct. 1 to Election Day” was engaged in ballot harvesting, rather than, say, driving a taxi or delivering mail. *See* Arellano Decl. Ex. CC. There is simply no evidence of any meaningful problem with ballot harvesting by “ballot mules” in Arizona—or anywhere else in the United States—that Defendants’ activities could possibly be needed solve. And Arizona election officials *already* monitor and secure drop boxes. There is no evidence whatsoever that this is in any way insufficient.

Defendants’ activities thus have no benefit, but they do impose very substantial harms. The constitutional interest at stake in this litigation is the voters’ “most precious” “right . . . , regardless of their political persuasion, to cast their votes effectively” and free of intimidation. *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). The interest in “protecting voters from confusion and undue influence” is “compelling,” *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality op.), and laws that protect voters from intimidation safeguard the “fundamental political right . . . preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Thus, “voter intimidation and coercion [are] . . . obvious harm[s]

1 that federal law strongly and properly prohibits.” *United States v. Madden*, 403 F.3d 347,
 2 352 (6th Cir. 2005) (Boggs, C.J., concurring in part and dissenting in part). And “[b]y
 3 definition, [t]he public interest . . . favors permitting as many qualified voters to vote as
 4 possible.” *League of Women Voters*, 769 F.3d at 247; *see also Purcell v. Gonzalez*, 549
 5 U.S. 1, 4 (2006) (the public has a “strong interest in exercising the fundamental political
 6 right to vote”).

7 CONCLUSION

8 The Court should grant a temporary restraining order and a preliminary injunction
 9 prohibiting Defendants gathering within sight of drop boxes; from following, taking photos
 10 of, or otherwise recording voters or prospective voters, those assisting voters or prospective
 11 voters, or their vehicles at or around a drop box; and from training, organizing, or directing
 12 others to do the same.

13 Dated: October 24, 2022

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arizona Alliance for Retired Americans;
Voto Latino,

Plaintiffs,

v.

Clean Elections USA; Melody Jennings;
Doe Defendants 1-10,

Defendants.

No. _____

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiffs Arizona Alliance for Retired Americans and Voto Latino moved to enjoin Defendants for violations of the Voting Rights Act and the Ku Klux Klan Act. Having considered the parties' pleadings, arguments of counsel, and the record in this case, the Court finds that Plaintiffs have demonstrated a strong likelihood of success on the merits; that, absent an injunction, they face immediate, irreparable injury from Defendants' actions; and that the balance of the equities and the public interest favor immediate preliminary injunctive relief.

Therefore, the Court hereby **GRANTS** the motion and orders the following:

1. It is **HEREBY ORDERED** that Plaintiffs' Motion for Preliminary Injunction is **GRANTED**;
2. Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them are **ENJOINED** from:

- 1 a. Gathering within sight of drop boxes;
- 2 b. Following, taking photos of, or otherwise recording voters or prospective
- 3 voters, those assisting voters or prospective voters, or their vehicles at or
- 4 around a drop box; or
- 5 c. Training, organizing, or directing others to do the same.
- 6 3. No person who has notice of this injunction shall fail to comply with it, nor shall any
- 7 person subvert the injunction by sham, indirection or other artifice.
- 8 4. The bond requirement is hereby **WAIVED**.
- 9 5. This injunction will go into effect immediately and shall remain in effect pending
- 10 further order from this Court.

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12 **IT IS SO ORDERED.**
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