

JESUS A. OSETE*
Principal Deputy Assistant Attorney General
MATTHEW ZANDI (CA No. 203329)
Chief of Staff & Special Counsel
MAUREEN RIORDAN (NY No. 2058840)
Acting Chief, Voting Section
ANDREW BRANIFF (IN No. 23430-71)
Acting Chief, Appellate Section
DAVID GOLDMAN (VA No. 98922)
JOSHUA R. ZUCKERMAN (DC No. 1724555)
GRETA GIESEKE (TX No. 24132925)

Attorneys
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Telephone: (202) 514-3847
E-Mail: greta.gieseke@usdoj.gov

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
JULIE A. HAMILL (CA No. 272742)
Assistant United States Attorney
United States Attorney's Office
300 North Los Angeles Street, Suite 7516
Los Angeles, California 90012
Telephone: (213) 894-2464
E-Mail: julie.hamill@usdoj.gov

Attorneys for Plaintiff-Intervenor
UNITED STATES OF AMERICA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID TANGIPA, *et al.*,
Plaintiffs,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

GAVIN NEWSOM, in his official
capacity as the Governor of California,
et al.,

Case No. 2:25-cv-10616-JLS-KES
Three-Judge Court

**UNITED STATES' REPLY TO
OPPOSITION OF INTERVENOR-
DEFENDANT LEAGUE OF
UNITED LATIN AMERICAN
CITIZENS (LULAC) TO MOTIONS
FOR PRELIMINARY INJUNCTION**

* Assistant Attorney General Harmeet K. Dhillon is recused from this matter.

Defendants,

Hon. Josephine L. Staton

Hon. Wesley L. Hsu

Hon. Kenneth K. Lee

Hearing Date: December 15, 2025

Time: 9 a.m.

Courtroom: One

INTRODUCTION

Defendant-Intervenor League of United Latin American Citizens’ (“LULAC”) response to Plaintiffs’ and Plaintiff-Intervenor’s motions for a preliminary injunction alleges that Plaintiffs have “repackaged a nonjusticiable partisan gerrymander and called it an impermissible racial gerrymander.” LULAC Opp. at 1. The allegations in LULAC’s brief and the undisputed facts and evidence introduced in the United States’ complaint and motion, however, establish that California intentionally used race as a predominant factor in creating the map that the legislature passed as Assembly Bill 604 (“AB 604”).

A. The United States Has Established that AB 604 Violates the Equal Protection Clause

The Equal Protection Clause forbids a State, absent a compelling justification, from “separat[ing] its citizens into different voting districts on the basis of race.” *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 187 (2017). Under this rubric, plaintiffs must show that race was the “predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 7 (2024). Here, Plaintiffs and the United States have introduced both “‘direct evidence’ of legislative intent, [and] ‘circumstantial evidence of a district’s shape and demographics.’” *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); *see generally* U.S. P.I. Mot. 3-6, 8-11; Pls.’ P.I. Mot. 10-14.

In enacting AB 604, California no doubt sought to increase Democrats’ voting power. But this partisan goal was second to racial priorities. Paul Mitchell, who drew the map, admitted in an interview with Hispanas Organized for Political Equality (“HOPE”) on October 17, 2025, that his starting point for redistricting was implementing racial targets that HOPE lobbied for in a 2021 letter. Doc. 42-3 at 25-26. In addition to this direct evidence discussed in the United States’ Reply to Def. Opp., *see* Doc. 140 at 1-3, 10-11, and Memo in Support of the Motion for a Preliminary Injunction, *see* Doc. 29-1 at 8-11,

1 there is ample circumstantial evidence of race-based gerrymandering. The HOPE letter
2 also suggested moving Latino populations from districts that were “likely overpacked
3 beyond what is required to definitively allow for the election of a Latino candidate of
4 choice,” and deemed 52-54% Hispanic Citizen Voting Age Population (“CVAP”) an
5 optimal racial quota to “still be very likely to elect Latino candidates of choice.” App. A,
6 *Nov. 24, 2021 Letter from HOPE to Commissioners* at 5. And the evidence demonstrates
7 that Mitchell endeavored—indeed, successfully—to create a map that increased Democrat
8 voting power while prioritizing a similar racial quota.

9 Data submitted by LULAC’s own expert, Anthony Fairfax, indicates that Mitchell
10 implemented a racial quota to ensure that at least sixteen districts would be “very likely to
11 elect Latino candidates of choice”: 14/16 majority-Hispanic districts in the Proposition 50
12 Map have Hispanic CVAPs of 51.76-55.01%, whereas only 5/16 districts in the 2021 were
13 in this compact range. *Compare* Doc. 111-1 at 86-87 (2021 map’s Hispanic CVAP
14 percentages), *with id.* at 161-62 (Proposition 50 map’s Hispanic CVAP percentages).

15 Of course, it could be a coincidence that all but two majority-Hispanic districts have
16 Hispanic CVAP percentages within a compact range that is nearly identical to the range
17 that HOPE deemed optimal. But as LULAC included in its recent brief in *LULAC v.*
18 *Abbott*: “*Nothing’s a coincidence.*” No. 3:21-cv-00259, Doc. 1150 at 16 (W.D. Tex. Aug.
19 28, 2025) (quoting legislators’ discussions regarding two districts that were “just above”
20 50% Hispanic CVAP and two districts that were “just above” 50% black CVAP); *see also*
21 *LULAC v. Abbott*, --- F. Supp. 3d ---, 2025 WL 3215715, at *42 (W.D. Tex. Nov. 18,
22 2025) (finding it “very unlikely” that the map drawer “would have hit a barely 50%
23 CVAP *three times* by pure chance”), *stayed on other grounds*, 607 U.S. ---, 2025 WL
24 3484863 (W.D. Tex. Dec. 4, 2025).

25 Nonetheless, according to LULAC, California must not have racial gerrymandered
26 the Proposition 50 map because it has the same number of majority-Hispanic districts—
27
28

1 sixteen—as did the 2021 map, which undisputedly complied with the VRA.¹ Doc. 111 at
2 10 (accusing the United States of “fail[ing] to explain how the sixteen districts in the
3 Commission plan could be constitutional while the sixteen districts in the current plan are
4 not”). But while fifteen of the sixteen majority-Hispanic districts may nominally be the
5 same in both maps, their boundaries are not the same. Instead, the districts are drawn to
6 racially sort voters into the most politically advantageous districts that satisfy desired
7 racial quotas.

8 Take District 13 for example. In the 2021 map, it had a bulge that protruded into
9 District 9. Doc. 111-1 at 22. But the Proposition 50 map adds a plume atop the existing
10 bulge. *Id.* at 22-23. Accepting the data submitted by LULAC’s expert, Fairfax, the revised
11 District 13 in the Proposition 50 map increased Democrats’ voting power while keeping
12 Hispanic CVAP roughly the same at 53.73%, compared to 53.66% in the 2021 map.
13 *Compare* Doc. 111-1 at 86, 137, 140, 143 (2021 District 13 Hispanic CVAP and Democrat
14 populations), *with id.* at 161, 214, 217, 220 (Proposition 50 District 13 Hispanic CVAP
15 and Democrat populations). Had partisan goals predominated, Mitchell could have
16 maximized Democrats’ voting power in District 13, while keeping District 9 reliably
17 Democrat and drawing a more regular district. This is demonstrated by Trende’s three
18 alternative maps. *See* Doc.16-5 at 37-42.² Even under Fairfax’s data, Trende’s Map A
19 shows that when push came to shove, Mitchell prioritized the racial quota over partisan
20 goals.³ *Compare* Doc. 111-1 at 161, 214, 217, 220 (Proposition 50 District 13 Hispanic
21

22 ¹ Different data sets and analyses produce varying conclusions about the number of
23 majority-Hispanic districts in the 2021 map. *See, e.g.,* Dr. Raquel Centeno & Dr. Jarred
24 Cuellar, *Latino Voters and the November 2025 Special Election: Redistricting and*
25 *Representation* at 1, <https://tinyurl.com/5pjj9x7r>; *see also infra* note 3.

26 ² LULAC disposes of the United States’ arguments on the basis that the United
27 States did not retain its own expert and instead merely cites an academic analysis. Doc.
28 111 at 11. This is not true; the United States relies on Trende. *See* U.S. P.I. Mot. 11.

³ Fairfax’s report shows unequal populations between the districts in Trende’s
alternative maps. LULAC Opp. 17; *see, e.g.,* 111-1 at 569. Fairfax testified, however, that
data produced in one redistricting application may not populate accurately when reviewed
on different software. App. B, *Deposition of Anthony Fairfax* at 74:1-18 (“If you use

CVAP and Democrat populations), *with id.* at 240, 389, 392, 395 (Trende Map A District 13 Hispanic CVAP and Democrat populations). Prior VRA compliance does not create a safe harbor for subsequent unlawful discrimination.

Even if California had good in increasing the voting power of Latinos, the Proposition 50 map remains an illegal racial gerrymander. Supposedly “benign” racial classifications are held to the same strict scrutiny as “invidious” ones. *Adarand Constructions, Inc. v. Pena*, 515 U.S. 200, 229-30 (1995). That is because in “zero-sum” contexts such as electoral politics, a “benefit provided to some” racial groups “but not to others necessarily advantages the former group at the expense of the latter.” *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 218-19 (2023). When a state intentionally draws majority-minority districts to empower one racial group, it therefore necessarily harms the political power of other racial groups. Here, California’s “benign” discrimination to increase the political power of Latinos results in a corresponding decrease in the political powers of other racial groups. That violates the Equal Protection Clause. There is no “special category of ‘benign’ racial classification” when voting rights are at stake. *Shaw v. Reno*, 509 U.S. 630, 653 (1993).

B. The United States Has Established a VRA Violation Based on the Intentional Use of Race in Redistricting

Without ever citing the Voting Rights Act, LULAC further argues that the United States is limited to bringing a vote-dilution claim under the VRA. *Compare* LULAC Opp. 14 (arguing that the United States “appears to ... bring[] an intentional vote dilution claim” (citing U.S. P.I. Mot. 7-8)), *with* U.S. P.I. Mot. 7-8 (describing the legal standard for the VRA claim). And according to LULAC, the United States’ vote-dilution claim is inadequate. LULAC Opp. 14-15. In this case, there is ample evidence that the redistricting

Census block, which is what I use when I transfer or transmit a plan, it matches up correctly ... If you use some other – he used JSON, like I said, they may not conform to Census geography correctly.”).

1 process—including in District 13—began with, and was motivated by, race-based
2 considerations.

3 **1. Section 2 of the VRA Prohibits Purposeful Race-Based Redistricting**

4 Section 2 imposes a “permanent, nationwide ban on racial discrimination in
5 voting.” *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). Section 2 allows plaintiffs to
6 bring both “intent” (or “purpose”) claims and “results” claims. *See Democratic Nat’l*
7 *Comm. v. Hobbs*, 948 F.3d 989, 1011 (9th Cir. 2020) (*en banc*), *rev’d on other grounds*
8 *sub nom. Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647 (2021). Section 2 prohibits
9 both “those voting practices directly prohibited by the Fifteenth Amendment” and “also
10 any practice ‘imposed or applied . . . in a manner which results in a denial or abridgement
11 of the right . . . to vote on account of race or color.’” *United States v. Marengo Cnty.*
12 *Comm’n*, 731 F.2d 1546, 1553 (11th Cir. 1984) (emphasis removed). Or, said differently,
13 a Section 2 plaintiff “must either prove [discriminatory] intent, or, alternatively, must
14 show that the challenged system or practice, in the context of all the circumstances in the
15 jurisdiction in question, results in minorities being denied equal access to the political
16 process.” *Chisom v. Roemer*, 501 U.S. 380, 394 n.21 (1991); *Hobbs*, 948 F.3d at 1011.

17 When a state intentionally draws district lines on the basis of race, “[t]he racial
18 classification itself is the relevant harm.” *Alexander*, 602 U.S. at 38.⁴ That is because
19 “[c]lassifying citizens by race ... threatens special harms that are not present in ... vote-
20 dilution cases.” *Shaw v. Reno*, 509 U.S. 630, 649-50 (1993).

21 **2. The United States Has Established a Section 2 Intent Claim**

22 When considering a discriminatory purpose claim under Section 2, courts apply the
23 familiar approach outlined in *Village of Arlington Heights v. Metropolitan Housing*
24 *Development Corp.*, 429 U.S. 252, 266-68 (1977). *Hobbs*, 948 F.3d at 1038. Under this

25 ⁴ Moreover, to the extent that a claim of intentional racial gerrymandering requires
26 a showing that a certain racial or ethnic group’s voting power has been diminished (*see*
27 LULAC Opp. 14), the Proposition 50 map’s boost of Latino voting power necessarily
28 entails the concomitant diminution of the voting power of all other racial groups.

1 standard, plaintiffs must show that race was a motivating factor for the official action, but
2 they need not show “that the challenged action rested solely on racially discriminatory
3 purposes” or even that the discriminatory purpose “was the ‘dominant’ or ‘primary’ one.”
4 *Arlington Heights*, 429 U.S. at 265; *see also Allen v. Milligan*, 599 U.S. 1, 37 (2023)
5 (rejecting the contention that plaintiffs must show that a challenged districting plan “rested
6 solely on racially discriminatory purpose” (quoting *Arlington Heights*, 429 U.S. at 265)).

7 LULAC contends, and the United States does not dispute, that members of the
8 California legislature and government sold this plan to California voters as an attempt to
9 counteract the redistricting plans occurring in other states. *See* LULAC Opp. at 5-9.
10 However, these post-hoc rationalizations were made after the California legislature
11 passed, and the Secretary of State enrolled, AB 604, which set the proposed map in stone.
12 For example, the Official Voter Information Guide, *see* LULAC Opp. at 6, could not have
13 been created until after AB 604 passed. *See* Prop. 50 Voter Guide, *available at*
14 *ps://vig.cdn.sos.ca.gov/2025/special/pdf/complete-vig.pdf* (last visited Dec. 8, 2025). As
15 the United States has explained in its reply to the Defendants’ Opposition, the intent of
16 the voters is irrelevant to the analysis here. Doc. 140 at 6, 14. The Guide, and statements
17 by Governor Newsom and Republican Legislators who voted against the proposal, *see*
18 LULAC Opp. at 6-8, are similarly irrelevant as they were not made by relevant state actors.
19 *See Alexander*, 602 U.S. at 8; *see also Cooper*, 581 U.S. at 299 (finding a racial
20 gerrymander by examining evidence from the “State’s mapmakers”). Here Paul Mitchell
21 and the members of the California legislature were the State’s mapmakers—and relevant
22 state actors—who determined the final map that AB 604 enacted.

23 The mindset of the mapmaker is highly relevant to the question of whether invidious
24 discrimination tainted the mapmaking process. *See Perez v. Texas*, 891 F. Supp. 2d 808,
25 833 n.94 (W.D. Tex. 2012) (noting that “the actual mapdrawer[’s] ... state of mind and
26 decision-making appears to be the most relevant evidence concerning the extent to which
27 race played a role in determining district lines”); *see also Arlington Heights*, 429 U.S. at
28

266 (“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”). Here, as demonstrated in the motion for a preliminary injunction, U.S. P.I. Mot. 8-10, Mitchell prioritized bolstering the voting power of Latino voters as a bloc when he set out to draw the map in AB 604.

“[T]argeting a particular race’s access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose.” *League of Women Voters of Florida Inc. v. Florida Sec’y of State*, 66 F.4th 905, 924 (11th Cir. 2023) (quoting *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016)). Although “[o]utright admissions of impermissible racial motivation are infrequent[,]” *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999), such admissions actually occurred in this case. Mitchell stated the “number one thing that [he] first started thinking about” when creating the map was “drawing a replacement Latino majority/minority district in the middle of Los Angeles.” Doc. 42-3 at 24-25. He told HOPE that the “[t]he Prop. 50 maps [would] be great for the Latino community ... they [would] ensure that the Latino districts that are the VRA seats are bolstered in order to make them most effective, particularly in the Central Valley.” *Id.* at 31. He also boasted that he had redrawn another district to create a “Latino-influenced district at 35 percent Latino by voting age population.” *Id.* at 25-26. “Once racial discrimination is shown to have been a ‘substantial’ or ‘motivating’ factor behind enactment of the law, the burden shifts to the law’s defenders to demonstrate that the law would have been enacted without this factor.” *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). Neither LULAC nor the State Defendants have satisfied this burden.

C. The United States Has Established the Basis for a Preliminary Injunction

As Defendants concede, *see* Def. Opp. 12, n.7, the Ninth Circuit has adopted “a sliding scale variant of the *Winter* test—under which a party is entitled to a preliminary

1 injunction if it demonstrates (1) serious questions going to the merits, (2) a likelihood of
2 irreparable injury, (3) a balance of hardships that tips sharply towards the plaintiff, and (4)
3 the injunction is in the public interest.” *Flathead-Lolo-Bitterroot Citizen Task Force v.*
4 *Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quotation marks omitted). “[T]he serious
5 questions standard is ‘a lesser showing than likelihood of success on the merits,’” *id.*, a
6 burden that the United States has met. “Any racial discrimination in voting is too much,”
7 *Shelby County*, 570 U.S. at 557, and “[t]he federal interest in protecting voting rights is a
8 serious one,” *Harris v. Ariz. Indep. Redistricting Comm’n*, 993 F. Supp. 2d 1042, 1071
9 (D. Ariz. 2014). *See also Badham v. U.S. Dist. Ct. for N. Dist. of Cal.*, 721 F.2d 1170,
10 1173 (9th Cir. 1983) (“The right to vote is fundamental ‘because it is preservative of all
11 rights.’” (alteration adopted and citation omitted)). Likewise, the right to be free from
12 discrimination on the basis of race is a vital constitutional right: “At the heart of the
13 Constitution’s guarantee of equal protection lies the simple command that the Government
14 must treat citizens as individuals, not as simply components of a racial, religious, sexual
15 or national class.” *Miller*, 515 U.S. at 911 (internal quotation marks and citation omitted).
16 The Proposition 50 map, including District 13, was purposefully drawn, using race-based
17 considerations, to bolster Latino voting power in California politics, thereby diminishing
18 the political power of all other races. LULAC has not, and cannot, contradict this evidence.
19 A preliminary injunction is proper.

20 LULAC raises no other new arguments not raised by Defendants. Accordingly,
21 Plaintiff-Intervenor refers the Court to, and incorporates, the United States’ Reply to
22 Defendants, Doc. 140.

23 CONCLUSION

24 For the foregoing reasons and those in the United States’ memorandum in support
25 of its motion for a preliminary injunction, the Court should grant the United States’
26 motion.
27
28

1 DATED: December 10, 2025

Respectfully submitted:

2 TODD BLANCHE
Deputy Attorney General
3 BILAL A. ESSAYLI
First Assistant United States Attorney
4 s/ Julie A. Hamill
5 JULIE A. HAMILL
Assistant United States Attorney
6 United States Attorney's Office

JESUS A. OSETE*
Principal Deputy Assistant Attorney General

MATTHEW ZANDI
Chief of Staff & Special Counsel

MAUREEN RIORDAN
Acting Chief, Voting Section

ANDREW BRANIFF
Acting Chief, Appellate Section

7
8
9
10 DAVID GOLDMAN
JOSHUA R. ZUCKERMAN
11 s/ Greta Gieseke
GRETA GIESEKE
12 Attorneys

13 Civil Rights Division
14 United States Department of Justice

15 Attorneys for Plaintiff-Intervenor
16 UNITED STATES OF AMERICA
17
18
19
20
21
22
23
24
25

26
27 * Assistant Attorney General Harmeet K. Dhillon is recused from this matter.
28

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the United States of America certifies that this brief contains 2823 words, which complies with the word limit required by the court in Doc. No 82.

Dated: December 10, 2025

s/ Greta Gieseke
Greta Gieseke
Trial Attorney