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ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CRIMINAL DIVISION

October 19, 2026

VIA EMAIL

The Honorable Justin Heap
Maricopa County Recorder
301 W. Jefferson Street, Suite 200
Phoenix, Arizona 85003
justin.heap@maricopa.gov

Re: Restoration of Active or Inactive Status for Citizen Voters

Dear Recorder Heap:

As you may be aware, I and other attorneys from the Attorney General's Office have been communicating with Maricopa County Attorney Rachel Mitchell and your attorneys in her office regarding the eligibility of voters that you referred for investigation this spring due to questions regarding their citizenship status. As you are surely also aware, of the 60 individuals who had voted in past elections, the investigations conducted by MCAO and my office determined that 52 of those voters are United States citizens.

County Attorney Mitchell announced the results of the investigation on September 28, 2026. Despite the investigations confirming that these 52 voters are U.S. citizens, 24 of them remain in "Not Eligible" status. This is of grave concern as the November 3, 2026 election draws near. Indeed, the Secretary of State's office has informed us that 18 of these voters are participants in the Active Early Voting List, and your office should have mailed a ballot to them on October 7, 2026. A.R.S. § 16-542(C). An additional voter is a UOCAVA voter, and your failure to send that voter a ballot 45 days before the election violated 52 U.S.C. § 20302(a)(8)(A). This Friday is the last day that an early ballot can be mailed to a voter. Accordingly, for the reasons explained more fully below, we demand that you immediately update the records of the 24 voters you have marked as "Not Eligible" to the status they had before you made that change, *i.e.*, Active or Inactive.

As my May 20, 2026 letter to you explained, placing voters in "Not Eligible" status pending adequate citizenship documentation did not comply with Arizona's elections laws or the Elections Procedures Manual (EPM). Despite my explanation that you had no statutory authority to use the "Not Eligible" status, you persisted in doing so. In a statement to the media about this, you asserted that "no final action" was taken regarding the voters' registration status prior to the

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completion of the investigation.¹ That investigation is now complete for 60 of the referred voters. Now that the election is two weeks away, continuing to treat them as “Not Eligible” will have the effect of denying these properly registered voters the opportunity to cast a ballot that is counted. You have no legal basis for disenfranchising these voters.

As I explained in my May 20 letter, the EPM provides that “[w]hen a County Recorder obtains information pursuant to A.R.S. § 16-165 and *confirms that a registrant is not a U.S. citizen* . . . the County Recorder must cancel the registration, notify the registrant, and notify the County Attorney and Attorney General.” 2025 EPM, at 47 (emphasis added). As the investigations that the Attorney General and County Attorney carried out affirmatively establish, 24 voters who remain in Not Eligible status are U.S. citizens. Therefore, you have not confirmed that these voters are not U.S. Citizens, and you have no basis to prevent them from voting.

Importantly, by your own admission, the 24 voters who remain in “Not Eligible” status were associated with the well-documented MVD-related issue. But as the Attorney General has opined, if you do not have *affirmative* evidence that these the voters you identified are not U.S. citizens, Arizona law does not permit you to take steps to cancel or downgrade their voter registrations. Ariz. Op. Atty. Gen'l I25-007, at 22-24 (attached). Keeping a voter’s registration in “Not Eligible” status throughout the voting period effectively cancels that voter’s registration without statutory authorization.

In short, your refusal to restore the voting eligibility of these 24 voters is in direct violation of both A.R.S. § 16-165(A)(10) and the EPM. We hope that you will do the right thing and immediately restore these voters to their previous Active or Inactive status and mail ballots to the AEVL and UOCAVA participants among the affected voters. If you fail to do so, we are prepared to take further steps, up to and including instituting a mandamus action this week to protect these voters.

Sincerely,



Nicholas Klingerman
Criminal Division Chief Counsel
Arizona Attorney General's Office

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¹ <https://www.votebeat.org/arizona/2026/09/28/maricopa-county-suspected-noncitizen-voters-investigation-results-save-heap-mitchell/>