100 Midterms Mayhem

ROMAN MARS: It is Thursday, October 15th, at 3:00 p.m. as we record this--as we record our 100th episode.

ELIZABETH JOH: Yep. It's amazing.

ROMAN MARS: It is amazing. What are we going to be talking about today?

ELIZABETH JOH: Well, Roman, I think it's fair to say that the United States has had a very complicated history of relying on the labor of Mexican nationals. So, in the early 20th century, we relied really heavily on Mexican immigrants for things like mining, railroads, and especially agriculture. But large numbers of Mexican immigrants also meant large numbers of immigrants building communities in places like San Antonio and Los Angeles. No surprise, these immigrant communities faced discrimination and unequal treatment. And the federal government, in response, decided to crack down. The stock market crash of 1929 made matters worse for Mexican immigrants. There were more efforts to deport Mexican immigrants who were in the United States unlawfully. And in 1929, Mexican Americans in Corpus Christi, Texas, founded the League of United Latin American Citizens, or LULAC, the group formed to protect the civil rights of the Mexican community in the United States.

But labor needs arose once again because of the Second World War, and the United States needed people to work in the fields. And agricultural interests lobbied once again to allow the hiring of temporary immigrant labor. But it's a complicated story because President Truman's Commission on Migratory Labor came right out and said, "The demand for migratory labor is thus essentially twofold, to be ready to go to work when needed, to be gone when not needed." But it was the labor shortage of World War II that led to the 1942 agreement between the United States and Mexico. This was called the Mexican Farm Labor Program. And over time, this agreement would allow millions of Mexican men to work legally in the United States on short-term contracts, mostly in agriculture. That agreement was more popularly known as the Bracero Program. The men were called "braceros" because they worked with their arms and hands. And at first, the Bracero Program was very popular. Migrant laborers could work legally for wages that would benefit the Mexican economy. But employers soon discovered it was just cheaper to ignore the worker protections that were part of the agreement and just hire Mexican immigrants outside of the program. And in fact, illegal migration increased during the operation of the Bracero Program.

So calls to crack down on illegal immigration came from many places, including the Mexican government. The Eisenhower administration faced enormous pressure to take some sort of action. And on June 9th, 1954, the Immigration and Naturalization Service Commissioner, Joseph Swing, announced the beginning of Operation Wetback. "Wetback," of course, is a racial slur referring to Mexicans. And Operation Wetback involved the federal government attempting to deport very large numbers of Mexican nationals, often with the help of local law enforcement. The operation often took the form of mass raids. The LA Times reported, in June of 1954, that more than 500 Mexican nationals were arrested in a single day. Teams of federal and local law enforcement agents, according to the Times, "questioned and arrested score on scores of aliens on streets, in factories, in foundries, in brickyards, in many other industrial plants." And those mass raids led to mass deportations.

The Border Patrol had learned that when deportees were released at the border, many of them simply re-entered the United States. And even before the announcement of Operation Wetback, the United States reached an agreement with Mexico so that deported Mexican nationals would be delivered to Mexican immigration officials. Thousands of deportees from the United States were then sent deep into the interior of Mexico by bus, by train, and sometimes by plane. Between 1953 and 1956, U.S. And Mexican officials began to deport large numbers of Mexican nationals by boat as well. They deported more than 49,000 people this way. And the boat program only stopped after there was a riot on board the SS Mercurio, which resulted in the drowning of five deportees in 1956.

The raids were indiscriminate, so it's no surprise that of the hundreds of thousands who were sent to Mexico by train, plane, or boat, some number were American citizens of Mexican descent. Some were kids, like Bobby Munoz, identified by the L.A. Times in June of 1954. He was a one-year-old born in Los Angeles to Mexican parents. But some citizens caught up in these dragnets were not. And that raises the question, what does it mean to look like an undocumented person? Does the Supreme Court have a view on whether you can be stopped for looking Mexican? And why might that answer contribute to potential midterm mayhem this November? Time to find out.

ROMAN MARS: Let's do it.

This is What Trump Can Teach Us About Con Law, an ongoing series of indeterminate length and sporadic release, where we look at harmful stereotypes and non-existent election fraud and use them to examine our Constitution like we never have before. Our music is from Doomtree Records. Our professor and neighbor is Elizabeth Joh. And I'm your fellow student and host, Roman Mars.

ELIZABETH JOH: All right, Roman, so the Bracero Program I just mentioned was officially terminated in 1964. The federal government claimed it was a success. And they said the same for Operation Wetback. One program welcomed Mexican nationals and the other violently rejected them. And that history has some relevance to how we might think about the 2026 midterms because Trump, of course, has tried to overhaul our immigration system. And the Trump administration has been particularly focused on undocumented people in the United States who are coming from Latin America. Although of course, he's been hostile to other non-white immigrant groups as well. Now, you might remember that Trump issued an executive order at the beginning of his second term that declared that the United States is experiencing what he called an "invasion" at the southern border. I don't know if you remember that.

ROMAN MARS: I do, I do.

ELIZABETH JOH: And another big theme of Trump's is his frequent accusation that non-citizens are illegally voting in American elections. He's never provided any proof for that. So, first, I want to be clear, it is illegal for non-citizens to vote in federal or state elections, period. There's no nuance about that. But second, every serious study on the subject has concluded that non-citizen voting is just a non-problem. It's a non-issue. It happens very, very rarely. And it's not even happening in numbers close that we would worry about the results of any election.

And so with the midterms not looking favorable to the GOP, the Trump administration is taking several approaches to try and address the non-citizen voting issue, like investigating nonprofit organizations that the administration claims are trying to register

non-citizens as voters, things like that. But one measure the administration could take is something we might not see until we get closer to election day. And that is sending ICE officials to polling places.

ROMAN MARS: Are they allowed to do that?

ELIZABETH JOH: Well, the simple legal answer, I think, is no because, for more than 160 years since the end of the Civil War, federal law has prohibited the military or armed federal law enforcement from being deployed to polling places. And the current law is 18 U.S.C. § 592. And Section 592 makes it a crime for "any officer of the Army or Navy, or other person in the civil, military, or naval service of the United States" from ordering, bringing, keeping, or controlling "any troops or armed men at any place where a general or special election is held." So what that means is that sending troops to the polls is considered a federal crime. And not only is it a crime, but this was considered so serious at the time it was enacted that violators face being disqualified from holding any federal office in the future. That's also a punishment as well, so it's pretty interesting.

ROMAN MARS: Yeah. So, even the soldiers that have been conscripted into the service--whether they want to or not or whatever it is--they would actually be held liable, like individually, in some way.

ELIZABETH JOH: I think it actually addresses the people who would be doing the ordering, like the officer of the army or navy or any person in charge. But yeah, potentially other people would get in trouble, too.

ROMAN MARS: I just want to put that out there, potentially. So since you mentioned Army, Navy, and the military, does that include ICE?

ELIZABETH JOH: Well, so Section 592 doesn't talk about ICE because ICE didn't exist when the law was passed. But since the section addresses armed men of the civil service, I think it pretty comfortably covers ICE because ICE agents are federal law enforcement agents. And also, while we don't have a Supreme Court case, let's say, talking about what any place where an election is held means, it's pretty clear that, I think, that language can cover polling places. It probably covers election offices and ballot counting facilities, too.

ROMAN MARS: And so is this just a flat ban of sending any sort of federal agents to the polls, or are there some kind of exceptions if they were trying to keep people safe or something like that? I don't know.

ELIZABETH JOH: Oh, that's a good point because, actually, when the law was first enacted, Congress wrote in two exceptions. And the first is one that you're actually thinking about. One allowed the military to be deployed to the polls, if necessary, to keep peace. But Congress actually removed that exception in 1909. And I think you might be able to see why because it's kind of vague. And you might worry that the executive branch might use this as some excuse--some pretext--to send the military to the polls. Now, there is another exception, and it still exists, and that one allows the military to be sent to the polls when such force may be necessary to repel armed enemies of the United States. Now, this seems like a very specific exception, right? I mean, it sounds like we'd have to have a hostile power attacking polling places with weapons, right? And even then the exception only allows the military to be used in a defensive way, to repel them, not to do anything else. Now, Section 592--we might call it the "no troops at the polls law"--that appears to be a pretty clear, more or less flat out ban. The president general can't or any

other federal official can't just say, "We're going to be sending armed agents to the polls for an election."

But I do want to take a little detour here to consider an argument that might be raised about maybe not ICE, but the military. So what if Trump tries to send the military to some polling places as a general intimidation tactic? Well, we have talked before about something called the Federal Posse Comitatus Act. And that act generally bans the military from participating in civilian law enforcement, unless Congress has specifically allowed the military to do that. And there is a federal law called the Insurrection Act that we've discussed before. And the Insurrection Act is an important exception to the general ban on using the military within the United States. So, the Insurrection Act allows the president to enforce the federal law by using the military in some limited emergency circumstances. And this is a law that some presidents have used historically, but not too often.

ROMAN MARS: So can Trump rely on the Insurrection Act to say that there's an emergency, even if there isn't?

ELIZABETH JOH: Well, probably not, right? So, here's when the president can use the Insurrection Act. The act allows the president to deploy the military for domestic law enforcement purposes in just a few narrow circumstances. One is when the state asked for help because there's some insurrection; that doesn't seem to apply. The second circumstance might arise when the president decides there is what the Insurrections Act calls "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States" that "make it impracticable to enforce the laws of the United States." That law is not super clear, right? But this second part suggests we'd have to see something really extreme happening for the President to be able to rely on this provision--some real general breakdown of law. And then finally, the Insurrection Act can also be invoked if the president thinks it "necessary to suppress any insurrection, domestic violence, unlawful combination, or conspiracy if it hinders the execution of the laws of the state, or if it obstructs the execution of the law of the United States." Now that's a mouthful, too. This section was added after the Civil War to address the violence of the KKK actually against Black Americans. But it's pretty vague. So, you know, there is some interpretation here. So this third provision was made federal law after the troops at the pole statute--that's Section 592--was passed. And the relevance of the timing is because sometimes when courts are asked to interpret statutes, they typically decide that specific laws tend to displace general laws and a later in time law normally controls the meaning when there's some dispute. So, here because the troops at the polls statute was amended or changed after the Insurrection Act provision and because it is more specific that it should control rather than this vague provision of the Insurrection Act.

So, it sounds very lawyerly, right? And it has the feeling of maybe a court would look at this dispute. So this isn't super reassuring. But still I think it's a low probability, don't you? I mean, I think it's pretty unlikely that Trump's going to say, "I'm going to send the military to the polls."

ROMAN MARS: I don't know. I guess it's a low probability I don't know anymore.

ELIZABETH JOH: Well, it seems to me that it would be really extreme. I mean, it's one thing sending, like, some ICE officials, which would also be problematic. But sending the military would be such a new norm to be broken. I'm not sure that he's going to go that far.

But let's return back to the presence of ICE officers who are not the same as the military or Federalized National Guard.

ROMAN MARS: So you don't think it's realistic to send military personnel to the polls, but is it realistic that he would send ICE officers to the polls?

ELIZABETH JOH: It's hard for us to predict exactly, but I think it is probably more likely than sending actual members of the military. And that's because Trump himself has refused to rule it out. This was part of his whole election fraud narrative. And in fact, in May, he said, "I'll do anything necessary to make sure we have honest elections." And in September, when the Senate Judiciary Committee asked FBI Director Kash Patel to testify before him, Senator Peter Welch asked Patel, "Wait, I thought you weren't gonna be sending your people to the polls?" And Patel said, "When did you hear that? It's just another lie. Election integrity is of paramount importance. This FBI is not going to shy away from that effort." And then there is Markwayne Mullin, the head of Homeland Security. And on September 1st, Mullin told reporters that ICE agents do have authority to go to polling places. Here's what he said. "The only reason why we would be at polling places is that if there is a threat to that polling place or we're serving a warrant on someone that we have been actively tracking down. ICE's job is immigration, customs enforcement, that's their job. If we're serving a warrant, we will be where we need to be." And just a reminder that ICE officers are authorized to carry guns, and they do carry guns.

But at the same time, there are something like 100,000 polling locations in the United States. And there's only about-- Well, I shouldn't say "only." But there are 22,000 ICE agents. Will there be ICE agents at every polling place? Absolutely not. But is there a non-zero chance that some ICE agents might show up to some polling places, either during early voting or on election day? I think we have to assume that there's some chance that might happen.

So, Roman, let's imagine a scenario that ICE officials respond to reports about some undocumented person or persons at or near a polling place. Here's my question for you. What does an undocumented person look like?

ROMAN MARS: [CHUCKLES] They don't really look like any one thing at all as far as I'm concerned. But I think that the ICE people might look for different sort of racial characteristics to represent where people might be born, you know?

ELIZABETH JOH: Yeah. I mean, an undocumented person really means a non-citizen who doesn't have the right papers to be in the United States. Theoretically, these people could be from anywhere, right? But that's not really in the eyes of the ICE officials. So remember that with Operation Wetback, at least some people were targeted in indiscriminate raids. And then they were sent by bus or train or ship to the interior of Mexico. Now, since the 1960s, there have been some really important changes in how the Supreme Court interprets constitutional restraints on how law enforcement officials do their job. So I'm not talking about one case in particular, but there have many cases that have shaped how police are supposed to do their jobs and how they're supposed to respect individual liberties or civil liberties. So here's one important background piece of information. In order for any law enforcement official, whether we're talking about a police officer or a federal law enforcement officer, if they want to detain someone briefly, they need to justify that brief detention, which we can call a "stop," by a constitutional standard called "reasonable suspicion." That's not a whole lot of suspicion. It's not as much as you need for an arrest, and you'd need what's called probable cause for an arrest. But it's at

least some set of facts so that that official can say these are the reasons why we detain this person.

Okay. So what counts as legitimate factors that suggest a person might be undocumented? Well, let's go back 50 years. On March 11th, 1973, two border patrol officers were parked and watched the northbound traffic on the I-5, that's the north-south interstate that runs through California. And the officers were in San Clemente; that's north of San Diego. They decided to pull over one of the cars that passed by. And the driver was a man named Felix Humberto Brignoni-Ponce. He was a Marine Corps vet and an American citizen of Puerto Rican ancestry. The patrol officers questioned Brignoni-Ponce and his two female passengers. The passengers were undocumented. One woman was from Mexico, and the other was from Guatemala. All three of them were arrested. Brignoni-Ponce was later criminally charged with transporting undocumented persons into the United States. And his lawyers argued that the border patrol agents violated his constitutional rights by pulling over his car without any lawful reason.

ROMAN MARS: So why did the police officers say that they pulled him over then?

ELIZABETH JOH: Well, the agents actually admitted that the only reason for pulling Brignoni-Ponce over was because the three people inside, and I'm quoting, "appeared to be of Mexican descent." Remember that only one person in the car was actually a Mexican national.

ROMAN MARS: And at the time in 1973, was this a good enough reason?

ELIZABETH JOH: Well, in the 1975 case of United States versus Brignoni-Ponce, the United States Supreme Court said no. Pulling over someone just based on the fact that they looked like they were Mexican was not sufficient to be constitutional. Brignoni-Ponce's Fourth Amendment rights had been violated. The Border Patrol agents just caught a fleeting glimpse of the people in the car. And the Supreme Court's said that their apparent Mexican ancestry wasn't enough to justify a reasonable belief that everyone in the car was undocumented. And in 1975, the Supreme Court observed that there were what it called "large numbers of native born and naturalized citizens who have the physical characteristics identified with Mexican ancestry," which is sort of a dry way of saying a lot of Americans are Hispanics and they're not undocumented. Now, I don't want to suggest that the opinion is without problems. In another part of the opinion, the Court says, "The undocumented population in the United States is a problem." The Court said, "These aliens create significant economic and social problems, competing with citizens and legal resident aliens for jobs and generating extra demand for social services."

ROMAN MARS: Well, it seems unnecessary to add that to this decision, but... God.

ELIZABETH JOH: They just threw that in there, right?

ROMAN MARS: So is this a helpful case for people who are targeted by ICE today?

ELIZABETH JOH: Well, seemingly yes because it seems like they're saying you can't use their Mexican ancestry. But it's actually more complicated than that. What the Court said in Brignoni-Ponce was that the border agents in that case could not use "looking Mexican" as the exclusive basis to stop Brignoni-Ponce as a potentially undocumented person. And what that means is that it can't be the only factor. In fact, the Supreme Court in the Brignoni-Ponce decision concluded with this. "The likelihood that any given person of

Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor. But standing alone, it does not justify stopping all Mexican Americans to ask if they are aliens."

ROMAN MARS: And so what are the potential other factors that they can use to pull people over besides looking Mexican?

ELIZABETH JOH: Well, this is 1975, and the Supreme Court suggests some legitimate factors, such as the characteristics of the area, like where the agents were patrolling. Have there been other undocumented people detained there in the past? If the driver is driving erratically, which suggests evasion or trying to flee from border patrol... And then there's this, that there may be, and I'm quoting the Supreme Court, "a mode of dress and haircut that border patrol officers recognize as the characteristic appearance of persons who live in Mexico." It's hard for me to imagine what those stereotypes were in 1975, but it seems pretty much like a stereotype.

ROMAN MARS: For sure! For sure. It seems ridiculous, and I don't see why it's any sort of better morally than just the way people look or something.

ELIZABETH JOH: Yeah. I mean, it seems like just a way of saying, "Well, you sort of look like a Mexican non-citizen to me." Well, nevertheless, that's been the law for more than 50 years. Now, how does this intersect with what's happening today? Well, before the Trump administration, both one and two, immigration enforcement priorities, like during the Biden and Obama administrations, didn't go as far as Trump did. And part of this is they focused primarily on enforcing immigration laws against undocumented people with criminal records or people who had very recently arrived in the United States and people that were considered by the administrations to be some sort of threat to national security. They were not targeting people who have lived in the United States for years or sometimes decades, raising families, working legitimate jobs, not causing any sort of criminal problems. Those weren't targets of immigration enforcement. All of this has changed since 2025. So, mass deportation is probably one of Trump's very top priorities. And he's actually spoken admiringly of Operation Wetback. In 2015, he talked to Sean Hannity on Fox News, and he praised Eisenhower for deporting so many people. And it's Operation Wetback that probably is the inspiration for reported plans by the Trump administration to use ships as deportation vessels. Actually, one of the ships they're thinking about is the Golden Bear. Do you know the Maritime Academy in the Bay Area?

ROMAN MARS: I'm not sure if I'm familiar exactly where it is, but yeah, please tell me.

ELIZABETH JOH: Yeah, it's a school in the northern part of the Bay Area in Vallejo for people who want to have careers at sea. So if you want to join the merchant marine or something like that, you go to that school. And then there's a training ship called the Golden Bear. It's been a training ship for 30 years, doing a lot of good things. And it was just recently retired this summer. Now it might have another life as a deportation ship.

ROMAN MARS: Oh my god.

ELIZABETH JOH: Right. So at this point, most people are now familiar with the mass raids that we've seen in lots of places all over the country. But remember, early on last year, this felt pretty new and pretty shocking, right? There were places like farms, parking lots, bus stops, street corners, in places where there were very large Hispanic populations. And these raids were often conducted in a very terrifying way to people. People were

wearing masks. They were jumping out of unmarked cars. Sometimes they were just dragging people away without even really talking to them. So when these immigration raids began in Los Angeles last summer, the ACLU and a group of other nonprofit groups and lawyers filed a lawsuit in federal court on behalf of several immigrants rights groups and five people who had been detained by ICE, including two American citizens. The case is called Vazquez Perdomo versus Mullin because Markwayne Mullin is the head of DHS. And Vasquez Perdomo is the name of one of the people who was waiting at a bus stop in Pasadena when he was picked up by ICE.

ROMAN MARS: And so what are the claims of this lawsuit?

ELIZABETH JOH: Well, there are several. I mean, there are a lot of problematic things that happened during these raids in Los Angeles. But I thought we'd make things simple and just consider the same issue that the Supreme Court considered in Brignoni-Ponce. Were ICE officials targeting these people simply because they were Latino? Now, of course, today, people know that case and no immigration official would say today, "We are stopping this person just because they're Hispanic or Latino."

ROMAN MARS: Right, because they can use one other factor and therefore obviate any sort of need to rely just on appearance or just on racial appearance or whatever.

ELIZABETH JOH: Exactly. So what you're identifying is exactly the concern that, even if the government offers a couple of different reasons and they can throw race in there, the worry is that these other factors are just proxies or substitutes for race--that they're just relying on race and they're throwing in some other things as well. And the concern here would be that altogether these factors maybe aren't super convincing, but maybe they're really just saying this person's Hispanic and that's why they pulled them over. So, in fact, two of the plaintiffs were American citizens, and they were detained anyway.

So in the Perdomo Vasquez case, the plaintiffs asked the federal district court judge to issue a temporary restraining order. This is an emergency motion asking the judge to--basically that the emergency is so great--please stop the defendants right now from doing what they're doing right away. So it tends to last for a short period of time--a TRO or a temporary restraining order--but it's really saying, "We need you to take action as soon as possible."

ROMAN MARS: And this is the TRO to stop ICE from doing these kind of pickups.

ELIZABETH JOH: Exactly. In September of 2025, the federal judge in this case, Judge Ewusi-Mensah, granted that TRO.

ROMAN MARS: And so what was the scope of what the judge said that the government couldn't do with this TRO in place?

ELIZABETH JOH: So, first things first, there's no question that the federal government has absolutely the right to enforce immigration law, even on a large scale, if they want to. We can't stop them from doing that. Congress has written the law and the executive branch can enforce the law. But last year, the federal judge in this case said that what ICE agents could not do was just basically stop people without any lawful justification. And then based on the evidence at this very early stage of this case, the judge accepted the plaintiff's claim that ICE was just using four factors to determine who to stop. And those factors were apparent race or ethnicity, or basically looking Mexican, speaking Spanish or speaking

English with an accent, presence at a low wage work location, like a car wash or a Home Depot parking lot, and targeting certain jobs, like being a person who works at a carwash That is kind of what it appeared to be--that ICE officials were just coming to bus stops, parking lots where day laborers were hanging out, other kinds of low wage workplaces, looking for people with darker skin, if they were speaking Spanish, or had an accent in English. And they were just taking them away. That happens to also describe a lot of people who live in Los Angeles.

ROMAN MARS: So did the government stop? Did they comply with this TRO?

ELIZABETH JOH: No, because the administration ran to the Supreme Court once again and asked for an emergency stay of the temporary restraining order, just like they've done in so many other challenges to what they've been doing. And in September of last year, the Supreme Court granted the Trump administration's request. They put a pause on the TRO, a stop on the stop. No reason was provided because, again, this is another use of the Supreme Court's so-called emergency docket. You know, it's not a typical case. But there are some notable aspects of what the Supreme Court did. Justice Kavanaugh wrote a very long, solo opinion. He agreed that the government could continue. Here's what he wrote. "There is an extremely high number and percentage of illegal immigrants in the Los Angeles area; that those individuals tend to gather in certain locations to seek daily work; these individuals often work in certain kinds of jobs, such as day labor, landscaping, agriculture, and construction; and that many of those illegally in the Los Angeles area come from Mexico or Central America and do not speak much English." He refers to the 1975 case several times. "Sure, race alone isn't enough," he's saying, "and can be a factor." And Kavanaugh doesn't see a problem with ICE officers deciding, "Look, you look like you're Mexican, you speak English with an accent, you work in a low wage job, or you happen to be in a place where there's low wage work." And so it was Kavanaugh's reasoning that led people, mostly online, to start using this term "Kavanaugh stops" to refer to these really aggressive detentions that basically feel like racial profiling.

ROMAN MARS: I mean, I hope that this term takes over and he's saddled with it for the rest of his life. I hope his kids are saddled with it. I mean, it makes me so mad, yeah.

ELIZABETH JOH: But, I mean, he didn't have to say anything. He could have been part of that nameless majority that said, "This is fine." But he'd wanted to put it on paper, "This is how I see the issue." Now, the three liberal Justices dissented from putting the stay on the TRO. They did not think that the stay was justified. Justice Sotomayor says something to the effect of, "What are we doing here? We are legitimizing racial profiling." And she says in her dissent, "We should not have to live in a country where the government can seize anyone who looks Latino, speaks Spanish, and appears to work in a low wage job."

ROMAN MARS: So what happened after that? The TRO is negated by the stay on the TRO. And so are normal ICE stops that use this kind of racial profiling-- "Vaguely" racial profiling--whatever they want to say. Are those happening again?

ELIZABETH JOH: Well, that's what's kind of funny. When the Supreme Court said the Trump administration can continue, it kind of made the headlines of all the newspapers and there was a ton of coverage last year. And then it kind of dropped from the headlines. I mean, I guess there were so many other things that happened, everybody kind of moved on. But in reality, the case of Vasquez Perdomo versus Mullin has continued. And ICE, of course, has continued to be able to do these roving patrols, these immigration raids. And in July of this year, 2026, the plaintiffs in the case asked the district court for a preliminary

injunction, that's a more permanent stop, to be imposed on the government during the course of the lawsuit. And as far as I can tell, the judge has not yet decided that issue. But in September, this is just last month, the judge in the case did issue a preliminary injunction in regard to some of the other claims that the plaintiffs have made. So that includes putting a pause on the administration's alleged policy of making warrantless immigration arrests in violation of immigration law.

And what's interesting is that since the case was filed--so when the Supreme Court intervened, it was at a very early stage of the case--the plaintiffs have been able to find out more because they're in this process of what's called "information sharing or discovery." That's what lawyers call it. So they are getting depositions or interviews under oath of officers. They're getting videos from body cameras. And they're getting text messages from the phones of some of these officials. And it's pretty awful. I mean, a lot of these officers say they're looking for "tonks." That's a slur that they use to refer to undocumented people. Another officer, when he was asked in a deposition who he thinks is suspicious, said, "Oh, well, older Hispanic males." So it kind of seems like Justice Sotomayor was right that a lot of this is sort of motivated by a lot of racial animus.

So the immigration raid case from Los Angeles is far from over, even though it's kind of disappeared from the headlines. And the Supreme Court's intervention hasn't decided the case with any kind of finality. We still don't know what will happen.

ROMAN MARS: Yeah. But a new injunction seems not likely to survive because we still have the same Supreme Court who got rid of the original TRO, right?

ELIZABETH JOH: Yeah, I mean, it would take a while though, in the normal course of things, for the Supreme Court to intervene again because that first time was an emergency motion. And I assume, although you never know, that we'd have to wait for the case to take a sort of natural course before the Supreme Court intervenes again by deciding the case on the merits or the full case. Although, all signs are not good in the sense that we've had the law since the 1970s where race can be a relevant factor here. And it just doesn't look like there's a majority that would be inclined to decide that that case was wrong or that they want to change this in some radical way because immigration law is always about borders and the executive branch's ability to control the nation as a whole. And the Supreme Court's been pretty deferential to those kinds of matters.

ROMAN MARS: Yeah, that makes sense.

[AD BREAK]

ELIZABETH JOH: All right, so let's go back to the midterms.

ROMAN MARS: Okay.

ELIZABETH JOH: So, these ICE raids have taken place in many, many cities around the country, not just Los Angeles, and they've been highly publicized. And we know that even U.S. citizens have been caught up in these raids. So, two of the plaintiffs in the Vasquez Perdomo lawsuit are citizens. So, for instance, investigative journalists at ProPublica have found that there have been more than 170 American citizens who have been detained or questioned or arrested at immigration raids and protests during the first nine months of 2025, so presumably there have been even more. So, if ICE officers show up at a polling place, I think it would be reasonable to worry that, as a Hispanic voter or election worker or

legal observer, you might be targeted, right? And that's especially true because administration officials have refused to say that they will not send ICE officers to the polls. So I think just the possibility creates a lot of fear in people. And it's the kind of fear that can keep people away from the polls.

ROMAN MARS: So has there been any action to prevent this from happening--this intimidation or what we think might happen at the polls or this hypothetical?

ELIZABETH JOH: Well, I mean, first of all, let's not forget it is illegal under federal law. So it shouldn't happen, period.

ROMAN MARS: Right. Right.

ELIZABETH JOH: But Roman, you're absolutely right. What if Trump were to do this anyway? So actually two lawsuits have already been filed that have asked federal courts to declare that any attempts to send armed agents to the polling places is illegal and to stop or enjoin the defendants from doing so.

ROMAN MARS: And so who is bringing those cases?

ELIZABETH JOH: Well, these are two different groups. One lawsuit has been brought by several advocacy groups, plus the city of Denver and Hennepin County, Minnesota. The lead plaintiff in this case is the League of United Latin American Citizens, or LULAC.

ROMAN MARS: Oh, nice.

ELIZABETH JOH: You might remember that I mentioned LULAC right at the beginning. They were first started in 1929 in Texas, worried about increasing discrimination against Mexican Americans, and here they are still. The second lawsuit is also a coalition of advocacy groups. And the lead plaintiff here is the NAACP. And this lawsuit says that the administration is taking actions that would violate Section 11(b) of the Voting Rights Act. So this is a good opportunity for me to mention that, while we've been talking about the Trump administration's targeting of undocumented people from Latin America, there's a long, long history of voting rights discrimination against Black Americans, right?

ROMAN MARS: Of course.

ELIZABETH JOH: And they also face risks of disenfranchisement from the Trump administration. And what the Voting Rights Act does in Section 11(b) is that it makes it unlawful to intimidate or threaten another person who's trying to vote. And that comes out of the direct experience of Black Americans who experienced not just voter suppression, but personal violence during the civil rights era. And so Section 11(b) says, "No person shall intimidate, threaten or coerce, or attempt to intimidate someone who's voting or attempting to vote." And this language also protects people who are helping other people to vote. And in fact, there are multiple federal laws that make it a crime to intimidate voters. And federal law also allows people to file civil lawsuits if they have voter intimidation claims, which is what we're seeing in this NAACP case. Every state also bans voter intimidation, too. So there's no lack of laws here. It's pretty clear around the country, voter intimidation is bad. It is a crime everywhere we go, right? And with a lot of these laws, the intimidation doesn't even have to be successful. I mean, even if you voted, you could say, "Well, I still was intimidated. People were yelling at me or screaming at me or threatening me."

ROMAN MARS: Yeah, yeah, yeah.

ELIZABETH JOH: And don't forget, it doesn't even have to happen in the physical world. You could be threatened online, you could have emails sent to you, or you could even have things sent in physical mail to you. That could be intimidation too. And some voter intimidation may have already happened. So the mere fact that there have been all these immigration sweeps in communities all around the country... There have been lots of reports of people who, in largely Hispanic communities, are afraid to go shopping. They're afraid to go to school. They're afraid to be outside. If you're afraid to go to work or school, voting would maybe be not close to the top of the list. So, in that sense, it may already be successful.

ROMAN MARS: Yeah. Wow. That's so depressing.

ELIZABETH JOH: And voter intimidation, of course, isn't the only tool the administration is using. In July, the Justice Department sent letters to all 50 states warning that if election officials counted the votes of non-citizens, there would be criminal prosecutions. Again, it's already illegal to vote if you're not a citizen, right? And non-citizen voting is a non-existent problem.

ROMAN MARS: Yeah. Yeah.

ELIZABETH JOH: And today, as we speak, the Trump administration has sued the state of California. The administration claims that it has identified "20,000 likely non-citizens" that may have been sent ballots. Remember, in our state, California, every Californian receives a ballot so they can vote by mail if they want.

ROMAN MARS: Yeah, yeah, yeah.

ELIZABETH JOH: So the Trump administration wants the state-- Well, actually I read the complaint. It's not entirely clear why they think they can file this lawsuit or what their legal theory is. But the administration essentially wants the federal court to stop the state from counting these ballots of alleged non-citizens, which they don't provide any proof for. And well, in July, the administration announced it had identified 15,000 non-citizens on the voter rolls in Nevada. In August, the administration actually sent a list of 185 people to Nevada. They said, "We're non-citizens registered as voters." Nevada officials decided to check, and every single person on the list was a lawful citizen.

ROMAN MARS: It is nice that, when they check, they realize that all of these claims are bogus. But is the damage already done at that point?

ELIZABETH JOH: Well, there's political damage because it stirs up fears from people saying, "Well, maybe there is something wrong with the way the state is running its elections." And it raises a lot of doubts that shouldn't be there. It creates a challenge for the state to try and reassure voters there is no problem here, this is a non-problem. It's kind of a waste of resources to have essentially a frivolous lawsuit that the state has to not only defend now--the Trump administration's probably going to have out of public pronouncements about this. And then the state of California, the attorney general, or the governor has to go on TV. And maybe that's part of being a politician, but they have to spend energy doing this. So, it kind of doesn't matter. It's like a big piece of political theater, even if the lawsuit is ultimately meritless and won't go anywhere. And even if you

try to comply, if Nevada got 185 names, that's not too hard to look into. But 20,000 people, which I forgot to mention, were sent 48 hours ago? California can't possibly do that. It's just that they're setting them up to kind of look like the state is running their elections incorrectly. And there's no indication that they are.

ROMAN MARS: Yeah. Well, this is all really interesting stuff. I encourage everyone to vote. Please vote. It's very, very important that you vote. And if you can be someone there to help out and maybe you're a person who wouldn't be targeted by the bigotry of the administration, then maybe you're a good person to go out there and make sure everyone else is safe. So I encourage that as well. Thank you so much, Elizabeth. This was fascinating.

ELIZABETH JOH: Thanks, Roman.

ROMAN MARS: This show is produced by Elizabeth Joh, Isabel Angell, and me, Roman Mars. It's mixed by Martín Gonzalez. Our executive producer is Kathy Tu. You can find us online at trumpconlaw.com. All the music and What Trump Can Teach Us About Con Law is provided by Doomtree Records, the Midwest hip-hop collective. You can learn more about Doomtree Records, get merch, and find out what they're listening to at doomtree.net. We are part of the SiriusXM podcast family.