

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MI FAMILIA VOTA EDUCATION FUND;
SARA SCHWARTZ; and MARLA LOPEZ,

Plaintiffs,

-against-

DONALD J. TRUMP, in his individual and
official capacity as President of the United States;
WILLIAM P. BARR, in his official capacity as
Attorney General; and CHAD F. WOLF, in his
official capacity as Acting Secretary of Homeland
Security,

Defendants.

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. President Donald J. Trump and his political appointees are trying to prevent a free and fair 2020 election by intimidating and threatening eligible voters who want to vote, support, and advocate on behalf of certain political candidates, and express their political beliefs. The Voting Rights Act, the Ku Klux Klan Act, and the United States Constitution forbid them from doing so.

2. Defendants have threatened to send law enforcement to polling places; encouraged activist Trump supporters and white supremacist groups with a history of violence to go to polling locations to serve as “poll watchers”; proposed to delay the 2020 general election; publicly discredited voting by mail; sabotaged mail delivery for the purpose of making voting by mail less reliable; threatened to ban voting by mail or prevent mailed-in votes from being

counted; and rejected the nation's unbroken 231-year history of peaceful transfers of power by refusing to commit to honor or recognize the legitimacy of the results of the presidential election.

3. Defendants' actions over the past five months make these threats terrifyingly credible. Defendants have displayed a willingness to use the full force of the federal government to suppress constitutionally protected activity and incite private actors to do the same. They have deployed armed federal law enforcement agents to violently suppress peaceful assemblies and publicly encouraged vigilante violence against such demonstrators.

4. This pattern of violently suppressing opposition, sabotaging a free and fair election, and rejecting a peaceful transfer of power has the purpose and effect of intimidating Americans from voting, trying to vote, helping others to vote, supporting or advocating for the election of Trump's opponents, or exercising the right to speak, peaceably assemble, or petition the government for redress of grievances, in violation of Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b); Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3); and the First, Fifth, and Fourteenth Amendments to the U.S. Constitution.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 because this action arises under Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b); Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3); and the First, Fifth, and Fourteenth Amendments to the U.S. Constitution.

6. This Court has authority to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

7. Venue in this district is proper under 28 U.S.C. §§ 1391(e)(1) and 1391(b)(2) because Defendants are officers of the United States and reside in this District, and a substantial part of the events or omissions giving rise to this claim occurred in this District.

PARTIES

8. Plaintiff Mi Familia Vota Education Fund (“MFV”) is a non-profit, national civic engagement organization with the mission of uniting Latino, immigrant, and allied communities to promote social and economic justice through citizenship workshops, voter registration, and voter participation. Its mission and activities consist of public education, voter registration, and voter engagement. MFV has operations in Arizona, California, Colorado, Florida, Nevada, and Texas. MFV has expended money, time, and other resources to educate voters about mail-in voting and voting restrictions that Defendants have implemented or advocated for. It has diverted resources from other projects, including educating voters about issues that are relevant to their communities, in order to address Defendants’ intimidation tactics. MFV will continue to divert its resources, impairing its ability to perform its mission, unless and until Defendants’ intimidation tactics stop.

9. Plaintiff Sara Schwartz is a United States citizen. She resides in Philadelphia, PA, and is registered to vote there.

10. Plaintiff Marla Lopez is a United States citizen. She resides in Houston, TX, and is registered to vote there.

11. Defendant Donald J. Trump is the current president of the United States and an individual candidate for public office. He is sued in his individual and official capacities.

12. Trump operates, oversees the operation of, and frequently speaks through a verified Twitter account under the Twitter handle @realDonaldTrump. According to the White House, these tweets are “official statements by the president of the United States.”¹

13. Defendant William P. Barr is the Attorney General of the United States. He is sued in his official capacity.

14. Defendant Chad F. Wolf is the Under Secretary of Homeland Security for Strategy, Policy, and Plans, and has been serving under the title of Acting Secretary of Homeland Security. In that capacity, he presently oversees the Department of Homeland Security (DHS). He is sued in his official capacity.

FACTS

A. Violent attacks on public speech and assembly

i. Federal law enforcement attacks

15. Beginning in late May 2020, after the police killing of George Floyd, Americans around the country began assembling in large public demonstrations against police brutality and racism. These demonstrators largely have voiced support for the slogan or movement “Black Lives Matter,” and many have voiced their opposition to President Trump, his administration, and his statements and policies with respect to police brutality. A substantial number of these demonstrators also have emphasized the need for attendees to register to vote for the 2020 general election and actually vote when the time comes. The vast majority of the people assembling in these demonstrations have been peaceful and law-abiding.

¹ White House Press Sec’y Sarah Sanders, Press Briefing (Dec. 5, 2017), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-120517/>.

16. In some cases, these demonstrations occurred while local, state, and/or presidential primary elections were ongoing. Other demonstrations have occurred in the weeks leading up to the 2020 general election.

17. Many people have been inspired by these assemblies to contact their political representatives and participate in the political process, including by registering to vote, planning to vote, and/or requesting an application for vote-by-mail, including for the 2020 general election.

18. Plaintiff Schwartz has attended several such demonstrations in Philadelphia, PA at which she has observed concentrated voter registration efforts.

19. Demonstration organizers throughout the country often specifically have advocated for attendees to become active in state and local politics, register to vote and, in some cases, have conducted voter registration drives at the assemblies themselves.

20. Government officials, elected representatives, and candidates for public office also have attended the demonstrations and have been featured speakers at protests where they have spoken directly to constituents.

21. Defendants Trump, Barr, and Wolf have stated their opposition to the themes, demands, and legitimacy of these assemblies. Their opposition threatens not only the assemblies themselves, but also the voter engagement work that often takes place during them.

22. While these assemblies were precipitated by incidents of police violence, they have become linked to the 2020 general presidential election.

23. While both Trump and his principal general election opponent, Joe Biden, have spoken regarding the protests and their subject matter, Trump has explicitly attributed the

ongoing protests to Biden and his supporters and characterized the protests as related to the 2020 general election.

24. Trump also has described the phrase “Black Lives Matter” as a “symbol of hate.”²

25. Defendants Trump, Barr, and Wolf have threatened and conducted armed attacks on these assemblies. In some instances, these three Defendants deployed armed federal agents in unmarked clothing—lacking any uniforms or insignia that would enable citizens to identify their agencies or even ascertain that they were lawfully authorized law enforcement officers—into the streets to break up the assemblies and detain demonstrators, sometimes by violent means.

26. In June 2020, Trump and Barr directed the deployment of multiple armed forces (some, again, without uniforms or identifying insignia) to the streets of Washington, D.C., to break up the assemblies and detain demonstrators, sometimes with violent means. These forces included riot control teams from the Bureau of Prisons.³

27. On June 1, 2020, Trump and Barr ordered armed federal agents to clear Washington, D.C.’s Lafayette Square of individuals peacefully demonstrating for racial justice before the city’s 7 p.m. curfew took effect. These agents used tear gas and/or other chemical

² Donald J. Trump (@realDonaldTrump), “NYC is cutting Police \$’s by ONE BILLION DOLLARS, and yet the @NYCMayor is going to paint a big, expensive, yellow Black Lives Matter sign on Fifth Avenue, denigrating this luxury Avenue. This will further antagonize New York’s Finest, who LOVE New York & vividly remember the....,” Twitter (July 1, 2020; 9:48 AM), <https://twitter.com/realDonaldTrump/status/1278324680311681024>; “...horrible BLM chat, ‘Pigs In a Blanket, Fry ‘Em Like Bacon.’ Maybe our GREAT Police, who have been neutralized and scorned by a mayor who hates & disrespects them, won’t let this symbol of hate be affixed to New York’s greatest street. Spend this money fighting crime instead!”, Twitter (July 1, 2020; 9:48 AM), <https://twitter.com/realDonaldTrump/status/1278324681477689349>.

³ Ryan Lucas, *Attorney General Steps Up Federal Law Enforcement Response To Protests*, NPR (June 1 2020), <https://n.pr/2FnXjH6>; Emily Goodin, *Federal prisons chief apologizes for letting his riot control guards onto streets of D.C. with NO identification - as pictures show officers acting as Bill Barr’s private army equipped with knives and stun grenades*, Daily Mail (June 4, 2020), <https://www.dailymail.co.uk/news/article-8388143/Bill-Barr-deploys-army-federal-correctional-officers.html>.

irritants and flash-bang explosives to disperse the crowd so that Trump could pose for pictures in front of a church.⁴

28. On June 26, 2020, Trump signed Executive Order No. 13933, “Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence.” 85 Fed. Reg. 40,081 (June 26, 2020).

29. In Executive Order 13933, Trump described the ongoing protests against racism and police brutality as follows: “Anarchists and left-wing extremists have sought to advance a fringe ideology that paints the United States of America as fundamentally unjust and have sought to impose that ideology on Americans through violence and mob intimidation.” *Id.* § 1.

30. Trump further wrote that state and local governments “have lost the will or the desire to stand up to the radical fringe and defend the fundamental truth that America is good [and] her people are virtuous.” *Id.*

31. The Executive Order directs “the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security” to provide “personnel to assist with the protection of Federal monuments, memorials, statues, or property.” *Id.* § 5.

32. On July 6, 2020, Wolf spoke to the TV show “Fox & Friends” and publicly characterized individuals protesting at the time as “violent, criminal mobs taking over certain cities.”⁵

33. In July 2020, Wolf directed Customs and Border Protection (CBP), a DHS component agency, to send armed federal agents to Portland, Oregon, ostensibly to protect the federal courthouse from protesters.

⁴ Katie Rogers, *Protesters Dispersed With Tear Gas So Trump Could Pose at Church*, N.Y. Times (June 1, 2020), <https://nyti.ms/3bOx9JG>.

⁵ Joshua Nelson, *DHS Secretary Wolf says 'criminal mobs' taking over cities, not peaceful protesters*, Fox News (July 6, 2020), <https://fxn.ws/2ZGKoq3>.

34. These federal agents (often dressed in camouflage and tactical gear without identifying insignia) repeatedly used tear gas and impact munitions to disperse protesters, including people who were engaged in voter registration activities.⁶

35. These federal agents also seized people off the streets and detained them in unmarked vans. Some of the abductees were engaged in First Amendment-protected protests when they were seized; others simply happened to be walking in the area nearby. At least 23 individuals were detained in Portland by DHS agents but never charged with a crime. In several cases, federal agents confiscated protesters' and observers' phones and did not return them after releasing the individuals. These incidents included the following:⁷

- a. In the early morning of July 15, 2020, while Evelyn Bassi and a friend were standing at an empty intersection in Portland, a dark gray Dodge Grand Caravan with tinted windows pulled up next to them. Unidentified agents in camouflage tactical gear emerged, gave chase, and detained Bassi for questioning in the back of the unmarked van before dropping her off somewhere else in the city.⁸
- b. Shortly after Bassi's detention, Mark Pettibone departed from a protest. An unmarked van approached, and several armed agents dressed in camouflage with no identifying insignia emerged, gave chase, and detained him in the back of the van, pulling his hat down over his eyes. He was taken to the federal courthouse and detained there for several hours before being released without charges.⁹

⁶ Andrew Selsky & Gillian Flaccus, *Oregon officials decry federal agents after protest clashes*, AP News, July 18, 2020, <https://apnews.com/article/f273a11675373e10630e657383c915be>.

⁷ Shawn Boburg et al., *Swept up in the federal response to Portland protests: 'I didn't know if I was going to be seen again'*, Wash. Post (Sept. 10, 2020), <https://wapo.st/2GK8wCh>.

⁸ *Id.*

⁹ *Id.*

36. Defendants Trump, Barr, and Wolf have publicly approved and ratified these actions.

37. On July 20, 2020, Trump praised DHS's actions in Portland: "In Portland, they've done a fantastic job. . . . These are anarchists. These are not protestors. People say 'protestors'; these people are anarchists. These are people that hate our country. And we're not going to let it go forward."¹⁰

38. Trump's approval of Defendants Barr and Wolf and federal agents' actions against protestors expresses unequivocal support for using governmental and police power to suppress speech to which Trump is opposed.

39. On July 21, 2020, Wolf explained that DHS was "proactively" arresting people. As he told Fox News host Martha MacCallum, "[t]he Department [of Homeland Security], because we don't have that local support, that local law enforcement support, we are having to go out and proactively arrest individuals."¹¹

40. That same day, when asked by a reporter at a DHS press conference about "the standard of probable cause you are getting," Wolf referred the question to his deputy Richard "Kris" Cline, the Deputy Director of the Federal Protective Service.

41. In reference to Bassi's detention, Cline opined that seizing a person off the street without reason to believe she had committed any criminal activity, placing her in a van,

¹⁰ President Donald J. Trump, *Remarks on Phase Four Negotiations*, The White House (July 20, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-phase-four-negotiations/>.

¹¹ Colin Kalmbacher, *Two DHS Officials Apparently Just Admitted Their Troops Have Been Violating the Constitution*, Law & Crime (July 22, 2020), <https://lawandcrime.com/legal-analysis/two-dhs-officials-apparently-just-admitted-their-troops-have-been-violating-the-constitution/>.

transporting her elsewhere, and detaining her for questioning for twenty minutes “was not a custodial arrest.”¹²

42. After Trump’s and Wolf’s explicit ratification of DHS agents’ tactics, these agents continued their practices of seizing and detaining citizens off the streets without probable cause.

43. For example, in the early hours of July 29, 2020, John Hacker had spent the night documenting protests. While he stood in a mostly quiet and empty park, a green targeting laser shone down onto him from a seventh-floor balcony. Two unmarked vans approached and armed men in camouflage tactical gear, believed now to be Border Patrol agents, surrounded and detained Hacker. He was held at the federal courthouse for several hours before being released without charges. His phone was confiscated and not returned.¹³

44. Trump and Wolf have not publicly rescinded their ratification of these tactics.

45. Trump and Barr have also sought to intimidate people who have participated or might participate in these assemblies by trying to link them to “antifa.” Antifa is a decentralized movement of self-described antifascist activists, which Trump, Barr, and Wolf have falsely portrayed as an organized terrorist network.

46. On May 31, 2020, Trump announced that “The United States of America will be designating ANTIFA as a Terrorist Organization.”¹⁴ That same day, Barr announced that federal law enforcement would target “violent radical agitators” and that “[t]he violence instigated and

¹² U.S. Sec’y of Homeland Security Chad Wolf and Principal Deputy Dir. of the Federal Protective Service Richard Kline, “DHS/CBP Press Conference July 21, 2020”, YouTube (July 21, 2020), <https://youtu.be/2XTYITCtFlc> (*see generally* minutes 35:00-38:00).

¹³ Shawn Boburg et al., *supra* n.6.

¹⁴ Donald J. Trump (@realDonaldTrump), Twitter (May 31, 2020; 12:23 PM), <https://twitter.com/realDonaldTrump/status/1267129644228247552>.

carried out by Antifa and other similar groups in connection with the rioting is domestic terrorism and will be treated accordingly.”¹⁵

47. Since that announcement, federal law enforcement agents have repeatedly questioned people involved in protests about their political beliefs.

48. For example, on June 3, 2020, Joel Feingold was arrested in Brooklyn, New York for violating the city’s 8 p.m. curfew; while he was detained at the New York Police Department’s 78th precinct, a Federal Bureau of Investigations (FBI) agent questioned him regarding his political beliefs and reasons for participating in the nationwide protests.¹⁶

49. Between June 2-4, FBI agents approached at least three residents of the small town of Cookeville, Tennessee who had posted on social media to organize peaceful public assemblies against police brutality; the agents questioned or sought to question them regarding their political beliefs and potential links to “antifa.”¹⁷

50. Some of these individuals, as well as others learning of this or similar FBI actions, were intimidated from attempting to organize such assemblies in the future.

ii. Intimidating statements and encouraging vigilante violence and intimidation against citizens engaging in public speech and assembly

51. Trump, Barr, and Wolf have repeatedly threatened further armed attacks against citizens engaging in public speech and assembly. They have also repeatedly publicly encouraged third parties to engage in violence or other forms of intimidation against citizens.

¹⁵ Office of Public Affairs, Press Release No. 20-500, *Attorney General William P. Barr's Statement on Riots and Domestic Terrorism*, Dep’t of Justice (May 31, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

¹⁶ Ryan Devereaux, *A man in Brooklyn was arrested for curfew violation. The FBI interrogated him about his political beliefs.*, The Intercept (June 4, 2020), <https://interc.pt/3czaqQn>.

¹⁷ Chris Brooks, *After Barr ordered FBI to “identify criminal organizers,” BLM activists were intimidated at home and at work*, The Intercept (June 12, 2020), <https://interc.pt/2B66idx>.

52. Armed vigilante groups and self-styled militias or paramilitary groups have repeatedly threatened, intimidated, or attacked people around the country attending public assemblies protesting against local, state, or federal government actions.¹⁸

53. Defendants Trump, Barr, and Wolf have repeatedly described people attending Black Lives Matter protests in coded or dehumanizing language, while also stating that local law enforcement is incapable of restraining lawbreaking. These three Defendants have encouraged armed vigilantes to believe that their intervention is necessary and invited by the president and his administration.

54. On May 28, 2020, Trump tweeted, “These THUGS are dishonoring the memory of George Floyd, and I won’t let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!”¹⁹ Twitter flagged this tweet with a note stating: “This Tweet violated the Twitter Rules about glorifying violence. However, Twitter has determined that it may be in the public’s interest for the Tweet to remain accessible.”

55. On June 1, 2020, Trump threatened to deploy the United States military into the streets of America’s cities over the objections of local leaders, explaining in an official Rose Garden address, “If the city or state refuses to take the actions that are necessary to defend the life and property of their residents, then I will deploy the United States military and quickly solve the problem for them.”²⁰

¹⁸ Safia Samee Ali, *Where protesters go, armed militias, vigilantes likely to follow*, NBC News (Sept. 1, 2020), <https://nbcnews.to/2RdYPhi>.

¹⁹ Donald J. Trump (@realDonaldTrump), Twitter (May 29, 2020; 12:53 AM), <https://twitter.com/realDonaldTrump/status/1266231100780744704>.

²⁰ *READ: President Trump’s Rose Garden Speech on Protests*, CNN (June 1, 2020), <https://cnn.it/2GGIDV3>.

56. On June 2, 2020, Trump tweeted, “D.C. had no problems last night. Many arrests. Great job done by all. Overwhelming force. Domination. Likewise, Minneapolis was great (thank you President Trump!).”²¹

57. Donald J. Trump for President, Inc. (“Trump Campaign”) is Trump’s principal campaign committee.

58. On June 4, 2020, the Trump Campaign sent an email to supporters, labeled “FOR PATRIOTS ONLY,” inviting them to join “the Trump Army” and serve as “the President’s first line of defense when it comes to fighting off the Liberal MOB.”²²

59. On June 19, 2020, Trump tweeted, “Any protesters, anarchists, agitators, looters or lowlifes who are going to Oklahoma please understand, you will not be treated like you have been in New York, Seattle, or Minneapolis. It will be a much different scene!”²³

60. On June 23, 2020, Trump tweeted, “There will never be an ‘Autonomous Zone’ in Washington, D.C., as long as I’m your President. If they try they will be met with serious force!”²⁴ Twitter flagged this tweet with a note stating: “This Tweet violated the Twitter Rules about abusive behavior. However, Twitter has determined that it may be in the public’s interest for the Tweet to remain accessible.”

61. QAnon is a group that promotes false, inflammatory theories through the Internet and otherwise. QAnon supporters posit that Trump is engaged in a shadowy war with unseen forces within and outside government.

²¹ Donald J. Trump (@realDonaldTrump), Twitter (June 2, 2020; 9:19 AM), <https://twitter.com/realDonaldTrump/status/1267808120136511489>.

²² Aaron Blake (@AaronBlake), Twitter (June 4, 2020; 11:47 AM), <https://twitter.com/AaronBlake/status/1268570177484001287/photo/1>.

²³ Donald J. Trump (@realDonaldTrump), Twitter (June 19, 2020; 9:34 AM), <https://twitter.com/realDonaldTrump/status/1273972301156016130>.

²⁴ Donald J. Trump (@realDonaldTrump), Twitter (June 23, 2020; 8:45 AM), <https://twitter.com/realDonaldTrump/status/1275409656488382465>.

62. In 2019, the Federal Bureau of Investigation described adherents of QAnon and similar conspiracy theories as “conspiracy theory-driven domestic extremists,” noting that adherents have already committed multiple violent acts, that these conspiracy theories will “driv[e] both groups and individual extremists to carry out criminal or violent acts,” and that these acts are likely to increase during the 2020 presidential election cycle.²⁵

63. On August 19, 2020, a reporter asked Trump about QAnon. Trump responded, “I don’t know much about the movement other than I understand that they like me very much, which I appreciate,” and “I have heard that it is gaining in popularity, and from what I hear, these are people that when they watch the streets of Portland, when they watch what happened in New York City, these are people that don’t like seeing what’s going on. I’ve heard these are people that love our country and they just don’t like seeing it. So I don’t know really anything about it other than they do supposedly like me and they also would like to see problems in these areas, like especially the areas that we’re talking about, go away.”²⁶

64. On August 20, 2020, Trump tweeted, “I STAND FOR LAW AND ORDER AND I TOOK ACTION! Operation LeGend has led to the arrest of over 1,000 criminals, including 90 killers, all while Sleepy Joe Biden and the Radical Left excuses violence and crime in their Democrat-run cities. I want safety & security, Joe allows CRIME!”²⁷

65. On August 23, 2020, Trump tweeted, “These riots are an antigovernment movement from the Left that are all in Democrat run cities. The mayors have got to let their

²⁵ Federal Bureau of Investigation, Phoenix Field Office, “Anti-Government, Identity Based, and Fringe Political Conspiracy Theories Very Likely Motivate Some Domestic Extremists to Commit Criminal, Sometimes Violent Activity,” (May 30, 2019), *available at* <https://bit.ly/2DH1bEU>.

²⁶ Caitlin Oprysko, *Trump: I ‘appreciate’ support from QAnon adherents*, Politico (Aug. 19, 2020), <https://politi.co/2CGRseL>.

²⁷ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 20, 2020; 7:28 PM), <https://twitter.com/realDonaldTrump/status/1296589900804915202>.

police do what they know how to do. Would be very easy to suppress or, call in the Federal Government. We will solve problem fast!”²⁸

66. On August 25, 2020 Trump tweeted, “We again request Kate Brown (@OregonGovBrown), the Governor of Oregon, and Mayor @TedWheeler of Portland, to call up the National Guard like should have been done 3 months ago.” He added in a reply, “They must stop calling these anarchists and agitators ‘peaceful protestors’. Come back into the real world! The Federal Government is ready to end this problem immediately upon your request.”²⁹

67. On August 27, 2020, Trump tweeted, “Democrats and Biden didn’t even mention the Anarchists, Agitators, Looters and so called ‘Peaceful Protesters’ at their Convention. They will allow rampant crime, just as they do in Portland. If they ask us, as they must do, we will end crime in their Democrat run cities, FAST!”³⁰

68. On August 23, 2020, police in Kenosha, Wisconsin shot an unarmed Black man named Jacob Blake. Protests began shortly afterwards.

69. On August 28, 2020, Trump tweeted, “Success: Since the National Guard moved into Kenosha, Wisconsin, two days ago, there has been NO FURTHER VIOLENCE, not even a small problem. When legally asked to help by local authorities, the Federal Government will act and quickly succeed. Are you listening Portland?”³¹

70. On August 28, 2020, Trump tweeted, “If the incompetent Mayor of Portland, Ted Wheeler, doesn’t get control of his city and stop the Anarchists, Agitators, Rioters and Looters,

²⁸ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 23, 2020; 8:13 AM), <https://twitter.com/realDonaldTrump/status/1297507346705522689>.

²⁹ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 25, 2020; 1:14 PM), <https://twitter.com/realDonaldTrump/status/1298307827837145088>; <https://twitter.com/realDonaldTrump/status/1298307828789194752>.

³⁰ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 27, 2020; 7:18 PM), <https://twitter.com/realDonaldTrump/status/1299124203552210951>.

³¹ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 28, 2020; 1:01 PM), <https://twitter.com/realDonaldTrump/status/1299391572384059397>.

causing great danger to innocent people, we will go in and take care of matters the way they should have been taken care of 100 days ago!”³²

71. On August 28, 2020, Trump stated at a campaign event, “They’re not protesters. Those aren’t protesters. Those are anarchists, they’re agitators, they’re rioters, they’re looters.”³³

72. On August 30, 2020, Trump shared a tweet by Twitter user @hollandcourtney. The tweet that Trump shared stated: “This is Ted Wheeler’s Portland / This is Muriel Bowser’s Washington DC / What we’ve been witnessing for weeks now is the inaptitude of city mayors being able to provide safety & peace for their citizens / And tonight, those citizens are beginning to take matters into their own hands.”³⁴ Trump added in his retweet: “Our great National Guard could solve these problems in less than 1 hour. Local authorities must ask before it is too late. People of Portland, and other Democrat run cities, are disgusted with Schumer, Pelosi, and thier [*sic*] local ‘leaders’. They want Law & Order!”³⁵

73. On August 30, 2020, Trump retweeted a tweet by reporter Mike Baker. Baker’s tweet included a video of armed men (apparently not law enforcement officers) in the back of a pickup truck bearing a Trump campaign flag, firing a weapon at a crowd on the sidewalk. Baker’s tweet included the explanatory text, “Clashes. Trump people unload paintballs and pepper spray. They shot me too.”³⁶ Trump added in his retweet, “The big backlash going on in Portland cannot be unexpected after 95 days of watching and incompetent Mayor admit that he

³² Donald J. Trump (@realDonaldTrump), Twitter (Aug. 28, 2020; 9:33 PM), <https://twitter.com/realDonaldTrump/status/1299520405871316992>.

³³ Jeff Mason, *Trump knocks protesters against racial injustice during New Hampshire rally*, Thomson Reuters (Aug. 28, 2020), <https://reut.rs/3lmSJZY>.

³⁴ Courtney Holland (@hollandcourtney), Twitter (Aug. 30, 2020; 12:05 AM), <https://twitter.com/hollandcourtney/status/1299921091872264193>.

³⁵ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 30, 2020; 6:12 AM), <https://twitter.com/realDonaldTrump/status/1300013635046182912>.

³⁶ Mike Baker (@ByMikeBaker), Twitter (Aug. 29, 2020; 11:15 PM), <https://twitter.com/ByMikeBaker/status/1299908467457622016>.

has no idea what he is doing. The people of Portland won't put up with no safety any longer. The Mayor is a FOOL. Bring in the National Guard!"³⁷

74. Thirty-seven minutes after retweeting the video of armed men in the back of a pickup truck with Trump signs shooting at protesters in Portland, Trump shared another tweet with a video of other pickup trucks with Trump signs entering Portland, and added his comment, "GREAT PATRIOTS!"³⁸

75. On August 30, 2020, Trump tweeted, "The only way you will stop the violence in the high crime Democrat run cities is through strength!"³⁹

76. On August 31, 2020, Trump tweeted, "If I didn't INSIST on having the National Guard activate and go into Kenosha, Wisconsin, there would be no Kenosha right now. Also, there would have been great death and injury. I want to thank Law Enforcement and the National Guard. I will see you on Tuesday!"⁴⁰

77. That same day, Trump made a statement at the White House concerning Illinois resident Kyle Rittenhouse.

78. Three days prior, Rittenhouse had been arrested and charged in Wisconsin with two counts of first-degree homicide and one count of attempted homicide for allegedly traveling to Kenosha with his firearm and shooting and killing people protesting the recent police shooting of Jacob Blake.

³⁷ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 30, 2020; 6:00 AM), <https://twitter.com/realDonaldTrump/status/1300010374855524352>.

³⁸ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 30, 2020; 6:37 AM), <https://twitter.com/realDonaldTrump/status/1300019849540886528>.

³⁹ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 30, 2020; 4:38 PM), <https://twitter.com/realDonaldTrump/status/1300171130326716418>.

⁴⁰ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 31, 2020; 9:10 AM), <https://twitter.com/realDonaldTrump/status/1300420725837266944>.

79. Trump suggested that Rittenhouse acted in justifiable self-defense. But he failed to acknowledge that the shooter had traveled to the demonstrations with the intent to engage in armed confrontation with protesters.

80. Trump stated, “That was an interesting situation. He was trying to get away from them, I guess it looks like, and he fell and then they very violently attacked him, and it was something that we are looking at right now and it’s under investigation. But I guess he was in very big trouble. He probably would’ve been killed.”⁴¹

81. The Department of Homeland Security further directed federal law enforcement officials to make public comments sympathetic to Kyle Rittenhouse.⁴² Wolf either ordered or approved of this direction.

82. On September 8, 2020, Trump tweeted, “They are not ‘peaceful protesters’, as Sleepy Joe and the Democrats call them, they are THUGS - And it is all taking place in Democrat run cities. Call me and request Federal HELP. We will solve your problems in a matter of minutes - And thanks to the U.S. Marshalls in Portland!”⁴³

83. Trump’s statements against protesters, including his characterizations of the protesters as “anarchists,” “agitators,” “rioters,” “looters,” and “thugs,” his direction and promotion of government and vigilante violence in response, and his characterization of violence related to the protests as the fault of Democratic officials have all had the purpose and effect of linking the protests and his response to the ongoing and forthcoming elections and of

⁴¹ Matthew Choi, *Trump defends gunman charged with murdering 2 in Kenosha*, Politico (Aug. 31, 2020), <https://politi.co/3jCvkIP>.

⁴² Julia Ainsley, *Internal documents show Trump officials were told to make comments sympathetic to Kyle Rittenhouse*, NBC News (Oct. 1, 2020), <https://www.nbcnews.com/politics/national-security/internal-document-shows-trump-officials-were-told-make-comments-sympathetic-n1241581>.

⁴³ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 8, 2020; 12:34 PM), <https://twitter.com/realDonaldTrump/status/1303371151792513024>.

discouraging individuals from voting and from supporting or advocating for Democratic candidates for federal office.

84. Trump, Barr, and Wolf have, at the same time, made statements or taken actions (or refrained from taking actions) indicating that they will refrain from enforcing the law against armed vigilantes or local officials who act in accordance with Trump's wishes, including by intimidating people who oppose him.

85. During approximately the same time period as the Black Lives Matter-associated assemblies, supporters or sympathizers of President Trump have confronted law enforcement officials at multiple public protests. However, federal law enforcement has rarely (if ever) intervened in these confrontations.

86. For example, on April 9, 2020, the governor of Michigan issued a pandemic-related safety order.

87. On April 17, 2020, Trump tweeted, "LIBERATE MICHIGAN!"⁴⁴

88. On April 30, 2020, armed militants stormed the Michigan Capitol building to protest the pandemic-related safety order.

89. On May 1, 2020, Trump tweeted, "The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal."⁴⁵

⁴⁴ Donald J. Trump (@realDonaldTrump), Twitter (Apr. 17, 2020; 11:22 AM), <https://twitter.com/realDonaldTrump/status/1251169217531056130>.

⁴⁵ Donald J. Trump (@realDonaldTrump), Twitter (May 1, 2020; 8:42 AM), <https://twitter.com/realDonaldTrump/status/1256202305680158720>.

90. On May 14, 2020, heavily-armed protesters returned to the Michigan Capitol. Some of them had made specific violent threats against Michigan lawmakers.⁴⁶

91. Trump, Barr, and Wolf did not deploy federal law enforcement to stop these confrontations in Michigan.

92. On October 8, 2020, thirteen men were arrested and charged with plotting to kidnap the Governor of Michigan, a Trump political foe and a frequent target of his tweets. Trump had previously tweeted his support for protestors rallying against the Governor's response to the COVID-19 pandemic.

93. Trump, Barr, and Wolf have *never* deployed federal law enforcement to disperse a public demonstration by Trump's supporters or people acting in accordance with his rhetoric or guidance—even when they carry weapons and even when they engage in armed violence.

94. The deployment of federal law enforcement by Trump, Barr and Wolf against assemblies of individuals perceived to be in opposition to Trump, coupled with their decision not to deploy federal law enforcement officials against assemblies of individuals perceived to support Trump, intimidates individuals who plan to express political opposition to Trump or vote against him, by communicating that Trump endorses physical violence against his political detractors.

iii. Official pardons of lawbreakers acting in support of Trump

95. Trump has repeatedly granted or offered executive clemency, or intervened in prosecutions, to protect individuals charged with or convicted of crimes arising from following

⁴⁶ Abigail Censky, *Heavily Armed Protesters Gather Again At Michigan Capitol To Decry Stay-At-Home Order*, NPR (May 14, 2020), <https://n.pr/2RdTGpS>; Steve Neavling, *Gov. Whitmer becomes target of dozens of threats on private Facebook groups ahead of armed rally in Lansing*, Detroit Metro Times (May 11, 2020), <https://bit.ly/3bO61um>; Stephen Sorace, *Michigan man in infamous photo shouting in police's face unmasked gives his side of story*, Fox News (May 6, 2020), <https://fxn.ws/35zRTBM>.

his wishes, physically abusing people perceived to be in opposition of him, or violating those people's constitutional rights. These included the following examples:

- a. In August 2017, Trump issued his first presidential pardon to Joe Arpaio, the former sheriff of Maricopa County, Arizona. Arpaio had become nationally famous for repeatedly mistreating mostly Latino and Black incarcerated people. In July 2017, Arpaio was convicted of criminal contempt of court for violating a federal injunction barring his office from detaining people without any evidence that they had violated state law. The court found that Arpaio had "willfully violated the order by failing to do anything to ensure his subordinates' compliance and by directing them to continue to detain persons for whom no criminal charges could be filed." On August 22, 2017, Trump suggested that Arpaio was "convicted for doing his job."⁴⁷ On August 25, 2017, Trump pardoned Arpaio. Trump tweeted, "I am pleased to inform you that I have just granted a full Pardon to 85 year old American patriot Sheriff Joe Arpaio. He kept Arizona safe!"⁴⁸
- b. In 2019, Trump told government officials to ignore any federal laws that might impede construction of a wall on the southern border, including criminal statutes, and explained, "Don't worry, I'll pardon you."⁴⁹
- c. In November 2019, Trump pardoned Army 1st Lt. Clint Lorance and Maj. Matthew Golsteyn, two Army officers accused or convicted of war crimes in Afghanistan. He also reversed the demotion of Navy Chief Petty Officer Edward

⁴⁷ Max Walker & Josh Frigerio, *Sheriff Joe Arpaio pardon: President Trump hints 'he'll be fine'*, ABC 15 News Arizona (Aug. 23, 2017), <http://bit.ly/2k3M6k8>.

⁴⁸ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 25, 2017; 10:00 PM), <https://twitter.com/realdonaldtrump/status/901263061511794688>.

⁴⁹ Nick Miroff & Josh Dawsey, *'Take the land': President Trump wants a border wall. He wants it black. And he wants it by Election Day.*, Wash. Post (Aug. 27, 2019), <https://wapo.st/3maCGik>.

Gallagher, who was convicted at court martial of posing with the dead body of a teenage captive that he had just killed with a hunting knife. Trump described them all as “great fighters.”⁵⁰

96. The effect of Trump’s grants or offers of pardons or clemency (including in advance) is to encourage both law enforcement agents and private vigilantes to disregard legal restrictions when carrying out his direction to intimidate citizens who express opposition to Trump, his administration, or his political platform, by conveying that he will intervene to protect them from legal consequences for criminal misconduct.

B. Efforts to intimidate or prevent citizens from casting their votes by mail

97. The SARS-CoV-2 coronavirus (“coronavirus”) causes Coronavirus Disease 2019 (“COVID-19”), which has been spreading throughout the United States since approximately January 2020.

98. The pandemic has infected over eight million people in the United States and killed more than 200,000.

99. The pandemic disproportionately impacts minority populations in the United States, who face far greater risk of infection, serious health complications, and death.⁵¹

100. People of color are experiencing higher rates of infection, illness, and death because they are less likely to be able to work from home, more likely to live in dense areas, and more likely to live in multi-generational housing.

⁵⁰ Richard Gonzales, *Trump Pardons 2 Service Members Accused Of War Crimes And Restores Another’s Rank*, NPR (Nov. 15, 2019), <https://n.pr/2FaPKUp>.

⁵¹ Carla Baranauckas & Samuel Stebbins, *Minorities are disproportionately affected by COVID-19. This is how it varies by state*, USA Today (July 21, 2020), <https://bit.ly/2PKFt2J>.

101. Underlying inequities, including but not limited to lack of fair employment opportunities, unaffordable housing, poverty, and inadequate health care, have increased the vulnerability of Latino and Black communities to coronavirus outbreaks.

102. Many states have implemented emergency measures to limit the risk of COVID-19 spread during the 2020 general election.

103. In particular, to reduce crowding at polling places, many states have expanded access to vote-by-mail.

104. Citizens can thereby register to vote, request a mail-in ballot, and submit their ballot through the mail during the weeks prior to Election Day.

105. Vote-by-mail reduces the need for person-to-person contact and in-person appearances—the primary vectors of transfer—at polling places during early voting or on Election Day.

106. The simple act of appearing at polling locations across the country will expose many citizens, particularly those with underlying health conditions or similarly vulnerable close relations, to a real and imminent risk of serious illness that can lead to death.

107. The act of appearing in-person before election officials to respond to a voter challenge or verify the legitimacy of mailed ballots will also present a risk to health and life of voters.

108. Despite the manifest need for a vote-by-mail option during the pandemic, Trump has used his platform to intimidate and coerce people not to vote by mail.

109. Trump has disparaged vote-by-mail, sabotaged the U.S. Postal Service to undermine the speed and reliability of mail delivery, threatened to ban voting by mail, and stated that he will not accept the results of the presidential election if he is not declared the winner.

110. On March 30, 2020, in response to a question about Congressional efforts to expand vote-by-mail amidst the pandemic, Trump stated, “They had things—levels of voting that, if you ever agreed to it, you’d never have a Republican elected in this country again.”⁵²

111. Trump has since repeatedly stated to the public—without basis—that vote-by-mail is fraudulent.

112. Trump has publicly confirmed that his efforts to intimidate and coerce people not to vote by mail are subjectively motivated by the intent to harm his political opponents in the 2020 presidential election by dissuading people who do not wish to vote for him from voting at all.

113. On April 8, 2020, Trump tweeted, “Republicans should fight very hard when it comes to state wide mail-in voting. Democrats are clamoring for it. Tremendous potential for voter fraud, and for whatever reason, doesn’t work out well for Republicans. @foxandfriends”.⁵³

114. On May 28, 2020, Trump tweeted, “MAIL-IN VOTING WILL LEAD TO MASSIVE FRAUD AND ABUSE. IT WILL ALSO LEAD TO THE END OF OUR GREAT REPUBLICAN PARTY. WE CAN NEVER LET THIS TRAGEDY BEFALL OUR NATION. BIG MAIL-IN VICTORY IN TEXAS COURT TODAY. CONGRATS!!!”⁵⁴

115. On June 22, 2020, Trump tweeted, “Because of MAIL-IN BALLOTS, 2020 will be the most RIGGED Election in our nations history – unless this stupidity is ended. We voted

⁵² Aaron Blake, *Trump just comes out and says it: The GOP is hurt when it’s easier to vote*, Wash. Post (Mar. 30, 2020), <https://wapo.st/2E7ESFQ>.

⁵³ Donald J. Trump (@realDonaldTrump), Twitter (Apr. 8, 2020; 8:20 AM), <https://twitter.com/realDonaldTrump/status/1247861952736526336>.

⁵⁴ Donald J. Trump (@realDonaldTrump), Twitter (May 28, 2020; 9:00 PM), <https://twitter.com/realdonaldtrump/status/1266172570983940101>.

during World War One & World War Two with no problem, but now they are using Covid in order to cheat by using Mail-Ins!”⁵⁵

116. On July 2, 2020, Trump tweeted, “Mail-In Ballots will lead to massive electoral fraud and a rigged 2020 Election. Look at all of the cases and examples that are out there right now, with the Patterson, N.J., being the most recent example. Republicans, in particular, cannot let this happen!”⁵⁶

117. On July 10, 2020, Trump tweeted, “Absentee Ballots are fine because you have to go through a precise process to get your voting privilege. Not so with Mail-Ins. Rigged Election!!! 20% fraudulent ballots?”⁵⁷

118. On July 21, 2020, Trump tweeted, “Mail-In Voting, unless changed by the courts, will lead to the most CORRUPT ELECTION in our Nation’s History! #RIGGEDELECTION”.⁵⁸

119. On July 29, 2020, Trump tweeted, “New York Mail-In voting is in a disastrous state of condition. Votes from many weeks ago are missing - a total mess. They have no idea what is going on. Rigged Election. I told you so. Same thing would happen, but on massive scale, with USA. Fake News refuses to report!”⁵⁹

120. On July 30, 2020, Trump tweeted, “Mail-In Voting is already proving to be a catastrophic disaster. Even testing areas are way off. The Dems talk of foreign influence in

⁵⁵ Donald J. Trump (@realDonaldTrump), Twitter (June 22, 2020; 9:45 AM), <https://twitter.com/realDonaldTrump/status/1275062328971497472>.

⁵⁶ Donald J. Trump (@realDonaldTrump), Twitter (July 2, 2020; 7:41 PM), <https://twitter.com/realDonaldTrump/status/1278836342609379328>.

⁵⁷ Donald J. Trump (@realDonaldTrump), Twitter (July 10, 2020; 7:51 AM), <https://twitter.com/realDonaldTrump/status/1281556758457188352>.

⁵⁸ Donald J. Trump (@realDonaldTrump), Twitter (July 21, 2020; 7:41 AM), <https://twitter.com/realDonaldTrump/status/1285540318503407622>.

⁵⁹ Donald J. Trump (@realDonaldTrump), Twitter (July 29, 2020; 6:28 PM), <https://twitter.com/realDonaldTrump/status/1288602262567153664>.

voting, but they know that Mail-In Voting is an easy way for foreign countries to enter the race. Even beyond that, there's no accurate count!"⁶⁰

121. On July 30, 2020, Trump tweeted, "Must know Election results on the night of the Election, not days, months, or even years later!"⁶¹

122. On or about August 2, 2020, the Nevada legislature passed, and the Nevada governor signed, a bill making Nevada the eighth state to send mail ballots to all registered voters.

123. On August 3, Trump tweeted, "In an illegal late night coup, Nevada's clubhouse Governor made it impossible for Republicans to win the state."⁶²

124. On August 5, 2020, Trump tweeted, "Nevada has ZERO infrastructure for Mail-In Voting. It will be a corrupt disaster if not ended by the Courts. It will take months, or years, to figure out. Florida has built a great infrastructure, over years, with two great Republican Governors. Florida, send in your Ballots!"⁶³

125. On August 15, 2020, Trump shared a tweet by Elizabeth Harrington, a spokesperson for the national Republican Party. Trump added in his retweet, "The Democrats know the 2020 Election will be a fraudulent mess. Will maybe never know who won!"⁶⁴

126. On August 17, 2020, Trump tweeted, "Some states use 'drop boxes' for the collection of Universal Mail-In Ballots. So who is going to 'collect' the Ballots, and what might

⁶⁰ Donald J. Trump (@realDonaldTrump), Twitter (July 30, 2020; 8:10 AM), <https://twitter.com/realDonaldTrump/status/1288809157722877952>.

⁶¹ Donald J. Trump (@realDonaldTrump), Twitter (July 30, 2020; 4:22 PM), <https://twitter.com/realDonaldTrump/status/1288933078287745024>.

⁶² Donald J. Trump (@realDonaldTrump), Twitter (Aug. 3, 2020; 7:37 AM), <https://twitter.com/realDonaldTrump/status/1290250416278532096>.

⁶³ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 5, 2020; 7:08 AM), <https://twitter.com/realDonaldTrump/status/1290967953542909952>.

⁶⁴ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 15, 2020; 7:46 AM), <https://twitter.com/realDonaldTrump/status/1294601307068735488>.

be done to them prior to tabulation? A Rigged Election? So bad for our Country. Only Absentee Ballots acceptable!”⁶⁵

127. On August 20, 2020, Trump tweeted, “They are sending out 51,000,000 Ballots to people who haven’t even requested a Ballot. Many of those people don’t even exist. They are trying to STEAL this election. This should not be allowed!”⁶⁶

128. On August 23, 2020, Trump tweeted a Fox News video clip attacking voting by mail, and added his comment, “The greatest Election Fraud in our history is about to happen. This may top the Democrats illegally spying on my campaign!”⁶⁷

129. On August 24, 2020, Trump tweeted, “All the Radical Left Democrats are trying to do with the Post Office hearings is blame the Republicans for the FRAUD that will occur because of the 51 Million Ballots that are being sent to people who have not even requested them. They are setting the table for a BIG MESS!”⁶⁸

130. On August 25, 2020, Trump tweeted, “80 Million Unsolicited Ballots are impossible for election centers to tabulate accurately. The Democrats know this better than anyone else. The fraud and abuse will be an embarrassment to our Country. Hopefully the Courts will stop this scam!”⁶⁹

131. On August 25, 2020, Trump tweeted, “For our Country to be sending 80 million UNSOLICITED BALLOTS is very unfair and a roadmap to disaster. Even recent small and

⁶⁵ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 17, 2020; 11:40 AM), <https://twitter.com/realDonaldTrump/status/1295385113862090753>.

⁶⁶ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 20, 2020; 8:15 PM), <https://twitter.com/realDonaldTrump/status/1296601698891374593>

⁶⁷ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 23, 2020; 9:23 PM), <https://twitter.com/realDonaldTrump/status/1297706044236472320>.

⁶⁸ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 24, 2020; 11:45 AM), <https://twitter.com/realDonaldTrump/status/1297922993021042688>.

⁶⁹ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 25, 2020; 9:49 AM), <https://twitter.com/realDonaldTrump/status/1298256297431666688>.

easier to control elections which did this are a catastrophic disaster. Fraudulent & missing Ballots like never seen before. 20% and 30% off. STOP!”⁷⁰

132. On September 2, 2020, Trump tweeted, “Rigged Election?” and shared a tweet by Twitter user Raheem Kassam (@RaheemKassam), stating: “WARNING: Democrat Data Firm Admits ‘Incredible’ Trump Landslide Will Be Flipped By Mail-In Votes Emerging A Week After Election Day.”⁷¹

133. Also on September 2, 2020, Barr said, without basis, in a CNN interview that mail-in voting is “fraught with the risk of fraud and coercion.”⁷²

134. Trump has encouraged supporters and third parties to interfere with vote-by-mail and engage in voter suppression in a manner that threatens, intimidates, and discourages voters from voting at all.

135. Trump has falsely asserted that he has “the right” to stop states from allowing citizens to vote by mail. During a White House press briefing on August 3, 2020, Trump stated that he was considering stopping state efforts to expand vote-by-mail, claiming: “I have the right to do it. We haven’t gotten there yet. We’ll see what happens.”⁷³

136. During the September 29, 2020 presidential debate, Trump said that balloting already underway was a “fraud and a sham” and proof of a “rigged election.”

137. Trump also threatened during the debate that the Supreme Court would have to “look at the ballots.”

⁷⁰ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 25, 2020; 7:37 PM), <https://twitter.com/realDonaldTrump/status/1298404245629284354>.

⁷¹ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 2, 2020; 6:12 AM), <https://twitter.com/realDonaldTrump/status/1301100620741595136>.

⁷² Katelyn Polantz & Caroline Kelly, *Barr says voting by mail is ‘playing with fire’*, CNN (Sept. 2, 2020), <https://www.cnn.com/2020/09/02/politics/barr-mail-in-voting-playing-with-fire-situation-room/index.html>.

⁷³ Matt Stieb, *Trump Says He Has the ‘Right’ to Block Expansion of Mail-in Voting*, N.Y. Intelligencer (Aug. 3, 2020), <https://nym.ag/31OY2sq>.

138. Trump and Barr have also given the green light to federal prosecutors to investigate and prosecute alleged voter fraud tied to mail-in voting in the immediate lead-up to the election—a sharp departure from Department of Justice policy.

139. In early October 2020, evidence emerged that the Department of Justice had implemented an exception to its forty-year-old policy of non-interference with elections to allow federal prosecutors to take public investigative steps in the weeks leading up to election day if they suspect election fraud that involves postal workers or military employees. The exception allows federal prosecutors to take such steps even if they risk affecting the outcome of the election.⁷⁴

140. This policy change appears to have been implemented to enable Barr and Trump to coordinate public statements about investigations in a manner to discredit and influence the election and further confuse and intimidate voters from participating in the election or supporting Democratic candidates.

141. For example, in late September, Barr personally told Trump about a purported investigation into the alleged discarding of a small number of ballots. Although the purported investigation was not then public, Trump referenced the allegations on national television, expressing doubt as to whether the election could be “honest.”

142. Within hours of Trump’s public comments, the United States Attorney for the Middle District of Pennsylvania, a Trump appointee who serves under Barr, announced that his office was conducting an investigation into the alleged discarding of nine military overseas

⁷⁴ Robert Faturechi & Justin Elliott, *DOJ Frees Federal Prosecutors to Take Steps That Could Interfere With Elections, Weakening Long-standing Policy*, ProPublica (Oct. 7, 2020), <https://www.propublica.org/article/doj-frees-federal-prosecutors-to-take-steps-that-could-interfere-with-elections-weakening-long-standing-policy>.

ballots, and that seven of the nine ballots were for Trump. The Trump Campaign promptly amplified this announcement and tweeted, “the Democrats are trying to steal this election.”⁷⁵

143. Even absent the Justice Department policy against public investigative activity that could influence a pending election, this public announcement of a United States Attorney’s conclusions in an investigation that has not resulted in public charges served no proper law enforcement purpose and was highly improper and unprecedented. Its primary purpose was to assist Barr and Trump in their effort to cast public doubt on voting, the election, and to aid Trump’s reelection campaign.

144. Trump has continued his efforts to cast voting by mail as fraudulent despite overwhelming evidence to the contrary.⁷⁶

145. Trump’s and Barr’s assertions against voting by mail, their unfounded assertions of rampant voter fraud, and their misuse of the Department of Justice to promote these assertions have the effect of discouraging and intimidating potential voters from exercising their right to vote by mail, as those voters now reasonably fear that their votes may not be counted, may be deemed fraudulent, and may cause them to suffer adverse consequences such as false accusations of voter fraud.

146. Defendants’ campaign against mail-in voting and their efforts to discredit the election have the effect of intimidating and coercing people not to vote at all. This effect is

⁷⁵ Amy Gardner, Devlin Barrett, and Josh Dawsey, *Barr said to have told Trump about investigation into discarded Pennsylvania ballots that president seized on as evidence of widespread fraud*, Wash. Post (Sept. 25, 2020), https://www.washingtonpost.com/politics/barr-trump-pennsylvania-ballots-investigation/2020/09/25/5e4990a0-ff3b-11ea-b555-4d71a9254f4b_story.html; Offices of the United States Attorneys, Press Release, *Revised Statement of U.S. Attorney Freed On Inquiry Into Reports Of Potential Issues With Mail-In Ballots*, Dep’t of Justice (Sept. 24, 2020), <https://www.justice.gov/usao-mdpa/pr/revised-statement-us-attorney-freed-inquiry-reports-potential-issues-mail-ballots>.

⁷⁶ Jim Rutenberg, *The Attack on Voting*. N.Y. Times (Sept. 30, 2020), <https://www.nytimes.com/2020/09/30/magazine/trump-voter-fraud.html>.

enhanced by the circumstances in which they are waging this campaign, during a global pandemic, due to which voting in person means risking contracting COVID-19.

C. Undermining mail delivery

147. Since June 16, 2020, Louis DeJoy has been the United States Postmaster General and the Chief Executive Officer of the United States Postal Service (USPS).

148. To further undermine voting by mail, Trump and DeJoy also agreed or endeavored to undermine the entire mail delivery system.

149. Beginning almost immediately after taking office, DeJoy initiated or oversaw drastic reductions to USPS staffing and service, including eliminating overtime for postal workers; limiting the number of mail trucks; removing hundreds of sorting machines from postal facilities, including in states where the presidential election is expected to be closely contested;⁷⁷ demoting or reassigning 23 high ranking executives within the USPS;⁷⁸ eliminating overtime pay and instituting a policy, for the first time in USPS history, permitting mail to be “left behind”;⁷⁹ and removing mailboxes from neighborhoods in select locations across the country.⁸⁰

150. Defendant Trump ordered or ratified these actions. Trump publicly confirmed his involvement in USPS changes and that his actions were intended to thwart and undermine vote-by-mail. Furthermore, he explained that he opposes both election aid for states and an emergency bailout for the USPS because he wants to restrict how many Americans can vote by mail.

⁷⁷ Aaron Gordon, *The Post Office Is Deactivating Mail Sorting Machines Ahead of the Election*, Vice (Aug. 13, 2020), <https://bit.ly/3hg9VgD>.

⁷⁸ Jacob Bogage, *Postal Service overhauls leadership as Democrats press for investigation of mail delays*, Wash. Post (Aug. 7, 2020), <https://wapo.st/3iBpLn6>.

⁷⁹ Michael D. Shear et al., *Mail Delays Fuel Concern Trump Is Undercutting Postal System Ahead of Voting*, N.Y. Times (July 31, 2020), <https://nyti.ms/3fO3bpA>.

⁸⁰ Anjali Hemphill, *USPS Mailboxes Removed in Some New York Area Neighborhoods*, NBC N.Y. (Aug. 17, 2020), <https://bit.ly/34dQWk1>; Marisa Schultz, *Postal slowdown, mailbox removal before November election sparks mounting concerns*, Fox News (Aug. 16, 2020), <https://fxn.ws/2CykAVu>.

151. Trump stated in an interview with the Fox Business Network, “They [the USPS] need that money [the election aid and emergency bailout funds] in order to make the post office work, so it can take all of these millions and millions of ballots”; “If we don’t make a deal, that means they don’t get the money. That means they can’t have universal mail-in voting. They just can’t have it”; and “Those are just two items. But if they don’t get those two items, that means you can’t have universal mail-in voting because they’re not equipped to have it.”

152. He later added at the White House that, “the reason the post office needs that much money is they have all of these millions of ballots coming in from nowhere and nobody knows from where and where they’re going.”⁸¹

153. On August 22, 2020, Trump again confirmed that his opposition to increased funding for the U.S. Postal Service was directly tied to obstructing voting by mail, tweeting, “Representatives of the Post Office have repeatedly stated that they DO NOT NEED MONEY, and will not make changes. This is all another HOAX by the Democrats to give 25 Billion unneeded dollars for political purposes, without talking about the Universal Mail-In Ballot Scam...” and continued, “...that they are trying to pull off in violation of everything that our Country stands for. Vote NO to the Pelosi/ Schumer money wasting HOAX which is taking place now. Then fight the \$51 million unasked for Ballots. Only ABSENTEE BALLOTS are acceptable!”⁸²

⁸¹ Amy Gardner et al., *Trump opposes election aid for states and Postal Service bailout, threatening Nov. 3 vote*, Wash. Post (Aug. 13, 2020), <https://wapo.st/3ies4MX>; Chris Stirewalt, *Trump seeks to starve post office to limit mail-in voting*, Fox News (Aug. 13, 2020), <https://fxn.ws/3iCkGL3>.

⁸² Donald J. Trump (@realDonaldTrump), Twitter (Aug. 22, 2020; 4:15 PM), <https://twitter.com/realDonaldTrump/status/1297275235432005632>; <https://twitter.com/realDonaldTrump/status/1297275241203458048>.

154. On August 23, 2020, Trump tweeted that mail-in ballot drop boxes are a “voter security disaster.”⁸³

155. At a September 16, 2020 press conference, Trump stated, “There’s going to be fraud all over the place.” He continued, “Our biggest threat to this election is governors from opposing parties controlling ballots, millions of ballots.”⁸⁴

156. On September 17, 2020, Trump called out for a stop of mail-in voting, tweeting “Stop Ballot Madness!”⁸⁵

157. On September 24, 2020, Trump tweeted, “Cheating on Unsolicited Ballots by political hacks, or anyone else, is against the law. We are closely watching!”⁸⁶

158. Trump’s and DeJoy’s changes and proposed changes to USPS operations served to create lasting public uncertainty about the reliability of mail delivery and to intimidate voters from voting by mail.

159. Trump’s and DeJoy’s statements and actions attacking voting by mail have had an objectively intimidating effect, leading voters across the country to fear and doubt the reliability and accuracy of voting by mail.⁸⁷

160. Trump’s and DeJoy’s attacks on mail-in voting intimidate reasonable voters from exercising their right to vote at all by impeding mail delivery and explicitly and implicitly threatening to further impede mail delivery or to block the canvassing or counting of mailed-in

⁸³ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 23, 2020; 7:25 AM), <https://twitter.com/realDonaldTrump/status/1297495295266357248>.

⁸⁴ Aaron Rupar (@atrupar), Twitter (Sept. 16, 2020; 5:47 PM), <https://twitter.com/atrupar/status/1306349008663777280>.

⁸⁵ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 17, 2020; 7:36 AM), <https://twitter.com/realDonaldTrump/status/1306557587375128576>.

⁸⁶ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 24, 2020; 8:31 PM), <https://twitter.com/realDonaldTrump/status/1309289455535050752>.

⁸⁷ Maggie Haberman et al., *Trump’s False Attacks on Voting by Mail Stir Broad Concern*, N.Y. Times (June 24, 2020), <https://nyti.ms/3gTEhGq>.

ballots. The intimidating impact of these actions is enhanced by the fact that they are being taken in the context of the ongoing COVID-19 pandemic and the resulting health risks associated with in-person voting.

161. These actions intimidate voters across the political spectrum, but their intent and predominant effect is to intimidate voters inclined to vote for Trump's principal general election opponent.

162. In July 2020, a poll found that 27 percent of Florida Republicans planned to vote by mail.

163. In August, after Trump's and DeJoy's USPS interference made headlines, the same polling firm found that only 19 percent of Florida Republicans planned to do so.

164. But the intimidating effect was far more pronounced on Democrats.

165. The same polls found that, among Florida Democrats, 61 percent planned to vote by mail in July, but only 32 percent did so in August.⁸⁸

166. Another foreseeable effect of these actions to undermine mail-in voting was to intimidate voters from voting safely and comfortably by mail and coerce them into voting in person (if at all) where, besides the increased risk of COVID exposure, they also face increased risks of in-person intimidation.

D. Threats to in-person voting

167. Trump has threatened to send law enforcement agents and prosecutors to polling places to prevent "fraud," explaining that "We're going to have sheriffs, and we're going to have

⁸⁸ Eric Cortellessa, *Is Trump Scaring Democrats Away from Vote by Mail?*, Wash. Monthly (Sept. 10, 2020), <https://bit.ly/35qmHXB>.

law enforcement. And we're going to have hopefully U.S. attorneys, and we're going to have everybody and attorney generals.”⁸⁹

168. In making these assertions, Trump appears to disregard the illegality of his proposed actions. The use of armed military officers at polling stations has been prohibited by federal statute. Under 18 U.S.C. § 592, no “person in the civil, military, or naval service of the United States” may order, bring, or keep “any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States.” *See also* 52 U.S.C. § 10102 (“No officer of the Army, Navy, or Air Force of the United States shall . . . in any manner interfere with the freedom of any election in any State.”); 18 U.S.C. § 1385 (“Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”)

169. On September 2, 2020, Trump encouraged supporters to first send in a mail-in ballot, then go to polls and attempt to vote a second time, stating: “So, let them send it in, and let them go vote, and if the system is as good as they say it is, then obviously they won't be able to vote. If it isn't tabulated, they won't be able to vote. So that's the way it is. And that's what they should do.”⁹⁰

170. Voting more than once is a prohibited act under Section 11(e) of the Voting Rights Act, 52 U.S.C. § 10307(e), and constitutes a felony act in at least 28 states.⁹¹

⁸⁹ Justine Coleman, *Trump says he will send law enforcement, US attorneys to polls in November to prevent fraud*, The Hill (Aug. 20, 2020), <https://bit.ly/3m6kB56>.

⁹⁰ Maegan Vazquez & Nikki Carvajal, *Trump appears to encourage North Carolinians to vote twice to test the system*, CNN (Sept. 3, 2020), <https://cnn.it/3bD3d32>.

⁹¹ Nick Corasaniti and Stephanie Saul, *Is Voting Twice a Felony?*, N.Y. Times (Sept. 9, 2020), <https://www.nytimes.com/article/voting-twice.html>.

171. That same day, Barr was asked in a CNN interview about Trump's encouragement to supporters to vote twice. He refused to condemn Trump's statement or acknowledge that Trump was asking his supporters to commit a federal crime.⁹²

172. On September 8, 2020, Trump told supporters to act as poll watchers to counteract "all these Democrats watching that stuff," and to "[w]atch all the thieving and stealing and robbing they do."⁹³

173. In a September 12, 2020 interview, Trump was asked what he would do if his opponents "riot" on election night. His response: "We'll put them down very quickly."⁹⁴

174. Trump continued his threats during a September 16, 2020 press conference, saying that if there is "any kind of demonstration or violence, there will be nothing that interferes with this . . . vote."⁹⁵

175. On September 29, 2020 a woman who was hired and paid by the Trump Campaign showed up at a polling station in Philadelphia not for the purpose of voting, but to "monitor what was going on."⁹⁶

176. Eric Trump (President Trump's son) tweeted about the woman not being permitted to enter the polling place, and Trump re-tweeted Eric's tweet.⁹⁷

⁹² Situation Room, "AG Barr: Mail-in voting is 'playing with fire'", CNN (Sept. 3, 2020) <https://www.cnn.com/videos/politics/2020/09/02/bill-barr-intv-playing-with-fire-absentee-mail-in-voting-election-tsr-sot-vpx.cnn>.

⁹³ Maegan Vazquez, *Trump tells his supporters to become poll watchers with a baseless claim about fraud at voting locations*, CNN (Sept. 8, 2020), <https://cnn.it/32cjKaX>.

⁹⁴ Michelle Goldberg, *Trump's Shredding of Civil Rights Won't Stop With Antifa*, N.Y. Times (Sept. 14, 2020), <https://www.nytimes.com/2020/09/14/opinion/trump-antifa-civil-liberties.html>

⁹⁵ Aaron Rugar (@atrupar), Twitter (Sept. 16, 2020; 5:47 PM), <https://twitter.com/atrupar/status/1306349008663777280>.

⁹⁶ Ellie Rushing (@EllieRushing), Twitter (Sept. 29, 2020; 1:16 PM), <https://twitter.com/EllieRushing/status/1310991943766339585>.

⁹⁷ Eric Trump (@EricTrump), "Does it shock anyone that poll watchers are being blocked and kicked out of voting locations in Philly? We are in court right now! This corruption must end!", Twitter (Sept. 29, 2020; 1:39 PM) <https://twitter.com/EricTrump/status/1310997632211353600>.

177. On September 30, 2020, according to Philadelphia election officials and sheriff's aides, a deputy sheriff escorted James Fitzpatrick, Trump's Pennsylvania director of Election Day operations, out of the satellite election office at Philadelphia City Hall, where he was recording video on his cellphone.

178. In response to Trump's statements, Trump supporters have already made efforts to be visibly present at polling places. On September 19, the second day of early voting in Virginia, Trump supporters staged a rally outside a polling place, requiring voters to make their way past the crowd.⁹⁸

179. The Trump Campaign has promised to recruit as many as 50,000 "poll watchers" to monitor voting locations on Election Day.

180. The Trump Campaign has maintained an "Army for Trump" website urging supporters to join the "army of supporters fighting to re-elect him in 2020."⁹⁹

181. Trump frequently adopts this language of violence in his tweets, encouraging people to join his "army" and "Fight for President Trump!"¹⁰⁰

182. At the September 29, 2020 presidential debate, President Trump was asked to denounce white supremacist organizations and tell them to stand down from their acts of intimidation. In response, President Trump directed the group "Proud Boys" to "stand back and stand by," a remark that has been widely understood by the public and the "Proud Boys" themselves as encouraging white supremacist intimidation.¹⁰¹

⁹⁸ Amy Gardner et al., *Trump's call for poll-watching volunteers sparks fear of chaos and violence on Election Day*, Wash. Post (Sept. 30, 2020), https://www.washingtonpost.com/politics/trumps-call-for-poll-watching-volunteers-sparks-fear-of-chaos-and-violence-on-election-day/2020/09/30/76ce0674-0346-11eb-b7ed-141dd88560ea_story.html.

⁹⁹ *Id.*

¹⁰⁰ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 3, 2020; 6:18 PM), <https://twitter.com/realDonaldTrump/status/1301645711910400001>.

¹⁰¹ DailyMail.com Reporter, *Read the full transcript and watch the whole debate*, Daily Mail (Sept. 20, 2020), <https://www.dailymail.co.uk/news/article-8788571/Full-transcript-Donald-Trump-Joe-Biden-debate.html>.

183. The “Proud Boys” are a group that has ties to the white supremacist movement and has previously been associated with violence.¹⁰² The group is listed as a “hate group” by the Southern Poverty Law Center.¹⁰³ Despite their known association with violence, the “Proud Boys” have been received with friendliness by law enforcement.¹⁰⁴

184. The “Proud Boys” responded to Trump’s directive by posting a statement on their social media account that said, “Standing back and standing by, sir.”¹⁰⁵ They also posted on Telegram an image with their logo and Trump’s remark.¹⁰⁶

185. Trump also said during the presidential debate, “I’m urging my supporters to go into the polls and watch very carefully, because that’s what has to happen.”

186. Trump’s collective statements at the presidential debate, at White House press conferences, via Twitter, and in other public forums, have caused a national sentiment of fear and uncertainty among voters who cannot predict what actions Trump and his supporters will take in the days leading up to the general election and on Election Day itself.¹⁰⁷

187. Trump’s statements are objectively intimidating to individuals who plan to vote in person. This is particularly so for voters of color, and voters who may be perceived as likely to vote against Trump by the various sheriffs, law enforcement, or private citizen poll watchers or vigilantes encouraged by Trump’s statements.

¹⁰² Khaleda Rahman, *Proud Boys Repeatedly Rush, Attack Black Lives Matter Supporters in Salem*, Newsweek (Sept. 8, 2020), <https://www.newsweek.com/proud-boys-rushed-attacked-black-lives-matter-supporters-1530187>.

¹⁰³ https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys?gclid=EAIaIQobChMIw_muyKCC7AIV1Bx9Ch3M4g_rEAAAYASAAEgLYdvD_BwE

¹⁰⁴ <https://www.thedailybeast.com/philadelphia-police-extra-friendly-with-far-right-proud-boys-videos-show?source=twitter&via=desktop>

¹⁰⁵ Ben Collins (@oneunderscore_), Twitter (Sept. 29, 2020; 10:51 PM), https://twitter.com/oneunderscore_/status/1311136483114442752.

¹⁰⁶ Alex Kaplan (@AlKapDC), Twitter (Sept 29, 2020; 10:44 PM), <https://twitter.com/AlKapDC/status/1311134771171545089>.

¹⁰⁷ Danny Hakim, et. al., *Trump Renews Fears of Voters as G.O.P Poll Watchers Mobilize*, N.Y. Times (Sept. 30, 2020), <https://www.nytimes.com/2020/09/30/us/trump-election-poll-watchers.html>.

E. Rejection of peaceful transfer of power

188. On July 30, 2020, Trump stated that he was exploring delaying the 2020 Presidential election. He tweeted, “With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history. It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote???”¹⁰⁸

189. In a July 19, 2020 interview with Fox News host Chris Wallace, Trump announced that he might refuse to “accept” the election:

WALLACE: But can you give a, can you give a direct answer you will accept the election?

TRUMP: I have to see. Look, you – I have to see. No, I’m not going to just say yes. I’m not going to say no, and I didn’t last time either.¹⁰⁹

190. In a September 23, 2020 White House press conference, Trump refused to commit to a peaceful transfer of power at the conclusion of the presidential election:

REPORTER: Win, lose or draw in this election, will you commit here today for a peaceful transfer of power after the election?

TRUMP: We’re going to have to see what happens.¹¹⁰

191. Trump’s refusal to commit to a peaceful transfer of power amounts to a clear threat that any vote cast against him will be ineffective. It has the effect of intimidating and threatening those who wish to support and vote for his opponent.

¹⁰⁸ Donald J. Trump (@realDonaldTrump), Twitter (July 30, 2020; 8:46 AM), <https://twitter.com/realDonaldTrump/status/1288818160389558273>.

¹⁰⁹ *Transcript: ‘Fox News Sunday’ interview with President Trump*, Fox News (July 19, 2020), <https://fxn.ws/31HYQiz>.

¹¹⁰ NBC News (@NBCNews), Twitter (Sept. 23, 2020; 6:53 PM), <https://twitter.com/NBCNews/status/1308902276187262978>.

F. Intent and effect of this pattern of conduct

192. Trump, Barr, and Wolf deployed armed federal law enforcement agents to suppress peaceful protests, and encouraged vigilante violence against demonstrators, with the effect and subjective intent of intimidating citizens from participating in speech or public assemblies; intimidating citizens from engaging in voting-related activities, such as voter registration, persuasion, or mobilization, at these assemblies; and intimidating citizens from giving support or advocacy towards the election of 2020 political candidates (including for the presidency).

193. Trump has discredited, sabotaged, and attacked the legitimacy of voting by mail in the midst of a global pandemic when people are supposed to be socially distancing with the effect and subjective intent of intimidating citizens from voting, attempting to vote, urging others to vote, or helping others to vote by mail, by suggesting that such votes would be ineffective or disregarded, and that the only way voters can exercise their right to vote is by entering physical polling places, with a concomitant potential risk to their health.

194. Trump has intimidated or attempted to intimidate citizens from voting in-person, threatened to delay the election, and threatened to reject the results of the election if he is not declared the winner, with the subjective intent of intimidating voters from voting at all, or from voting for Trump's opponent, in the 2020 general election.

195. The pattern of conduct described above has had, as a foreseeable impact, an objectively intimidating effect on eligible voters. Many Americans have been intimidated by this conduct—including people of color, people with a heightened susceptibility to COVID-19, people with a heightened sensitivity to chemical riot control agents, people who are reasonably fearful of being compelled to interact with armed law enforcement officers or armed private

vigilantes, people who would prefer to vote by mail for health reasons but fear that Defendants' actions will result in their ballots not arriving in time or not being counted, people who fear their cast votes will be rejected based on groundless accusations of "fraud," and people who fear that the President of the United States will render their attempts to vote meaningless by delaying or rejecting the results of the 2020 general election—to the extent that it has discouraged their plans to register to vote, to vote, or to conduct voter registration, persuasion, or mobilization activities at public assemblies.

196. Plaintiff Schwartz is intimidated from voting due to Defendants' acts and statements.

197. Plaintiff Schwartz, who has voted in every general election since being eligible to vote in 2000, has been terrified by President Trump's call to his supporters and white supremacist organizations to gather at polling places and monitor individuals who show up to vote. As a Jewish woman, Plaintiff Schwartz is particularly afraid of encountering white supremacists who may attack her for her identity alone. After Trump called on the Proud Boys to "stand by," she felt it was no longer safe to vote in person and requested a mail-in ballot.

198. Although Plaintiff Schwartz has received her ballot, she has been intimidated from sending it in by Defendants' many statements painting mail-in voting as a fraudulent activity that will be subject to investigation and scrutiny by law enforcement and the federal courts. She is further afraid that if she mails her ballot, it will not reach election officials in time, or at all, due to Defendants' attacks on the USPS.

199. Because Plaintiff Schwartz is also afraid to drop off her mail-in ballot in person where white supremacists might be surveilling, she is left with the untenable choice of risking

her life to drop off her ballot or risking the loss of her vote by mailing her ballot and having it lost or discounted as fraudulent. Because of these fears, she has not yet voted.

200. Plaintiff Schwartz also assists students from low-income communities of color with exercising their right to vote. Her students have expressed significant concerns about the reliability of their ballot access in the November election.

201. Plaintiff Lopez is also intimidated from voting due to Defendants' acts and statements.

202. Due to Plaintiff Lopez's asthmatic condition, it is particularly unsafe for her to vote in person at a polling location during the COVID-19 pandemic. Her only safe option for casting her vote is to submit an absentee ballot.

203. Because of Trump's and DeJoy's attacks on the USPS, Plaintiff Lopez hoped to drop off her mail-in ballot at a designated drop-off location. However, she has been intimidated from doing so because she is afraid that law enforcement and Trump supporters will be gathered around the location per Trump's encouragement and may identify her as someone likely to vote for Trump's opponent.

204. As a Latinx woman, Plaintiff Lopez is particularly frightened by Trump's encouragement of the Proud Boys to "stand by" during the election. Her fear of walking past these groups of Trump supporters, some of whom may be armed, as she approaches the drop-off location has left her deeply concerned about dropping off her ballot. Because of these fears, she has not yet voted.

205. In short, the Plaintiffs Schwartz and Lopez have been intimidated by Defendants' actions and statements.

206. Defendants' conduct has also perceptibly impaired Plaintiff MFV's ability to carry out its core mission of expanding general voter registration by requiring it, instead, to provide information and assistance to individuals who have been intimidated by Defendants' actions.

207. Plaintiff MFV has been required to divert resources from its mission in order to combat the intimidating effect of Defendants' conduct on voters.

208. MFV has spoken to numerous voters in the communities it serves who have expressed concern about voting in person because of Trump's threats to have law enforcement present at polling places and because of Trump's encouragement of his supporters, including white supremacist groups, to monitor the polls.

209. For example, Patrick Lucero, a voter in Colorado, told MFV, "As a retired laborer, I volunteer with my union every election. This year I wanted to go further by also volunteering my time at a poll center or drive-up ballot drop location. I shouldn't be scared of volunteering out of kindness because of the fear of being intimidated by possible vigilantes and law enforcement that Donald Trump called on himself. I want to be able to feel comfortable and know I will make it back home safe after my volunteer time."

210. A voter in Henderson, Nevada told MFV, "My wife and I want to vote in person because we want to make sure our [vote] counts, we are also concerned with surrounding [sic] the ballot at the voting location because we do not want to be accused that we are trying to vote twice. The president is making voting really hard this year, we are both elderly and afraid to put our health at risk, but we want to make sure our vote is counted this year."

211. MFV has also spoken to numerous voters who are concerned about voting by mail because of Defendants' actions.

212. A voter in North Las Vegas, Nevada told MFV, “I am afraid to vote by mail because I heard that the president wants to cancel the election this year. If he tries to stop VBM [vote-by-mail] my vote will not count.”

213. Voters have expressed concern to MFV that their mail-in votes will not be counted, will be lost in the mail, or will be subjected to heightened scrutiny. Defendants’ conduct caused these concerns.

214. MFV’s core activities—registering people to vote and encouraging people to vote—have been made significantly more difficult because of Defendants’ actions.

215. MFV has had to divert significant resources to combat Defendants’ intimidation tactics.

216. MFV is directing its staff to spend time educating voters about voting by mail in order to assure them that it can be done lawfully.

217. MFV has had to train its canvassers and phone bankers on the reliability of vote-by-mail options to combat the misinformation campaign being pushed by Trump and his senior officials.

218. MFV is spending time at the doors and on the phones discussing the reliability of vote-by-mail, telling people in the communities it serves that voting by mail is legal and effective, despite what Defendants have said.

219. This time investment has had a direct and adverse impact on the number of people that MFV is able to talk to and its ability to educate voters about the issues that matter to their communities. Time spent combatting Trump’s baseless attempts to label mail-in votes as fraudulent and his threats that the courts will have to review mail-in ballots would otherwise be spent talking to more voters and educating voters about the substantive issues at stake in this

election.

220. MFV would not have to spend time talking to voters about the reliability of legal voting systems were it not for Trump's repeated attacks on those systems.

221. MFV has also partnered with another non-profit civic engagement organization to redirect some of its staff to build a program to fight the misinformation that Defendants have been promoting.

222. MFV has limited time and monetary resources with which to carry out its mission. The need to engage in activities to counter Defendants' misinformation has reduced the financial and other resources available for MFV's core programs, including its education of voters about issues relevant in their communities.

223. Trump's efforts to dissuade people from voting by mail is also in direct conflict with one of MFV's core missions: helping voters to cast their votes.

224. Taken together, Defendants' actions have caused MFV substantial difficulty in carrying out its core mission and general programming of expanding general voter registration.

225. The actions of Trump, Barr, and Wolf have had the intent and effect of intimidating citizens based on their actual or presumed political views. Defendants have deployed federal armed agents to cities with Democratic mayors, selectively provided moral and rhetorical support for armed protesters thought to support Trump, and selectively supplied rhetorical condemnation of, and encouragement of vigilante violence against, largely unarmed protesters generally perceived to be politically opposed to Trump. This included making a show of force in cities governed by Democratic officials for the purpose of intimidating citizens in entirely different cities that were also governed by Democratic officials from engaging in similar expressive and voting-related activities.

226. Similarly, Trump and DeJoy discredited and undermined the mail voting process with the subjective intent of disproportionately influencing and intimidating voters who may be politically opposed to Trump, including those potentially planning to vote for Trump's opponent in the general election.

227. Similarly, Defendants' actions had the subjective intent of disproportionately influencing and intimidating voters based on their race, including against Latino voters.

228. MFV has spoken to many voters in Latino communities who have been particularly impacted by Defendants' actions.

229. The extent and consistency of the pattern of conduct and intimidation described above, Defendants' propensities for such conduct, and Defendants' stated intentions, together demonstrate that Defendants intend to continue similar conduct and intimidation in the future, up to and past Election Day on November 3, 2020.

CLAIMS FOR RELIEF

COUNT ONE

Intimidating or attempting to intimidate voters and those aiding them in violation of Section 11(b) of the Voting Rights Act of 1965

230. Plaintiffs reallege and incorporate by reference as if fully set forth herein each of the preceding paragraphs and allegations.

231. Section 11(b) of the Voting Rights Act of 1965 (VRA), 52 U.S.C. § 10307(b), provides:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under [other provisions of this law].

232. Defendants' intimidating and threatening conduct includes deploying federal law enforcement agents to suppress peaceful protests perceived to be in opposition to Trump, encouraging vigilante violence against demonstrators who appear opposed to Trump, discrediting voting by mail as a means by which voters can safely cast their ballots for the stated purpose of disenfranchising opposition voters, sabotaging mail delivery for the purpose of making voting by mail less reliable, threatening to ban voting by mail or prevent mailed-in votes from being counted, threatening to send law enforcement to polling places, encouraging armed vigilantes and activist Trump supporters to monitor polling locations and confront dissenters, proposing to delay the 2020 general election, and stating that President Trump will refuse to recognize the legitimacy of election results or provide for a peaceful transfer of power if he is not declared the winner.

233. Defendants' conduct has an objectively intimidating effect on voters and those who seek to lawfully aid eligible persons attempting to vote.

234. Defendants have engaged in this conduct with the subjective intent to intimidate and threaten voters and those who seek to lawfully aid eligible persons attempting to vote, and with the knowledge that the natural consequences of their conduct and speech will be the intimidation of voters and those who seek to lawfully aid persons attempting to vote.

235. Defendants' conduct has intimidated voters and those who seek to lawfully aid persons attempting to vote.

236. Defendants' actions have intimidated Plaintiffs Schwartz and Lopez and directly caused Plaintiff MFV to divert its resources.

237. Defendants have violated 52 U.S.C. § 10307(b), and will continue to do so absent judicial relief.

COUNT TWO

**Conspiring to intimidate or threaten voters and those aiding them
in violation of the Ku Klux Klan Act of 1871**

238. Plaintiffs reallege and incorporate by reference as if fully set forth herein each of the preceding paragraphs and allegations.

239. Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3), provides:

[I]f two or more persons conspire 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, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, 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, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

240. Defendants have agreed and conspired with the Trump Campaign to prevent—by force, intimidation, and threat—citizens lawfully entitled to vote from giving their support or advocacy toward Trump’s general election opponent in the 2020 general election.

241. Defendants’ actions, including deploying federal law enforcement agents to suppress peaceful protests, encouraging vigilante violence against demonstrators, discrediting voting by mail for the stated purpose of disenfranchising opposition voters, sabotaging mail delivery for the purpose of making voting by mail less reliable, threatening to ban voting by mail or prevent mailed-in votes from being counted, threatening to send law enforcement to polling places, encouraging armed vigilantes and activist Trump supporters to monitor polling locations and confront dissenters, proposing to delay the 2020 general election, and stating that President Trump will refuse to recognize the legitimacy of election results or provide for a peaceful

transfer of power if he is not declared the winner, are overt acts in furtherance of that agreement's objective.

242. Defendants have engaged in this conduct with the subjective intent to threaten, intimidate, and disenfranchise voters.

243. Defendants' actions have been objectively intimidating.

244. Defendants' actions have intimidated Plaintiffs Schwartz and Lopez and directly caused Plaintiff MFV to divert its resources.

245. Defendants have violated 42 U.S.C. § 1985(3), and will continue to do so absent judicial relief.

COUNT THREE

Unconstitutional suppression of speech and votes for political purposes in violation of the First, Fifth, and Fourteenth Amendments

246. Plaintiffs reallege and incorporate by reference as if fully set forth herein each of the preceding paragraphs and allegations.

247. The First Amendment to the U.S. Constitution states in part:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

248. The Fourteenth Amendment to the U.S. Constitution, which is applicable to the United States and to federal officials via the Fifth Amendment's Due Process Clause, states in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

249. Defendants, acting under color of law, have selectively classified and targeted citizens for adverse action, including infringement of fundamental rights, based on their

identities as members of protected classes or presumed political identifications or beliefs. They have done so with the intent of intimidating or chilling the speech of both the targeted citizens and other citizens, including Plaintiffs Schwartz and Lopez, with similar political identifications or beliefs, based on those political identifications or beliefs.

250. Defendants, acting under color of law, have abridged Plaintiffs' freedom of speech and deprived Plaintiffs of the equal protection of the laws and due process of law, in violation of the First, Fifth, and Fourteenth Amendments of the U.S. Constitution, and will continue to do so absent judicial relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that Defendants' actions and statements concerning deploying armed federal law enforcement agents to suppress peaceful protests, encouraging vigilante violence against demonstrators, discrediting voting by mail, sabotaging mail delivery for the purpose of making voting by mail less reliable, threatening to ban voting by mail or prevent mailed-in votes from being counted, threatening to send law enforcement to polling places, proposing to delay the 2020 general election, and stating that President Trump will refuse to recognize the legitimacy of election results if he is not declared the winner constitute unlawful voter intimidation in violation of Section 11(b) of the Voting Rights Act.
- b. Declare that Defendants' actions constitute a conspiracy to prevent citizens by force, intimidation, or threat from giving their support or advocacy toward or in favor of the election of lawfully qualified persons as electors for President or Vice President, in violation of the Ku Klux Klan Act.

- c. Declare that Defendants' actions violate the First, Fifth, and Fourteenth Amendments to the U.S. Constitution.
- d. Enjoin Defendant Trump from encouraging, urging, and/or importuning his supporters: to bring weapons to polling places, to block access to polling places, to question or otherwise intimidate voters, or to otherwise interfere with voting and ballot counting.
- e. Enjoin Defendants Trump, Barr, and Wolf from deploying federal law enforcement agents at, or within 300 feet of, polling places while voting is underway for the purpose of: questioning voters about their credentials; impeding or delaying voters by asking for identification; videotaping, photographing, or otherwise making visual records of voters or their vehicles; informing voters that voter fraud is a crime; or recounting the penalties under any state or federal statute for impermissibly casting a ballot.
- f. Enjoin Defendants Trump, Barr, and Wolf from deploying armed federal law enforcement agents at, or within 300 feet of, polling places while voting and ballot counting is underway except where necessary, as demonstrated by specific evidence pertaining to a particular polling place, to repel armed enemies of the United States.
- g. Enjoin Defendants Trump, Barr, and Wolf from ordering federal agents and employees to block the delivery of ballots or interfere in the counting of ballots.
- h. Enjoin Defendants from taking any actions that may limit the speed or reliability of mail delivery between now and November 10, 2020.

- i. Enjoin Defendant Trump from using official White House public communications channels, including the @realDonaldTrump Twitter account, to make statements or suggest that lawful votes will be subjected to heightened scrutiny by election officials; that people who lawfully vote by mail will have their ballots or their voting eligibility scrutinized by election officials; that lawful mail-in votes will not be counted; or that lawful mail-in ballots will be challenged.
- j. Award Plaintiffs reasonable attorneys' fees and costs.
- k. Retain jurisdiction to ensure all Defendants' ongoing compliance with the foregoing orders.
- l. Grant such other and further relief that this Court deems just and appropriate.

Date: October 21, 2020

Respectfully submitted,

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FREE SPEECH FOR PEOPLE

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