

**In the
Supreme Court of the United States**

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Applicants,

v.

LEAGUE OF WOMEN VOTERS, *et al.*,

Respondents.

**ON APPLICATION FOR A STAY OF THE ORDER ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

OPPOSITION TO APPLICATION FOR A STAY

Aman T. George
Sophie R. Gelber
Johanna M. Hickman
Mark B. Samburg
Ronald A. Fein
Robin Thurston
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, DC 20043

Jon Sherman
Michelle Kanter Cohen
FAIR ELECTIONS CENTER
1629 K St. NW, Suite 300
Washington, DC 20006

Nikhel S. Sus
Counsel of Record
John B. Hill
Lauren C. Bingham
Reuven Dashevsky
Samantha Y. Suman
Samantha M. Creighton
CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON
P.O. Box 14596
Washington, DC 20044
nsus@citizensforethics.org
(202) 408-5565

Counsel for Respondents

CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, Respondents League of Women Voters, League of Women Voters of Virginia, League of Women Voters of Louisiana, League of Women Voters of Louisiana Education Fund, League of Women Voters of Texas, and Electronic Privacy Information Center are non-profit corporations with no parent entity, and no entity has a greater than 10 percent ownership interest in them.

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT.....	4
I. Statutory Background.....	4
A. The Social Security Act of 1935	4
B. The Privacy Act of 1974	5
II. Factual Background.....	6
A. The SAVE System and its 2025 Modifications.....	6
B. The Modified SAVE Process	7
C. The Government Admits Modified SAVE's Citizenship Data Is Incomplete and Unreliable.....	9
D. The SAVE Modifications Were Unprecedented	10
III. Procedural Background	11
ARGUMENT	13
I. The Government is Unlikely to Succeed on the Merits.....	14
A. Respondents Have Standing.....	14
B. The SAVE Modifications Violated the Social Security Act.....	21
C. Applicants Lacked Statutory Authority for the SAVE Modifications..	24
D. The SAVE Modifications Were Arbitrary and Capricious.....	30
E. The SAVE Modifications Violated the Privacy Act.....	32
II. The Remaining Factors Cut Sharply Against a Stay	37
A. Applicants Will Suffer No Irreparable Harm.....	37
B. The Balance of Equities and Public Interest Favor Denying a Stay ...	39
CONCLUSION.....	40
SUPPLEMENTAL APPENDIX	

TABLE OF AUTHORITIES

Cases

<i>Abbott Labs. v. Gardner</i> , 387 U.S. 136 (1967)	33
<i>Ali v. BOP</i> , 552 U.S. 214 (2008)	28
<i>Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.</i> , 172 F.4th 361 (4th Cir. 2026)	18
<i>Ames v. DHS</i> , 861 F.3d 238 (D.C. Cir. 2017)	35, 36
<i>Axon Enter., Inc. v. Fed. Trade Comm’n</i> , 598 U.S. 175 (2023)	33, 34
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023)	2, 29, 30
<i>Bowen v. Massachusetts</i> , 487 U.S. 879 (1988)	34
<i>Bowen v. Mich. Acad. of Fam. Phys.</i> , 476 U.S. 667 (1986)	33
<i>Bowen v. Roy</i> , 476 U.S. 693 (1986)	36
<i>Branch v. Smith</i> , 538 U.S. 254 (2003)	28
<i>Bush v. Gore</i> , 531 U.S. 98 (2000)	36
<i>Califano v. Aznavorian</i> , 439 U.S. 170 (1978)	36
<i>Chamber of Com. of United States v. Whiting</i> , 563 U.S. 582 (2011)	28
<i>City & County of San Francisco v. EPA</i> , 604 U.S. 334 (2025)	28, 29, 35
<i>Coco v. A.N. Clark (Engineers) Ltd.</i> , [1968] F.S.R. 415 (Ch.) (Eng.)	18
<i>Colorado Montana Wyoming State Area Conf. of the NAACP v. Smith</i> , 180 F.4th 1266 (10th Cir. 2026)	20
<i>Corliss v. E.W. Walker Co.</i> , 64 F. 280 (D. Mass. 1894)	18

Cases—continued

<i>Democratic Nat’l Comm. v. Republican Nat’l Comm.</i> , 592 U.S. 1039 (2020) (Kavanaugh, J., concurring)	40
<i>Dep’t of Com. v. New York</i> , 588 U.S. 752 (2019)	15, 16
<i>Dep’t of Educ. v. California</i> , 604 U.S. 650 (2025)	39
<i>DHS v. Regents of the Univ. of Cal. (“Regents”)</i> , 591 U.S. 1 (2020)	31, 32
<i>Diamond Alt. Energy, LLC v. EPA</i> , 606 U.S. 100 (2025)	15
<i>Doe v. Chao</i> , 540 U.S. 614 (2004)	33
<i>DOJ v. Reps. Comm. for Freedom of the Press</i> , 489 U.S. 749 (1989)	5
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016)	31
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018)	27, 28
<i>FCC v. NextWave Personal Commc’ns, Inc.</i> , 537 U.S. 293 (2003)	32
<i>FAA v. Cooper</i> , 566 U.S. 284 (2012)	5, 19, 33
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009)	30
<i>FDA v. All. for Hippocratic Med.</i> , 602 U.S. 367 (2024)	20
<i>FDA v. Wages & White Lion Invs.</i> , 604 U.S. 542 (2025)	30, 32
<i>FEC v. Cruz</i> , 596 U.S. 289 (2022)	24
<i>Florida v. DHS</i> , No. 24-cv-00509 (N.D. Fla.).....	12
<i>Florida v. League of Women Voters</i> , No. 26-12533 (11th Cir.).....	12
<i>Gill v. Whitford</i> , 585 U.S. 48 (2018)	14

Cases—continued

<i>Jama v. ICE</i> , 543 U.S. 335 (2005)	28
<i>Jeffries v. Volume Servs. Am., Inc.</i> , 928 F.3d 1059 (D.C. Cir. 2019)	18
<i>Jones v. Bock</i> , 549 U.S. 199 (2007)	29
<i>Lawson v. FMR LLC</i> , 571 U.S. 429 (2014)	27
<i>Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania</i> , 591 U.S. 657 (2020)	37
<i>Londrigan v. FBI</i> , 670 F.2d 1164 (D.C. Cir. 1981)	5
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	25, 27, 34
<i>McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.</i> , 606 U.S. 146 (2025)	34, 35
<i>Meese v. Keene</i> , 481 U.S. 465 (1985)	14
<i>Nat’l Ass’n of Home Builders v. Defs. of Wildlife</i> , 551 U.S. 644 (2007)	28
<i>Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.</i> , 595 U.S. 109 (2022)	24, 30
<i>New England Power Co. v. New Hampshire</i> , 455 U.S. 331 (1982)	26
<i>Ohio v. EPA</i> , 603 U.S. 279 (2024) (Barrett, J., dissenting)	3, 22
<i>Packwood v. Senate Select Comm. on Ethics</i> , 510 U.S. 1319 (1994)	14
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006)	40
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	19
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021)	17, 19, 20
<i>Trump v. Cook</i> , 146 S. Ct. 2234 (2026)	14, 37

Cases—continued

<i>United States v. Fausto</i> , 484 U.S. 439 (1988)	29
<i>United States v. Oakland Cannabis Buyers' Co-op.</i> , 532 U.S. 483 (2001)	40
<i>Uzuegbunam v. Preczewski</i> , 592 U.S. 279 (2021)	15
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022)	29, 30

Statutes, Rules & Regulations

5 U.S.C.

§ 552a(a)(7)	5, 35
§ 552a(b).....	5, 33, 35
§ 552a(b)(3)	5
§ 552a(e)(4)	6
§ 552a(e)(7)	33
§ 552a(e)(11)	6, 31
§ 552a(g)(2)	33
§ 552a(g)(3)	33
§ 552a(o).....	34
§ 552a(v).....	34
§ 552a(v)(1)	6
§ 702	33
§ 706(2)(A).....	32

8 U.S.C.

§ 1373	2, 7, 21, 23, 25, 26, 28
§ 1373(a).....	2, 25, 26, 27, 28
§ 1373(b).....	2, 26, 27, 28
§ 1373(c)	2, 13, 26, 27, 28

18 U.S.C.

§ 611	20
§ 1015(f)	20

Statutes, Rules & Regulations—continued

42 U.S.C.	
§ 301	4
§ 405(c)(2)(III)	4, 21
§ 405(c)(2)(C)(viii)(I)	4, 21
§ 405(c)(2)(C)(viii)(IV)	4, 24
§ 1306(a)	4, 24
§ 1320b-7(d)	6
§ 1320b-7(d)(3)	25
§ 1320b-7(d)(4)	25
§ 1320b-7 note	25
52 U.S.C. § 20507(c)(2)(A)	38
Disclosure of Official Records & Information, 2 Fed. Reg. 1256 (June 18, 1937)	4
Exec. Order No. 14248, 90 Fed. Reg. 14005 (Mar. 25, 2025)	7
Illegal Immigration Reform and the Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009	25, 29
Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359	6, 25
Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28948 (July 9, 1975)	6, 34, 37
Pub. L. No. 74-271, 49 Stat. 620	4
Pub. L. No. 93-579, 88 Stat. 1896	5
Social Security Act Amendments of 1939, Pub. L. No. 76-379, 53 Stat. 1360, 1398	4
Other Authorities and Materials	
Jen Fifield & Zach Despart, “ <i>Not Ready for Prime Time.</i> ” <i>A Federal Tool to Check Voter Citizenship Keeps Making Mistakes</i> , ProPublica & Texas Tribune (Feb. 13, 2026)	10
Judd Legum & Rebecca Crosby, <i>The Federal Database That Could Upend the Midterm Elections</i> , Mother Jones (Apr. 9, 2026)	10
OMB Circular No. A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act (2016)	6
<i>Relationship Between Illegal Immigr. Reform & Immigrant Resp. Act of 1996 & Statutory Requirement for Confidentiality of Census Info.</i> , 1999 WL 34995963 (O.L.C. May 18, 1999)	27

Other Authorities and Materials—continued

Restatement (Second) of Torts § 652B (Am. Law. Inst. 1977)	17
S. Comm. on Gov't Operations and H.R. Comm. on Gov't Operations, 94th Cong., Source Book on Privacy 168 (1976).....	5
Sarah Miller, <i>Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2024 and Revised 2023</i> , Office of Homeland Sec'y Statistics (Sept. 2024).....	11
SAVE Act, H.R. 22, 119th Cong., 1st Sess. (2025)	30
SAVE Act, H.R. 8281, 118th Cong., 2d Sess. (2024)	30
SAVE America Act, H.R. 7296, 119th Cong., 2d Sess. (2026).....	30
SSA POMS, GN 03313.095 <i>Disclosure to the Department of Homeland Security</i> (2025).....	5
SSA POMS, GN 03325.002 <i>Disclosure and Verification of Social Security Numbers (SSN) Without Consent</i> (2023).....	4, 18, 23, 24, 30
U.S. Census Bureau, <i>Nativity and Citizenship Status in the United States</i> , (accessed Feb. 23, 2026)	11
USCIS, <i>Acquired citizenship</i> , Glossary of Terms	9
USCIS, <i>Derivative citizenship</i> , Glossary of Terms	9
USCIS, FOIA Release, Control No. COW2025005720 (June 26, 2026).....	8, 20, 23
USCIS, <i>Voter Registration and Voter List Maintenance Fact Sheet</i> (Jan. 24, 2025).....	11

INTRODUCTION

Congress has not authorized the federal government to create a master database of U.S. citizens. Nor does the government possess any dataset capable of providing accurate, real-time verification of individuals' U.S. citizenship status. And multiple statutes restrict federal agencies' ability to use, repurpose, and disclose Americans' sensitive personal information—either within the federal government or outside of it. These laws protect Americans from government overreach into their private lives and the careless use of their sensitive information held in trust by the federal government.

Disregarding these laws, the government has recklessly created an error-laden master citizenship database that endangers millions of Americans' privacy and voting rights. In 2025, the Department of Homeland Security ("DHS") and Social Security Administration ("SSA") rapidly transformed a 40-year-old immigration database—the Systematic Alien Verification for Entitlements system, or "SAVE"—into a new tool for mass "voter verification" and benefits eligibility checks. The modified system ("Modified SAVE") performs bulk searches of SSA data to check individuals' U.S. citizenship status, even though the government admits this data is not a reliable indicator of current citizenship status. The government created the system despite internally acknowledging it violated federal privacy laws and risked misidentifying eligible voters as non-citizens. And the flawed system has resulted in error rates as high as 81% in some localities. Among the American citizens caught in the fallout are Respondents' members, whose privacy and voting rights were violated and remain imperiled by Modified SAVE.

The court of appeals correctly refused to stay the district court's summary judgment order vacating the government's 2025 SAVE modifications pending appeal, and this Court should do the same. The government cannot meet its heavy burden to obtain this "extraordinary" relief. App.104a.

The government is not likely to succeed on the merits. Respondents have standing because Modified SAVE inflicts cognizable injuries on their members' voting, privacy, and reputational interests. The government forfeited key arguments below. And the SAVE modifications exceeded Applicants' statutory authority and violated the Social Security Act, Privacy Act, and Administrative Procedure Act.

Applicants' merits arguments hinge on a flawed, newly advanced reading of a 30-year-old statute, 8 U.S.C. § 1373. That reading misconstrues prohibitory text in § 1373(a) and § 1373(b) ("may not prohibit, or in any way restrict") as an affirmative grant of authority to consolidate and disclose millions of Americans' protected information. And it misconstrues DHS's duty to "respond" to a citizenship inquiry under § 1373(c) as impliedly "overrid[ing]" all preexisting statutory restrictions on disclosure, including the Social Security Act and Privacy Act. App.22-23.

The government's boundless reading of § 1373 defies normal rules of statutory construction and the Executive's own longstanding interpretation of the statute. Accepting it would give DHS unlimited power to vacuum up millions of Americans' sensitive information from SSA (or any other agency) and disclose it in bulk to states however it wants. Surely if Congress meant to confer that extraordinary power, it would have done so clearly and expressly. It did not. Meanwhile, several bills that *would* expressly authorize the SAVE modifications have failed in Congress. Modified SAVE thus has "conveniently" enabled DHS and SSA to "enact a program' that Congress has chosen not to enact itself." *Biden v. Nebraska*, 600 U.S. 477, 503 (2023).

Neither the government nor the public will be harmed by continuing to limit SAVE to its pre-2025 functionality pending appeal, the status quo since June 22. Agencies remain free to use SAVE for individualized citizenship checks as they did for decades prior to 2025. And states remain free to use their own robust voter registration and list-maintenance processes to ensure the integrity of their voter rolls.

The government also lacks a substantial interest in operating a citizenship

database it admits is error-prone and unreliable. Though the government touts SAVE's "millions" of "verification[s]," App.4, it omits the number of eligible voters whose citizenship SAVE has inaccurately called into question, and who consequently have been erroneously purged from voter rolls or forced to reverify their citizenship, which includes Respondents' members. "[N]othing in this preliminary stay posture necessarily calls for allocating the risk of error to citizens eligible to vote who may be burdened by inaccurate modified-SAVE results rather than to states temporarily unable to use modified SAVE's new functionality." App.118a.

This case is an especially poor candidate for emergency relief for three additional reasons. First, the government seeks review not of an order granting preliminary relief, but of a summary judgment decision following cross-dispositive motions based on a voluminous administrative record. The Court should not grant "emergency relief in a fact-intensive and highly technical case without fully engaging with both the relevant law and the voluminous record." *Ohio v. EPA*, 603 U.S. 279, 300 (2024) (Barrett, J., dissenting). Second, this case involves arguments that all judges below (including the dissenting judge) found that the government forfeited. See App.104a, 142a. This Court "normally declines to entertain" arguments "forfeited" by the parties," *Ohio*, 603 U.S. at 298-99, and doing so at the emergency stay stage would be "highly unusual" since it would require the Court "to doubly exercise discretion in [the government's] favor," App.120a, 114a. Finally, the court of appeals expedited the appeal in denying a stay, App.103a, and noted a "subsequent merits panel remains free to decide" whether to excuse the government's forfeiture, App.120a, further undercutting the need for this Court's immediate intervention.

The application for a stay should be denied.¹

¹ "App." refers to the stay application. "Dkt." refers to district court docket entries. The administrative record was docketed in the district court at Dkt.110, and cited excerpts (e.g., DHS-AR-XXX) are included in the attached supplemental appendix.

STATEMENT

I. Statutory Background

A. The Social Security Act of 1935

The Social Security Act of 1935 created financial assistance benefit programs for millions of Americans. Pub. L. No. 74-271, 49 Stat. 620 (codified at 42 U.S.C. § 301 *et seq.*). Privacy was central to Social Security from the start. The Social Security Board's first regulation prohibited any "member, officer, or employee of the Board" from disclosing "any record . . . or any information acquired therefrom . . . pertaining to any person." Disclosure of Official Records & Information, 2 Fed. Reg. 1256, 1256 (June 18, 1937). In 1939, Congress codified that prohibition in the Social Security Act. *See* Social Security Act Amendments of 1939, Pub. L. No. 76-379, title VIII, § 1106, 53 Stat. 1360, 1398. Today, the Act prohibits SSA's "disclosure . . . of any file, record, report, or other paper, or any information . . . except as . . . agency . . . regulations prescribe and except as otherwise provided by Federal law." 42 U.S.C. § 1306(a).

Another provision prohibits any "officer or employee of the United States" from disclosing the "[s]ocial security account numbers and related records that are obtained or maintained . . . pursuant to any provision of law enacted on or after October 1, 1990." 42 U.S.C. §§ 405(c)(2)(C)(viii)(I), (III). A "related record" is "any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained." *Id.* § 405(c)(2)(C)(viii)(IV).

SSA's policy manual recognizes that SSA does "not have the legal authority to disclose information about U.S. citizens to DHS," and that "[i]f DHS requests information and [SSA] determine[s] the information pertains to both U.S. citizens and aliens, only information about the aliens can be disclosed." SSA Program Operation Manual System ("POMS"), GN 03325.002 *Disclosure and Verification of Social Security Numbers (SSN) Without Consent* (2023), <https://perma.cc/PE44-2QBK>

(“SSA Disclosure Policy”); accord SSA POMS, GN 03313.095 *Disclosure to the Department of Homeland Security (DHS)* (2025), <https://perma.cc/NZR7-MVB7>.

B. The Privacy Act of 1974

The Privacy Act of 1974 established “safeguards for an individual against an invasion of personal privacy.” Pub. L. No. 93-579, § 2(b)(4), 88 Stat. 1896, 1896 (codified at 5 U.S.C. § 552a note). The Act “was passed largely out of concern over ‘the impact of computer data banks on individual privacy.’” *DOJ v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 766 (1989) (quoting H.R. Rep. No. 93–1416, at 7 (1974)); see also *Londrigan v. FBI*, 670 F.2d 1164, 1169 (D.C. Cir. 1981) (statute was enacted amid “growing awareness that governmental agencies were accumulating an ever-expanding stockpile of information about private individuals that was readily susceptible to both misuse and the perpetuation of inaccuracies that the citizen would never know of, let alone have an opportunity to rebut or correct”); App.4a-7a (providing statutory background). Thus, the Act’s substantive and procedural safeguards prevent the government from creating “centralized Federal information systems” or “interagency computer data banks” that consolidate Americans’ sensitive information across agencies in ways that could endanger our fundamental rights. S. Comm. on Gov’t Operations and H.R. Comm. on Gov’t Operations, 94th Cong., Source Book on Privacy 168, 217, 885 (1976), <https://perma.cc/9W9F-R5ZL>.

Pertinent here, the Privacy Act prohibits “an agency” from “disclos[ing] a record to another agency” or other entity “without the written consent of the person to whom the record pertains,” subject to “certain exceptions.” *FAA v. Cooper*, 566 U.S. 284, 289 n.2 (2012) (citing 5 U.S.C. § 552a(b)). One such exception is for a properly noticed “routine use,” 5 U.S.C. § 552a(b)(3), defined as a use “for a purpose which is compatible with the purpose for which [a record] was collected,” *id.* § 552a(a)(7).

The Act also imposes strict notice-and-comment requirements. When agencies “establish[] or revis[e]” any “system of records,” they must “publish in the Federal

Register . . . a notice,” *id.* § 552a(e)(4)—called a System of Records Notice (“SORN”)—disclosing the system’s contents, functions, uses, and procedures for individuals to access and correct records about themselves. *Id.* Agencies must publish a SORN at least 30 days before “any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments.” *Id.* § 552a(e)(11).

Contemporaneous Privacy Act guidelines issued by the Office of Management and Budget (“OMB”) pursuant to a statutory delegation, *see* 5 U.S.C. § 552a(v)(1), confirm that the Act requires a meaningful opportunity for notice and comment, with a public “explanation of the routine uses and any changes made or not made as a result of the public comment.” Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28948, 28966 (July 9, 1975), <https://perma.cc/776J-4L46>; *accord* OMB Circular No. A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act, at 7 & 12 (2016), <https://perma.cc/N9QK-SDLE>.

II. Factual Background

A. The SAVE System and its 2025 Modifications

“Congress created SAVE in 1986, directing DHS’s predecessor to establish an automated means of verifying the immigration status of noncitizens applying for certain public benefits.” App.105a (citing Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 121(c)(1), 100 Stat. 3359, 3391 (codified at 42 U.S.C. § 1320b-7(d)). Consistent with SAVE’s statutory purpose of verifying whether “aliens” are eligible for government “benefits,” 42 U.S.C. § 1320b-7(d), for “nearly four decades, SAVE principally searched DHS’s own immigration records,” App.105a. The system did not incorporate records on U.S.-born citizens (as DHS would have no immigration records on them), did not allow searches using Social Security numbers

or access SSA databases, and only allowed queries of one person at a time. *Id.*²

That changed in 2025, when the President issued an Executive Order directing DHS to provide states “access to appropriate systems for verifying the citizenship or immigration status of individuals registering to vote or who are already registered.” Exec. Order No. 14248, § 2(b)(i), 90 Fed. Reg. 14005, 14006 (Mar. 25, 2025). The order also directed SSA to make its Social Security Number Verification Service, Death Master File, and other relevant federal databases available for that purpose. *Id.* § 3(a), 90 Fed. Reg. at 14007.

Soon thereafter, DHS modified SAVE “in three principal respects: (i) it connected SAVE to SSA records and permitted searches using full or partial SSNs; (ii) that connection allowed SAVE to return information about persons—including many U.S.-born citizens—who had no DHS immigration records; and (iii) the system permitted bulk queries.” App.106a; *accord* App.133a (Katsas, J., dissenting).³

As authority for these modifications, DHS’s and SSA’s 2025 agreement for Modified SAVE invoked a 30-year-old statute, 8 U.S.C. § 1373, which the agencies had never previously construed to permit such data sharing. DHS-AR-421. Prior to making the modifications, neither agency published modified SORNs for the relevant systems of records “or otherwise provided an opportunity for the public to comment” as required by the Privacy Act. App.12a.

B. The Modified SAVE Process

Modified SAVE results in federal agencies disclosing, and SAVE users

² Also, before 2025, DHS recognized SAVE as a Privacy Act “system of records,” issued SORNs, and conducted notice and comment before making changes to the system. *See* App.10a (citing eight SAVE SORNs issued between 2001 and 2020).

³ Modified SAVE links directly to SSA’s Master Files (known as NUMIDENT), a highly sensitive system of records with information on over 300 million U.S. citizens, including SSNs, other identifying numbers, names, dates and places of birth, citizenship indicators, and death records. *See* SSA-AR-238; 90 Fed. Reg. 10025, 10026 (Feb. 20, 2025).

accessing, millions of Americans' sensitive information through a four-step process.

First, a SAVE user (e.g., a state election official) uploads into a web interface a spreadsheet with various data elements (first and last name, date of birth, a full or partial SSN, and the reason for verification) for up to millions of individuals. App.106a.

Second, DHS discloses these data elements to SSA, which uses it to search the SSA Master Files. *Id.*

Third, SSA “generates separate true-or-false match indicators for the SSN, name, and date of birth for each person.” *Id.* SSA sends DHS “match results, as well as yes-or-no indicators capturing whether queried individuals are citizens, deceased, or foreign-born, and other data fields that indicate state or country of birth and alien registration number if applicable and available.” *Id.* And if the user initially “provided only a partial SSN and SSA nonetheless identified a match in its own records, SSA shares the associated full (nine-digit) SSN with DHS for DHS’s own records.” *Id.*

Fourth, Modified SAVE discloses results to the SAVE user. “For each person encompassed by the query, the SAVE results report the name, SSN, date of birth, and other identifying information contained in the request, alongside search results. The search results may include an indicator of citizenship or immigration status, an indicator capturing whether the individual is deceased, and descriptions of errors generated by the search process.” App.107a. These results are disclosed to the end user in a “person-specific . . . SAVE case response.” App.125a; *see* USCIS, FOIA Release, Control No. COW2025005720 (June 26, 2026), <https://perma.cc/23F9-9W8N> (sample SAVE responses).

Under DHS’s standard SAVE user agreement, if Modified SAVE returns an inconclusive or non-U.S. citizen response, DHS instructs SAVE users that they *must* “contact the [individual] to obtain proof of U.S. citizenship.” App.7 (quoting DHS-AR-762); *see also* App.13, 107a; DHS-AR-449. Absent action by that individual, DHS’s

agreement contemplates their voter registration can be canceled. DHS-AR-1526.

C. The Government Admits Modified SAVE's Citizenship Data Is Incomplete and Unreliable

DHS knew when it modified SAVE that the changes violated the Privacy Act and that, due to “shortfalls in data accuracy,” the modified system could not reliably confirm citizenship for citizens born outside the United States (e.g., naturalized, derived, and acquired citizens).⁴ See App.111a; DHS-AR-260, -277, -302, -319 (DHS “Privacy Threshold Analysis” documents from July and September 2025 finding that SAVE modifications were “not in compliance” with the Privacy Act, and that “[s]hortfalls in data accuracy could cause incomplete or false results”); DHS-AR-240 (DHS “Privacy Impact Assessment” warning Modified SAVE “may share inaccurate information with registered agencies” and “may produce inaccurate results”).

Specifically, Modified SAVE incorporates SSA citizenship data that only reflects a person's citizenship status when they *applied* for an SSN; that status does not automatically update if the person later naturalizes, nor must the individual report a change in their citizenship status unless applying for SSA benefits. See SSA-AR-103, -44. Thus, a naturalized citizen who applied for a Social Security card or otherwise interacted with SSA before naturalization may be incorrectly identified as a non-citizen in SSA records. See SSA-AR-44 (“[C]itizenship information in SSA's records might not be current.”); SSA-AR-103 (SSA “citizenship information is accurate for SSA's program purposes” only; “if used later for other purposes, it may not be current”). Similarly, if an acquired or derived citizen has not obtained a “certificate of United States citizenship” from DHS—which “frequently” is the case,

⁴ Acquired citizenship is “[c]itizenship conferred at birth on children born abroad to a U.S. citizen parent(s).” USCIS, *Acquired citizenship*, Glossary of Terms, <https://perma.cc/8AB4-9LAX>. Derived citizenship is “[c]itizenship conveyed to children through the naturalization of their parents or, under certain circumstances, to foreign-born children adopted by U.S. citizen parents.” USCIS, *Derivative citizenship*, Glossary of Terms, <https://perma.cc/7SXE-ZTYT>.

DHS-AR-259—then “SAVE may not be able to confirm [that individual’s] U.S. citizenship.” DHS-AR-1525; *accord* DHS-AR-1529; DHS-AR-496 n.2.

While the government touts the “millions” of citizenship “verification[s]” Modified SAVE has allegedly enabled, *see* App.4, it has never disclosed Modified SAVE’s error rate, including the number of Americans whose U.S. citizenship Modified SAVE *failed* to confirm, whose status it has misrepresented, and who consequently have been forced to reverify their citizenship to retain their voter registration or obtain government benefits.

The record shows that Modified SAVE has high rates of erroneous non-citizen or non-verification responses (either of which triggers DHS’s directive that voters provide proof of citizenship, *see* App.7). In Travis County, Texas, “twenty-five percent of the non-citizen matches’ in that county were individuals who had already proven citizenship in the United States.” App.35a. The public record reflects that at least 81% of Modified SAVE’s responses to St. Louis County, Missouri were erroneous, with other jurisdictions across the country receiving similarly unreliable SAVE responses.⁵ Respondents’ members are among the victims of Modified SAVE’s stale and faulty citizenship data. *See infra* Argument § I.A.

D. The SAVE Modifications Were Unprecedented

By all accounts, the 2025 SAVE modifications were transformative and unprecedented. *See* App.34-37; App.133a, 136a, 151a-152a (Katsas, J., dissenting). As noted, Congress established SAVE to help verify *non-citizens’* eligibility for government benefits. Consistent with that limited statutory purpose, SAVE previously enabled only individualized searches of non-citizens and “certain

⁵ *See* Jen Fifield & Zach Despart, “Not Ready for Prime Time.” *A Federal Tool to Check Voter Citizenship Keeps Making Mistakes*, ProPublica & Texas Tribune (Feb. 13, 2026), <https://perma.cc/PR4Q-67NR>; Judd Legum & Rebecca Crosby, *The Federal Database That Could Upend the Midterm Elections*, Mother Jones (Apr. 9, 2026), <https://perma.cc/8YXC-WU7U>.

naturalized and derived U.S. citizens” and could not verify U.S. born citizens “under any circumstances.” USCIS, *Voter Registration and Voter List Maintenance Fact Sheet* (Jan. 24, 2025), <https://perma.cc/QW29-JZK8>. By expanding SAVE beyond its statutory design to incorporate SSA’s Master Files and enable bulk searches of U.S.-born citizens, DHS enlarged the population of Americans whose sensitive personal information SAVE accesses by over 1,000%—from about 27 million foreign-born citizens to more than 300 million Americans.⁶ Never before has a government agency created an inter-agency citizenship database centralizing Americans’ sensitive personal information at the scale and scope of Modified SAVE.

III. Procedural Background

Respondents are organizations whose members had their personal information disclosed without their consent and/or were wrongfully identified as non-citizens because of Modified SAVE. App.2a-3a. Some were purged from voter rolls as a result. App.33a. Respondents filed suit in September 2025 to challenge Modified SAVE as substantively and procedurally unlawful, Dkt.1, and moved for preliminary relief, Dkt.16. While that motion was pending, DHS and SSA belatedly published updated SORNs for Modified SAVE, App.13a. Although the SORNs “solicited comments from the public,” they also provided Modified SAVE “would be effective immediately (*i.e.*, before the public could submit comments).” App.13a.

After DHS and SSA produced voluminous administrative records and the

⁶ See U.S. Census Bureau, *Nativity and Citizenship Status in the United States*, <https://data.census.gov/table/ACSDT1Y2023.B05001?q=B05001> (accessed Feb. 23, 2026) (estimating about 25 million naturalized citizens in United States); Sarah Miller, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2024 and Revised 2023*, Office of Homeland Sec’y Statistics, at 3 (Sept. 2024), <https://perma.cc/E4TP-6FWX> (estimating some 2 million lawful permanent residents who derived citizenship from a parent since 1980); SSA-AR-238 (SSA Master Files include information on “easily over 300 million” Americans).

parties engaged in comprehensive summary judgment briefing, the court entered summary judgment for Respondents on multiple claims. App.1a. The court found that Respondents League of Women Voters (“LWV”) and League of Women Voters Texas (“LWVTX”) had associational standing based on their members’ privacy, reputational, voting, and procedural injuries. App.23a-40a.⁷ On the merits, the court held Modified SAVE and the associated SORNs “unlawful in several respects”: they violated the Social Security Act’s prohibition against “disclosure of Social Security numbers and other related SSA records,” substantive and procedural protections of the Privacy Act, and the APA. App.3a.⁸ The court also rejected the government’s claims about the impact of litigation in the Northern District of Florida between four plaintiff states and DHS (but not SSA), *see Florida v. DHS*, No. 24-cv-00509 (N.D. Fla.) (“*Florida*”), finding it lacked authority to enforce another court’s consent decree and, even if it could, “comity does not favor dismissing or abstaining in this circumstance.” App.72a.⁹ The court therefore “set[] aside and vacate[d] the 2025

⁷ Because these “injuries suffice[d] to confer standing,” the court did not address Respondents’ organizational and informational standing. App.23a n.5.

⁸ Because relief was “warranted on these [statutory] claims,” the court did not address Respondents’ constitutional claims. App.21a.

⁹ In *Florida*—four months after DHS internally acknowledged its SAVE modifications were “not in compliance” with the Privacy Act, DHS-AR-319, -326, two months after Respondents filed this suit, and eleven days after the district court wrote it “doubt[ed] the lawfulness of the Government’s actions,” Dkt.55 at 1—four plaintiff states and DHS executed a consent decree purporting to *require* DHS to maintain Modified SAVE. After the district court here vacated the SAVE modifications, the *Florida* court granted the plaintiffs’ motion to enforce their consent agreement with DHS, ordering DHS to reinstate those states’ access to Modified SAVE despite the contrary vacatur order in this case, and despite the lack of adversarial proceedings in *Florida* over the lawfulness of Modified SAVE. Respondents LWV and EPIC intervened in *Florida* to appeal the district court’s enforcement order. *See Florida v. League of Women Voters*, No. 26-12533 (11th Cir.). That appeal is ongoing.

SAVE modified system and the related [SORNs].” App.3a; *see also* App.74a-77a.¹⁰

The government appealed and moved to stay the order pending appeal. Dkt.113; Dkt.116. The district court denied the stay motion. App.78a. It affirmed its prior conclusions, and it held that the government’s newly advanced arguments about the Social Security Act were unlikely to succeed because they were forfeited. App.81a. The court found that any injuries to the government were “minimal” and “self-inflicted,” App.90a, 92a, and that the *Florida* court “had no authority to make merits determinations about the legality of SAVE” in entering a consent decree, App.91a-96a; *accord* App.119a.

The court of appeals also denied a stay. The court found Respondents’ members face “cognizable” voting injuries that are “sufficiently likely to establish their standing,” “fairly traceable” to Modified SAVE, and “redressable” by “setting [it] aside.” App.110a-112a. On the merits, the court found that the government forfeited “what are now its central arguments” under the Social Security Act, having first raised them in their post-judgment stay motion and declined the district court’s “express[]” invitation to “submit a post-judgment motion to excuse the forfeiture and receive full consideration of the late-raised arguments.” App.104a. The court also rejected the government’s claim of authority under 8 U.S.C. § 1373(c). App.120a-122a. Finally, the court concluded that the government failed to make “the requisite strong showing of a likelihood of success” even if its forfeiture were excused. App.122a-130a.

ARGUMENT

To obtain a stay pending appeal, the “applicant must show that it is likely to succeed on the merits of its appeal, that [this Court] would likely grant certiorari to review any decision to the contrary, that it will likely suffer irreparable harm in the

¹⁰ The district court permitted the State of Texas, a SAVE user, to intervene as a defendant, and Texas participated in dispositive motion briefing below. App.18a. Texas separately appealed the district court judgment but has not sought a stay.

interim, and that the balance of equities tip in its favor.” *Trump v. Cook*, 146 S. Ct. 2234, 2246 (2026). Such relief is extraordinary and granted “only ‘upon the weightiest considerations.’” *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers) (cleaned up). An applicant bears an “especially heavy burden” where, as here, “the Court of Appeals denied [its] motion for a stay.” *Id.* at 1320. The government fails to meet this burden.

I. The Government is Unlikely to Succeed on the Merits

A. Respondents Have Standing

Respondents have associational standing on behalf of their members based on voting, privacy, and reputational injuries caused by Modified SAVE. The government is not likely to show otherwise.

Voting Injuries. Modified SAVE harms Respondents’ members’ voting rights, with its continued operation substantially increasing the risk of forced verification of citizenship, deregistration, and even disenfranchisement—as reflected in the opinion of every judge who addressed this issue below. *See* App.31a-38a (Sooknanan, J.); App.110a-112a (Srinivasan, C.J., and Wilkins, J.); *cf.* App.139a, 153a (Katsas, J., dissenting) (not disputing standing).

Because Modified SAVE discloses inaccurate citizenship data to SAVE users, Respondents’ members who are naturalized and derived citizens have been forced to provide documentary proof of citizenship to maintain their voter registrations, with some having their registrations wrongfully cancelled. *See* App.110a-112a. And similarly situated members across the country will face the same harms if the government is allowed to resume use of Modified SAVE. *See id.* These burdens on the fundamental right to vote, including the substantial risk of future burdens if Modified SAVE continues, easily establish standing. *See Meese v. Keene*, 481 U.S. 465, 475 (1985) (“[T]he need to take . . . affirmative steps to avoid the risk of harm . . . constitutes a cognizable injury.”); *Gill v. Whitford*, 585 U.S. 48, 65-66 (2018)

(“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue’ to remedy that disadvantage.”); App.111a (“If a person needs to prove their citizenship to remain registered to vote or if they are removed from the registration rolls, they suffer a cognizable injury.”); App.32a-36a (citing cases).

The government disputes neither the facts underpinning these voting injuries, nor the injuries’ legal sufficiency. Instead, it focuses on traceability and redressability by denying that its actions are responsible for Respondents’ members’ injuries. App.12-16. But the government misstates the law. “Article III ‘requires no more than *de facto* causality.’” *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019). This Court has repeatedly recognized that a plaintiff has standing if “‘third parties will likely react’ to the government [action] ‘in predictable ways’ that will likely cause . . . the plaintiff’s injury.” *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025) (cleaned up). And even “‘a partial remedy’ satisfies the redressability requirement.” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021).

These standards are easily met here. As found below, “the undisputed record shows that the [Respondents]’ members suffer th[e] injury [of burdens on their franchise] because SAVE records show that they are not United States citizens.” App.37a (cleaned up); *see also* App.110a-112a. “It is hardly surprising that additional voter verification and potential voter disenfranchisement is ‘the predictable effect of the federal government incorrectly informing a state that an individual may be ineligible to vote.’” App.37a-38a; *see also* App.112a (“states’ response to an adverse SAVE result is not conjectural”). Indeed, the government concedes this is the intended effect: DHS agreements instruct users of Modified SAVE that they “*must* contact the registrant or registered voter to obtain proof of U.S. citizenship” if SAVE cannot confirm citizenship. DHS-AR-762 (emphasis added); App.13. And the ordered relief redresses Respondents’ harms because it prospectively halts the unlawful use of Modified SAVE that has burdened, and would continue to burden, Respondents’

members' voting rights. *See* App.112a.

Article III does not require plaintiffs to eliminate all hypothetical alternative causes of a future injury. *Contra* App.13 (speculating that, even without Modified SAVE, states might hypothetically demand proof of citizenship or revoke registrations for other reasons). Respondents need only show that Modified SAVE is a “*de facto* caus[e]” of their injuries. *Dep’t of Com.*, 588 U.S. at 768. Through un rebutted evidence, they have done exactly that. *See* App.37a; App.110a-112a.

Applicants incorrectly assert that the courts below “never found” Modified SAVE “less accurate” than the old SAVE and that Respondents cannot be injured by Modified SAVE because it is “*more* accurate.” App.14. In reality, the courts below made extensive findings regarding Modified SAVE’s inaccuracies. *See* App.35a-37a; App.110a-112a. These findings are based on the government’s own acknowledgment of “[s]hortfalls in data accuracy’ in SSA citizenship data” that “could produce ‘incomplete or false results.’” App.111a (quoting DHS-AR-260, -302); *see also supra* Statement § II.C.

Applicants also wrongly claim that Respondents cannot be harmed by Modified SAVE because “the old SAVE system would provide the *same* (non-)response” as Modified SAVE. App.15. This ignores substantial differences in the scope and intended use of the two systems. As the government recognizes, the pre-2025 SAVE system (which Congress authorized for assessing *non-citizens*’ eligibility for *benefits*) did not easily enable wholesale review of voter rolls because it did not allow bulk searches and “could not verify citizenship status without a DHS-specific immigration identifier, . . . which States do not always know, and which natural-born citizens do not have.” App.6; *accord* App.135a (Katsas, J., dissenting). Because statewide voter registration lists do not include DHS-issued identifiers, *see* App.6, the government’s speculation that the pre-2025 SAVE would (or could) have caused the “same” harms is highly implausible and refuted by the historical record of pre-2025 SAVE usage.

Modified SAVE's ability to ingest and search Americans' data at a much higher volume, its facilitation of SSN-based searches and incorporation of unreliable SSA citizenship data, and DHS's directive that state users must seek proof of citizenship from individuals who cannot be verified by the new system all burden voting rights in unprecedented ways.¹¹

The un rebutted record below establishes that Modified SAVE causes Respondents' members' voting injuries, and that "[r]everting SAVE to its prior functionality" would "likely redress" those harms. App.38a.

Privacy Injuries. The members of Respondents LWV and LWVTX also suffered concrete injuries when Applicants disclosed their information (including SSNs and citizenship status) from SSA records in violation of the Privacy Act and Social Security Act. App.24a. These disclosures occurred not only *within* the federal government, *contra* App.16-17, but also to Texas, Louisiana, and other SAVE users. App.24a, 107a, 126a-130a. Such intangible harms are "concrete" for Article III standing because they bear "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). A "close relationship" is enough; concreteness "do[es] not require an exact duplicate." *Id.* at 433. The district court correctly concluded that both intrusion upon seclusion and breach of confidence provide such an analogue here.

TransUnion expressly recognized that "intrusion upon seclusion" provides a basis for lawsuits in American courts. *Id.* at 425. The tort's relevant elements are "intentional[]" intrusion, "physically or otherwise, upon the . . . private affairs or concerns" of another which "would be highly offensive to a reasonable person."

¹¹ Applicants fault Respondents for not providing more examples of the harms inflicted by Modified SAVE. App.13, 15. But Respondents need not provide evidence of every American citizen—or even every one of its members—whose voting rights are or will be burdened by Modified SAVE to demonstrate standing. This was true at the merits stage below and certainly is true in the emergency stay posture. App.36a.

Restatement (Second) of Torts § 652B (Am. Law. Inst. 1977). The intrusion itself triggers liability; the tort requires neither publication of information obtained nor even the subject's knowledge that an intrusion has occurred. *See id.* cmt. b, illus. 1–5; cmt. c, illus. 7; *see also Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, 172 F.4th 361, 370-71 (4th Cir. 2026) (en banc); *contra* App.17.

“Breach of confidence”—a tort with roots in equity—is also a traditionally recognized basis for a lawsuit. *See, e.g., Corliss v. E.W. Walker Co.*, 64 F. 280 (D. Mass. 1894) (recognizing “violation of confidence” as allowing equitable relief). “The equitable jurisdiction in cases of breach of confidence is ancient.” *Coco v. A.N. Clark (Engineers) Ltd.*, [1968] F.S.R. 415, 419 (Ch.) (Eng.). Today recognized as a tort, “breach of confidence” is actionable where a person offers private information to a third party in confidence and the third party reveals that information. *Jeffries v. Volume Servs. Am., Inc.*, 928 F.3d 1059, 1064 (D.C. Cir. 2019).

A person's SSN and specific citizenship or immigration status are precisely the kinds of sensitive personal information the unauthorized disclosure of which is offensive to a reasonable person. Indeed, Respondents' members attested below that they provided this private information in confidence as part of their Social Security applications and reasonably expected SSA to keep it confidential. *See* App.24a; *see also* SSA Disclosure Policy, *supra* p.4 (assuring the public that SSA lacks “legal authority to disclose information about U.S. citizens to DHS” and will not do so).

Applicants rely on the forfeited argument that SAVE discloses only whether the government can confirm citizenship. App.16. This is belied by the lower courts' findings. *See* App.43a, 81a-85a, 126a-130a. Through Modified SAVE, SSA discloses SSNs and SSA citizenship data to DHS, and verifies SSNs and discloses citizenship data to SAVE user states. *See supra* Statement § II.B. Under SSA policy, verification of an SSN constitutes disclosure. *See* SSA Disclosure Policy, *supra* p.4; *see also* App.127a (“There are sound reasons to think verification of that kind might

well amount to a ‘disclos[ure]’ of an SSN for purposes of § 405(c)(2)(C)(viii)(I)’); *infra* Argument § I.B. Applicants conceded this in the district court, which found there was “no question that the modified SAVE system violates” the Social Security Act because it discloses “both [SSNs] and related records maintained by SSA.” App.43a; *see also* App.128a. As the courts below also found, SSA provides to DHS, and SAVE provides to user states, a specific search result about a person’s citizenship or immigration status, not a generalized statement whether or not the government can confirm citizenship. *See* App.16a-17a; 107a.

It is irrelevant that Applicants’ disclosures were not made to the general public. *Contra* App.17. As explained above, intrusion upon seclusion requires *no* disclosure of the information at issue. And breach of confidence requires only disclosure to any third party. Modified SAVE disclosures are made to such third parties, including SAVE user states.

This Court has noted that “[b]ecause the [Privacy] Act serves interests similar to those protected by defamation and privacy torts, there is good reason to infer that Congress relied upon those torts in drafting the Act.” *Cooper*, 566 U.S. at 295. And it has explained that “[i]n determining whether a harm is sufficiently concrete to qualify as an injury in fact . . . Congress’s views may be ‘instructive.’” *TransUnion*, 594 U.S. at 425 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)). Congress can “elevat[e] to the status of legally cognizable injuries concrete, de facto injuries.” *Spokeo*, 578 U.S. at 341. It did so in establishing the privacy protections of the Privacy Act and Social Security Act. The government is therefore not likely to prevail on its arguments concerning the concreteness of Respondents’ privacy injuries.

Reputational Injuries. Respondents also have standing because Modified SAVE inflicts harms on their members similar to those actionable as defamation. *See TransUnion*, 594 U.S. at 425. As the district court found, on an undisputed record, Modified SAVE disseminated “‘inaccurate information’ falsely indicating” that

several LWVTX and EPIC members were not citizens. App.30a. “Under longstanding American law, a person is injured when a defamatory statement ‘that would subject him to hatred, contempt, or ridicule’ is published to a third party.” *TransUnion*, 594 U.S. at 432. Publishing false or misleading information about citizenship status for registered voters is analogous to defamation because it carries the implication of serious criminal activity. *See id.* at 432 (misleading information labeling people as “potential . . . serious criminals” was sufficiently analogous to defamation); 18 U.S.C. § 611 (criminalizing non-citizen voting); 18 U.S.C. § 1015(f) (criminalizing non-citizen voter registration).

The government argues that Modified SAVE does no more than say it cannot confirm a person’s citizenship. App.17. Not so. The government conceded below—and the district court correctly found, based on the undisputed record—that SAVE affirmatively reports individuals’ purported immigration status (e.g., “Lawful Permanent Resident”). App.16a-17a; *see also* App.107a; USCIS FOIA Release (June 26, 2026), <https://perma.cc/23F9-9W8N>. And where the records are inconclusive as to an individual’s status, Modified SAVE indicates this fact, effectively flagging them as a potential non-citizen, and instructing the SAVE user “to obtain proof of U.S. citizenship” from the individual. App.17a-18a. In either situation, SAVE plainly communicates more than a mere inability to verify citizenship. And where that information is false—as was the case for several of Respondents’ members who were lawfully registered voters, *see* App.25a—those statements are defamatory.

Finally, the government’s traceability and redressability arguments fail for the reasons detailed above. *See supra* Argument § I.A (Voting Injuries). The fact that Modified SAVE can verify citizenship for a greater number of people overall, App.18, has no bearing on whether these particular members suffered reputational harms

that are traceable to SAVE’s faulty and error-prone operation.¹²

B. The SAVE Modifications Violated the Social Security Act

Applicants cannot establish a strong likelihood of reversing the ruling that Modified SAVE violates a provision of the Social Security Act prohibiting any “officer or employee of the United States” from disclosing “[s]ocial security account numbers and related records that are obtained or maintained . . . pursuant to any provision of law enacted on or after October 1, 1990.” 42 U.S.C. §§ 405(c)(2)(C)(viii)(I), (III).

1. Applicants forfeited the only arguments they now press about § 405(c). *See* App.112a-120a. And this failure was not for lack of opportunity. Respondents’ summary judgment briefing raised these arguments’ mirror image, asserting that Modified SAVE violates § 405(c) because the government is “collecting, verifying, and disclosing SSNs and related records en masse through overhauled SAVE, . . . and they are doing so under [8 U.S.C.] § 1373, a statute enacted ‘after October 1, 1990.’” Dkt.66-1 at 32-33 (quoting § 405(c)(2)(C)(viii)(I)); *contra* App.30-32. The government responded with its own cross-dispositive motion but did not raise its current argument at any point. *See* Dkt.77-1 at 49-50; Dkt.106 at 28-29. It did not do so until *after entry of final judgment*, in a stay motion. And then, after “the district court declined to consider” the government’s new arguments in the expedited stay posture “but expressly invited the government to submit a post-judgment motion to excuse the forfeiture and receive full consideration of the late-raised arguments,” the

¹² Respondents LWVTX and LWVLA also have organizational standing based on the “perceptibl[e]” harms Modified SAVE causes to their “core” voter-services “activities.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 396 (2024). Modified SAVE interferes with LWVTX’s and LWVLA’s core work to ensure voter access and participation, by misidentifying voters as potential non-citizens who must then take additional steps to register or remain registered, and by forcing the organizations to expend greater resources to counteract that harm. *See* Dkt.66-1 at 20-22; Dkt.99 at 2-3; *see also Colorado Montana Wyoming State Area Conf. of the NAACP v. Smith*, 180 F.4th 1266, 1275 (10th Cir. 2026) (voter-services organizations had standing to challenge conduct that interfered with their direct-services programs) (citing cases).

government ignored that “invitation” and sought a stay from the court of appeals “based in significant part on the forfeited arguments.” App.104a, 109a-110a.

This Court “‘normally declines to entertain’ arguments ‘forfeited’ by the parties.” *Ohio*, 603 U.S. at 298-99. And the reasons for not doing so are heightened in the emergency stay posture, where the government is asking the Court “to doubly exercise discretion in its favor.” App.114a-115a. Like the court of appeals, this Court should decline “to take the highly unusual step of considering the government’s forfeited arguments at this preliminary stage,” especially since “a subsequent merits panel remains free to decide for itself whether to entertain the arguments after full appellate briefing.” App.120a.

2. The court of appeals also correctly held that Applicants’ forfeited § 405(c) arguments, even if considered, would not justify a stay. App.122a-130a. As the government recognizes, § 405(c) demands separate analyses as to SSA’s and DHS’s disclosures through Modified SAVE, either of which could violate § 405(c). App.30-31.

As to SSA, Applicants argue § 405(c) is inapplicable because SSA “obtains and maintains its relevant records pursuant to laws enacted well before 1990.” App.31. But, as in the courts below, they fail to identify *which* pre-1990 “laws” they are relying upon. App.123a. Rather than citing a statute, the government only “cites an article written by an SSA employee that recounts the history of the SSN.” *Id.* Yet even that article indicates SSA sometimes obtains and maintains SSNs and related records under post-1990 laws. App.124a (citing statutes). By failing to identify *any* statute under which the relevant SSA records are obtained and maintained, the government does not provide “adequate support for the proposition its argument requires: that the particular SSNs and related records implicated by modified SAVE are neither obtained nor maintained [by SSA] pursuant to any post-1990 law.” App.125a. And if § 405(c)’s temporal requirement is met, SSA indisputably is *disclosing* protected records through Modified SAVE in violation of the statute, including by “giv[ing] DHS

a full SSN that DHS did not previously possess” when SAVE users run a search using “only a partial SSN.” App.126a-27a.

As to DHS, the government’s arguments are even weaker. Its primary position is that a later-enacted statute, 8 U.S.C. § 1373, impliedly repealed § 405(c) in relevant part and thus provides a “complete defense” to Respondents’ § 405(c) claim. App.31. But that implied repeal argument fails for the reasons explained below. *See infra* Argument § I.C; App.120a-121a. And because Congress enacted § 1373 in 1996, the government has necessarily conceded that DHS *does* “obtain[]” and “maintain[]” SSNs and “related records” from SAVE users and SSA through Modified SAVE pursuant to a “law enacted on or after October 1, 1990.” *See* App.125a. Thus, with respect to DHS, there is no dispute that § 405(c)’s temporal requirement is met.

Applicants next argue that, even if DHS is *obtaining* protected SSA records pursuant to a post-1990 statute through Modified SAVE, DHS is not *disclosing* those records in violation of § 405(c). App.31-32. But that is wrong for several reasons. First, when a SAVE user runs a search using a full or partial SSN, DHS indisputably discloses those SSNs to SSA to enable a search of SSA’s records. *See* App.106a, 126a-127a. That is one prohibited disclosure. Next, when DHS transmits the results of SSA’s search to the SAVE user, that too is a prohibited disclosure, both because it verifies that the supplied SSN matches SSA’s records and because it discloses “related records” concerning the individual’s citizenship status. *See* App.16a-17a; App.107a, 125a; USCIS FOIA Release (June 26, 2026), <https://perma.cc/23F9-9W8N>. Indeed, under SSA policy, verifying SSNs through match responses is equivalent to disclosing SSNs. *See* SSA Disclosure Policy, *supra* p.4. And while the court of appeals did not definitively resolve the question, it explained at length why “[t]here are sound reasons to think verification of [this] kind might well amount to a ‘disclos[ure]’ of an SSN for purposes of § 405(c)(2)(C)(viii)(I).” App.127a-128a.

Equally unavailing is the government’s claim that DHS is not disclosing

“related [SSA] records” to SAVE users within the meaning of § 405(c) when disclosing citizenship status, because the disclosed information does not “reveal[] anyone’s identity.” App.31. The court of appeals correctly rejected this unduly “narrow” reading of § 405(c). App.129a-130a. The statute defines a “related record” as “any record, list, or compilation that indicates, directly or indirectly, the identity of any individual” for whom an SSN or request for one is maintained. 42 U.S.C. § 405(c)(2)(C)(viii)(IV). “The records produced by modified SAVE seem to fit the definition as written,” because “the ‘SAVE case response’ DHS sends to a user ‘includes the data elements used to create the case’ together with additional citizenship or immigration information,” and “[a] record that links a person’s submitted name, date of birth, and SSN to a citizenship response can indicate whose information it reports even if the citizenship field itself contains no name.” App.129a-130a.

Thus, “the government has not made a strong showing that the records disclosed through modified SAVE fall outside § 405(c)(2)(C)(viii)(IV).” App.130a.¹³

C. Applicants Lacked Statutory Authority for the SAVE Modifications

An “agency . . . literally has no power to act . . . unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S. 289, 301 (2022). That is because “[a]dministrative agencies are creatures of statute,” and “accordingly possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. Dep’t of*

¹³ Modified SAVE likewise violates the Social Security Act’s separate prohibition on SSA’s “disclosure . . . of any file, record, report, or other paper, or any information . . . except as . . . agency . . . regulations prescribe and except as otherwise provided by Federal law.” 42 U.S.C. § 1306(a). As explained below, no statute or SSA regulation authorizes the agency to disclose SSA information to DHS and SAVE users through Modified SAVE. *See infra* Argument § I.C; SSA Disclosure Policy, *supra* p.4 (confirming SSA lacks “legal authority to disclose information about U.S. citizens to DHS”).

Lab., 595 U.S. 109, 117 (2022) (per curiam). To determine “whether an agency has acted within its statutory authority,” courts use “the traditional tools of statutory construction.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403, 412 (2024). Here, DHS and SSA invoke two statutes to justify their 2025 SAVE modifications: the Immigration Reform and Control Act of 1986 (“IRCA”), Pub. L. No. 99-603, 100 Stat. 3359, and the Illegal Immigration Reform and the Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 3009-546. Neither statute authorizes Modified SAVE. *See* App.120a-121a; App.65a-72a.

1. The IRCA amended the Social Security Act by directing DHS’s predecessor to create a “system”—later established as SAVE—“for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act [42 U.S.C. 1320b-7(d)(3), (4)(B)(i)].” 42 U.S.C. § 1320b-7 note. The system’s purpose is to help evaluate whether “an individual who is *not* a citizen or national of the United States” is eligible for certain “benefits.” *Id.* §§ 1320b-7(d)(3)-(4) (emphasis added).¹⁴ These provisions govern benefits, not voter eligibility, and only apply to applicants who are *not* U.S. citizens—hence the name “Systematic *Alien* Verification for *Entitlements*” program. Indeed, the statute instructs that users of the system “shall utilize the individual’s *alien file or alien admission number*”—not an SSN—“to verify with [DHS] the individual’s immigration status.” *Id.* § 1320b-7(d)(3) (emphasis added). Nothing in the IRCA authorizes using SAVE to verify individuals’ U.S. citizenship using SSNs.

2. The government chiefly relies on 8 U.S.C. § 1373, a section of the IIRIRA. Section 1373 consists of three subsections—each of which addresses a discrete point,

¹⁴ The government omits that the specific “system” authorized by the IRCA is not just any system for verifying immigration status, but rather the one described in “paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act.” 42 U.S.C. § 1320b-7 note; *see* App.5 (omitting statutory text with an ellipsis).

and none of which support the government's position. Section 1373(a) provides that, "[n]otwithstanding any other provision of" law, a "government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). Section 1373(b) provides that, "[n]otwithstanding any other provision of" law, "no person or agency may prohibit, or in any way restrict," a government entity from sending, requesting, exchanging, or maintaining "information regarding the immigration status, lawful or unlawful, of any individual." *Id.* § 1373(b). And § 1373(c) provides that DHS "shall respond to an inquiry by a . . . government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information." *Id.* § 1373(c).

The government mashes these discrete subsections together, construing the "notwithstanding" clauses of subsections (a) and (b) to apply to subsection (c) (even though it has no such clause), and insisting that § 1373 *as a whole* nullifies any provision of the U.S. Code that might restrict DHS's acquisition and disclosure of information under § 1373, including the Social Security Act and Privacy Act. App.22-23. But that boundless reading of § 1373 defies traditional rules of construction and the Executive's own longstanding interpretation of the statute.

Start with § 1373(a) and § 1373(b). Those subsections use purely prohibitory language, stating government entities "*may not* prohibit, or in any way restrict" certain action. Prohibitory language such as "shall not" or "may not" is not "an affirmative grant of power." *See New England Power Co. v. New Hampshire*, 455 U.S. 331, 341 (1982). Nothing in § 1373(a) or § 1373(b) affirmatively empowers DHS and SSA to freely exchange data for purposes of verifying "citizen and immigration status," despite the web of preexisting statutory restrictions on such inter-agency

disclosures. And the “Executive Branch interpretation . . . issued roughly contemporaneously with enactment of the statute” and “the longstanding ‘practice of the government’” since the IIRIRA’s enactment confirms as much. *Loper Bright*, 603 U.S. at 386; see *Relationship Between Illegal Immigr. Reform & Immigrant Resp. Act of 1996 & Statutory Requirement for Confidentiality of Census Info.*, 1999 WL 34995963, *4-*6 (O.L.C. May 18, 1999) (recognizing that neither § 1373(a) nor § 1373(b) “clearly invest[s]” agencies with “affirmative authority to disclose information in circumstances where they otherwise would be prohibited from doing so by a federal statute”); *supra* Statement § II.A.¹⁵

Nor does § 1373(c) authorize Modified SAVE. To start, § 1373(c) speaks solely to *DHS’s* obligations and confers no authority whatsoever on *SSA*. That point is dispositive here because, absent express authorization, the Social Security Act *prohibits SSA* from disclosing *its* records outside of the agency, see *supra* Argument § I.B, and Modified SAVE *cannot operate* without *SSA* doing so, see *supra* Statement § II.B.

Even as to *DHS*, the court of appeals correctly held its “general duty to answer a citizenship inquiry under 8 U.S.C. § 1373(c) does not by itself authorize disclosure of information” that other statutes “specifically make[] confidential.” App.121a. The government’s contrary position—that § 1373(c) “overrides” disclosure restrictions of the Social Security Act and Privacy Act, App.3—runs headlong into the “strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (cleaned up). “A

¹⁵ That the heading of § 1373(b) reads “Additional Authority of Government Entities,” see App.20, does not change this conclusion, because statutory “headings” cannot “take the place of the detailed provisions of the text.” *Lawson v. FMR LLC*, 571 U.S. 429, 446 (2014).

party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing a *clearly expressed congressional intention* that such a result should follow.” *Id.* (emphasis added). The government cannot meet this “heavy burden.” Indeed, nothing in § 1373(c) “expressly contradict[s]” the earlier-enacted statutes. *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007). Nor is the government’s reading “absolutely necessary . . . in order that [the] words [of the later statute] shall have any meaning at all.” *Id.* Rather, all statutes peacefully coexisted for decades until Applicants’ haphazard “overhaul” of SAVE in 2025. *See supra* Statement §§ II.A, II.D; App.10a & n.1. Because the government cannot show the statutes “are in ‘irreconcilable conflict,’” or that “the latter Act covers the whole subject of the earlier one and ‘is clearly intended as a substitute,’” *Branch v. Smith*, 538 U.S. 254, 273 (2003) (plurality), it cannot overcome the “strong presumption” against implied repeals.

In arguing otherwise, the government points to the “notwithstanding” clauses found in the *other* subsections of § 1373. *See* App.22 (citing 8 U.S.C. §§ 1373(a)-(b)). But Congress *omitted* that language from § 1373(c). The government effectively asks this Court to rewrite § 1373(c) to say: “*Notwithstanding any other provision of law*, DHS shall respond to an inquiry” But rules of construction compel the exact opposite reading. Where, as here, “Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *City & County of San Francisco v. EPA*, 604 U.S. 334, 344 (2025); *accord* App.29 (citing *Jama v. ICE*, 543 U.S. 335, 341 (2005)). This Court “must give effect to the text Congress enacted.” *Ali v. BOP*, 552 U.S. 214, 228 (2008).

The overall scheme of the IIRIRA further refutes the government’s reading of

§ 1373. Another section of the IIRIRA, creating the E-Verify program,¹⁶ demonstrates “Congress knew how to” permit data sharing and matching between DHS and SSA “when it wanted to” and that it chose not to in § 1373. *Jones v. Bock*, 549 U.S. 199, 222 (2007) (applying canon in a different context). In the E-Verify provisions of the IIRIRA, “Congress expressly authorized SSA to participate in an employment-verification system by matching names and SSNs against its records; specified what information SSA could return; and restricted how that information could be used.” App.121a (citing IIRIRA, Pub. L. No. 104-208, § 404(e), (h), 110 Stat. 3009-546, 3009-665 (codified at 8 U.S.C. § 1324a note)). “Section 1373(c) contains no comparable reference to SSA records, SSN matching, or the Social Security Act’s confidentiality rule.” *Id.* That omission is a “manifestation of a considered congressional judgment.” *United States v. Fausto*, 484 U.S. 439, 448 (1988); accord *City & County of San Francisco*, 604 U.S. at 344. There is “little basis to read § 1373(c)’s general instruction to answer citizenship inquiries as both silently accomplishing the same thing” as the IIRIRA’s E-Verify provisions “and silently displacing an otherwise applicable confidentiality restriction.” App.121a.

3. The major questions doctrine and its “clear statement” rule doubly confirm this conclusion. *Biden*, 600 U.S. at 506. By transforming SAVE into a first-of-its-kind master database of U.S. citizens and expanding the population of Americans whose sensitive information SAVE accesses by over 1,000%, see *supra* Statement § II.D, DHS and SSA “claim[ed] to discover in . . . long-extant statute[s] an unheralded power’ representing a ‘transformative expansion [of their] . . . authority’” on matters

¹⁶ “Originally known as the Basic Pilot Program, E-Verify is an internet-based system that allows an employer to verify an employee’s work-authorization status.” *Chamber of Com. of United States v. Whiting*, 563 U.S. 582, 590 (2011) (cleaned up). While SAVE and E-Verify utilize the same “underlying technology”—DHS’s “Verification Information System”—they are distinct programs subject to different legal authorities and parameters. DHS-AR-94.

of “vast . . . political significance.” *West Virginia v. EPA*, 597 U.S. 697, 716, 724 (2022).

Between SAVE’s creation in 1986 and 2025, DHS and SSA never claimed (and in fact *disavowed*) the power to use SAVE for verifying the citizenship status of natural-born citizens, let alone the power to do so free of all constraints imposed by federal privacy laws. *See supra* Statement §§ II.A, II.D; SSA Disclosure Policy, *supra* p.4 (stating SSA does “not have the legal authority to disclose information about U.S. citizens to DHS”). The “lack of historical precedent” for the agencies’ actions, “coupled with the breadth of authority that [they] now claim[], is a ‘telling indication’ that the SAVE modifications “extend[] beyond the [agencies’] legitimate reach.” *Nat’l Fed’n of Indep. Bus.*, 595 U.S. at 119.

Confirming the “political significance” of the agencies’ actions, multiple bills have been introduced in Congress to authorize the SAVE modifications. *See* SAVE Act, H.R. 8281, 118th Cong., 2d Sess., § 2(f) (2024) (bill authorizing use of SAVE for bulk voter verification and directing that all agency heads “shall share information with each other” to enable voter verification inquiries); *accord* SAVE Act, H.R. 22, 119th Cong., 1st Sess., § 2(f) (2025); SAVE America Act, H.R. 7296, 119th Cong., 2d Sess. § 2(f) (2026). But none have passed the Senate. The agencies thus have “conveniently . . . enact[ed] a program’ that Congress has chosen not to enact itself.” *Biden*, 600 U.S. at 504 (quoting *West Virginia*, 597 U.S. at 713).

Because Applicants cannot point to any “‘clear congressional authorization’ for the power [they] claim[ed]” in modifying SAVE, *West Virginia*, 597 U.S. at 723, the major questions doctrine confirms they exceeded their authority. And that lack of statutory authorization dooms the government’s likelihood of success on the merits.

D. The SAVE Modifications Were Arbitrary and Capricious

The district court correctly held that the SAVE modifications were arbitrary and capricious because they violated the change-in-position doctrine. Under that doctrine, “[a]gencies are free to change their existing policies as long as they provide

a reasoned explanation for the change,” “display awareness that [they are] changing position,” and consider “serious reliance interests.” *FDA v. Wages & White Lion Invs.*, 604 U.S. 542, 568 (2025). “An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). The duty to explain and consider reliance interests is particularly important when there have been “decades” of reliance on the prior policy. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). Review of these actions “is limited to ‘the grounds that the agency invoked when it took the action.’” *DHS v. Regents of the Univ. of Cal. (“Regents”)*, 591 U.S. 1, 20 (2020). *Post hoc* rationalizations are “impermissible.” *Id.* at 21.

The government has conceded that the transformation of SAVE, from a targeted tool to search individuals using DHS-issued identifiers to one allowing bulk searches of every citizen’s SSA data, amounted to a change in position. App.62a.

These changes were implemented in a way that made it impossible for Applicants to meet the APA’s reasoned decision-making requirements. The Privacy Act requires a thirty-day notice-and-comment period “*prior to*” a new routine use of SAVE taking effect, 5 U.S.C. § 552a(e)(11) (emphasis added), but Modified SAVE was effective in May 2025 and no notice was published until October 2025, over a month after the present litigation was filed. *See* DHS-AR-114 (published October 31, 2025); SSA-AR-206 (published November 12, 2025). Even once Applicants published the required notices, they maintained that Modified SAVE was already in effect before publication, would remain in effect through the comment period, and that the notices would be “effective upon publication,” rather than after any period of consideration of public comments. DHS-AR-115. Ultimately, the agencies received over 30,550 comments on the published SORNs. Dkt.66-1 at 8. As the district court correctly found, this untimely comment period meant that Petitioners could not have considered reliance interests before changing their position. App.62a.

The government's heavy emphasis on excusing its procedural missteps, *see* App.27-29, suggests they missed the import of the district court's analysis—that comments received months *after* modified SAVE went into effect, and *after* the government had already committed to making the new SORNs effective, “could not provide a ‘reasoned explanation for the change’ that the Federal Defendants undertook.” App.63a (quoting *Wages & White Lion Invs.*, 604 U.S. at 568). Whatever consideration the agency may have given to issues raised by commenters was inherently *post hoc* and inconsistent with the APA's requirement of reasoned decision-making. *Regents*, 591 U.S. at 21.

The government concedes that it did not consider reliance interests but argues there were none to consider. App.30. This assertion is wrong, and it serves as an independently sufficient reason why the SAVE modifications violated the APA. *See Regents*, 591 U.S. at 30-33 (holding agency action arbitrary and capricious for not considering reliance interests even though the agency thought there were none).

As the district court found, and as evidenced by the over-30,000 comments received by DHS and SSA, there were significant reliance interests. “[P]ersons who had provided information to SSA” and who had “failed to update SSA data” had reliance interests. App.62a-63a. These individuals include naturalized, derived, and acquired U.S. citizens who did not update their citizenship status in SSA records because there is no legal requirement to do so and because SSA records had never before been used to check the citizenship of registered voters. *See supra* Statement § II.C. The change in position meant these individuals were placed at risk of being purged from voter rolls, prevented from voting, referred for criminal prosecution, or denied public benefits. Applicants' admitted failure to consider these reliance interests was arbitrary and capricious.

E. The SAVE Modifications Violated the Privacy Act

APA cause of action. Congress did not immunize agency policies that violate

the Privacy Act from review under the APA. App.45a-49a; *contra* App.23-26. The APA requires federal courts to “hold unlawful and set aside agency action” that is “not in accordance with law.” 5 U.S.C. § 706(2)(A). “Law” here “means, of course, *any* law.” *FCC v. NextWave Personal Commc’ns, Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original). This Court embeds § 706(2)(A)’s mandate in a “strong presumption that Congress intends judicial review of administrative action.” *Bowen v. Mich. Acad. of Fam. Phys.*, 476 U.S. 667, 670 (1986).

While this Court has not conclusively affirmed the availability of APA review for Privacy Act violations, it has twice acknowledged that “injunctive relief under the Administrative Procedure Act (APA)” may be available to “deter[] violations of [the Privacy Act’s] substantive provisions” for which the Act lacks a cause of action. *Cooper*, 566 U.S. at 303 n.12; *see also Doe v. Chao*, 540 U.S. 614, 619 n.1 (2004) (“[T]he general provisions for equitable relief within the Administrative Procedure Act” may explain the “inattention” of the Privacy Act to the “standards of proof governing equitable relief.”).

The government contends that since the Privacy Act creates some remedies for some injuries, it must “impliedly forbid[]” judicial review of all other agency action that violates the Privacy Act. App.24 (quoting 5 U.S.C. § 702). But this sweeping assertion ignores this Court’s admonishment that “Congress rarely allows claims about agency action to escape effective judicial review.” *Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 186 (2023). Where Congress restricts judicial review, this Court expects to find “clear and convincing evidence” of a “legislative intent” to do so. *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967).

The Privacy Act’s internal remedial scheme only provides for injunctive relief in two narrow situations: to force an agency to amend an individual’s record, and to force an agency to disclose an individual’s records to them. 5 U.S.C. § 552a(g)(2), (g)(3). But the Privacy Act imposes myriad other requirements on agencies, such as

the Act's notice and comment requirements, *id.* § 552a(e)(7); and general prohibitions on disclosure of personal records within and outside the government, *id.* § 552a(b), accumulating records monitoring individuals' exercise of First Amendment rights, *id.* § 552a(e)(7), and creating cross-agency computer programs matching personal information across disparate systems, *id.* § 552a(o).

Congress did not intend to effectively preclude judicial review of violations of those requirements, just because it created the two narrow injunctive remedies codified in § 552a(g). As this Court has noted, a narrow remedial scheme should typically be understood as “exclusive *where it applies*,” but not necessarily to displace “general judicial review” elsewhere. *Axon*, 598 U.S. at 186 (emphasis added). For this Court to conclude otherwise, as Applicants advance, would mean the *only* mechanism for judicial review of programs that systematically violate the Privacy Act is for each of the millions of impacted Americans to litigate claims for monetary damages.

This Court has recognized that the availability of a “naked money judgment” will not “always be an adequate substitute for prospective relief” such that it displaces general judicial review. *Bowen v. Massachusetts*, 487 U.S. 879, 905 (1988). Further, “to demand that every potentially affected party” bring such claims is “impractical—and an enormous waste of resources.” *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 158 (2025) (concerning pre-enforcement challenges to Hobbs Act violations, noting it is “unrealistic” to expect “more than a fraction” of affected people to have the familiarity with the Federal Register needed to bring challenges).

Contemporaneous understanding and subsequent statutory amendments confirm Congress's intent to maintain APA review for some Privacy Act violations. The Privacy Act required OMB to issue “guidelines and regulations” for the Act's implementation. 5 U.S.C. § 552a(v). Those guidelines, which were “issued contemporaneously with the” Act and “have remained consistent over time,” *Loper*

Bright, 603 U.S. at 394, “recognized that the Privacy Act’s judicial review provisions would not preclude ‘judicial review under other provisions of the [APA].” App.49a (quoting 40 Fed. Reg. 28948, 28968 (July 9, 1975)). Further, the district court correctly noted that subsequent amendments to the Privacy Act have *expressly* limited judicial review for certain populations not at issue in this case, in exactly the way that the government argues should be *implied* for the Act as a whole. App.49a. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *City & Cnty. of S.F.*, 604 U.S. at 344.

The text, structure, and contemporaneous and subsequent history of the Privacy Act do not make it likely that the government will supply a “persuasive reason to believe that Congress intended to preclude” injunctive relief for agency actions that violate the Privacy Act’s other requirements. *McLaughlin*, 606 U.S. at 155-56 (cleaned up).

Violations of the Privacy Act’s Disclosure Restrictions. The district court correctly held Modified SAVE violated the Privacy Act’s restrictions on disclosure. See App.50a-56a; 5 U.S.C. § 552a(b). The government invokes just one exception to the Act’s general ban on disclosure without consent: the exception for disclosures pursuant to a “routine use.” App.26. That exception requires disclosures to be “both (i) for a purpose which is compatible with the purpose for which it was collected and (ii) within the scope of a routine use notice published by the agency.” App.50a (cleaned up) (quoting *Ames v. DHS*, 861 F.3d 238, 240 (D.C. Cir. 2017)); see 5 U.S.C. § 552a(a)(7). The compatibility requirement is not met here because the SSA records disclosed through Modified SAVE were “collected . . . for purposes concerning work authorization and eligibility for SSA benefits,” which does not have “any nexus to state governments’ voter verification efforts.” App.51a, 54a.

Regarding SSA's disclosure of SSNs, the government adopts far too general a test to determine the "purpose" of that data's collection—ignoring the limited ways in which SSNs are used when "keep[ing] track' of" and "matching" people. App.26. At Applicants' high level of abstraction, nearly *any* disclosure of SSA data could be called "routine." But SSA creates and collects SSNs to keep track of and match future and current *beneficiaries*. The unabridged language from the government's sole case, *Bowen v. Roy*, 476 U.S. 693, 710-711 (1986), proves this point: this Court observed that SSNs are used "to keep track of *persons no longer entitled to receive food stamps* because of past fraud or abuses of the program," and for matching "federal employee files against AFDC and Medicaid files to determine instances of Government employees *receiving welfare benefits* improperly." *Id.* at 710 (emphasis added). SSNs are not collected for any voting-related purpose. Nor is receipt of benefits—which the political branches can extend or withdraw as they see fit, *see Califano v. Aznavorian*, 439 U.S. 170, 174 (1978)—comparable to voting, a "right" that is "fundamental," *Bush v. Gore*, 531 U.S. 98, 104 (2000). "Under any reasonable formulation of the compatibility test," *Ames*, 861 F.3d at 240, n.1, the routine-use exception does not apply to disclosure of SSA citizenship data and SSNs through Modified SAVE.

The government also ignores that SSA is not just disclosing SSNs through Modified SAVE; it is also disclosing the *citizenship data* it collects. *See supra* Statement § II.B. Again, SSA does not collect citizenship data for identification purposes; it collects the information "for purposes concerning work authorization and eligibility for SSA benefits." App.51a. And SSA explicitly warns that its "citizenship information is accurate for SSA's program purposes' only—if used later for other purposes, it may not be current." App.51a (quoting SSA-AR-103).

Violations of the Privacy Act's Procedural Requirements. The district court correctly held that the SAVE modifications violated the Privacy Act's procedural requirements. *See* App.58a-63a. As explained, agencies must *both* publish

a modified SORN 30 days before beginning a new routine use *and* meaningfully consider public comments received in response. *See supra* Statement § I.B. Applicants violated both requirements by making the SAVE modifications on a timeline that made it impossible to consider public comments before new routine uses went into effect, and then by failing to provide any explanation of “any changes made or not made as a result” of the more than 30,000 “public comment[s]” received. 40 Fed. Reg. at 28966; *see supra* Argument § I.D.

Relying on *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 685 (2020), the government faults the district court for applying the “open-mindedness test” to the Privacy Act’s notice-and-comment requirements. App.28. Yet the government ignores the court’s exhaustive discussion of why *Little Sisters* “has little relevance here.” App.57a-60a. And the district court made clear its Privacy Act holding would be the same even if the government was “correct and [that] *Little Sisters* abrogated the D.C. Circuit’s use of the open-mindedness test” for purposes of the Privacy Act. App.60a.

II. The Remaining Factors Cut Sharply Against a Stay

Because “the Government has not shown that it is likely to prevail on the various legal arguments advanced in its stay application,” the Court should “start and stop with the first [stay] factor.” *Trump*, 146 S. Ct. at 2246; *accord* App.130a. But the remaining factors also weigh strongly against a stay.

A. Applicants Will Suffer No Irreparable Harm

The government is not irreparably harmed because—as it concedes—it is still able to provide SAVE verifications using the pre-2025 functionality it used for decades. App.34. The court of appeals noted that the government’s “principal operational harm from the denial of a stay” is that, without Modified SAVE, some citizenship and other verifications are, as the government described, “slower and

more cumbersome.” App.130a.¹⁷ While those constraints may require more work, “whatever its limitations, the preexisting SAVE program in operation for decades remains available to the states and to federal programs.” *Id.* Thus, any harm “stems from the unavailability of modified SAVE’s SSN- and bulk-search functionalities, not the loss of SAVE-based verification altogether.” App.130a-131a.

While the government claims “the district court’s order impairs the proper administration of federal elections,” App.34, there is no indication that Modified SAVE will meaningfully serve that interest. Modified SAVE’s unreliable citizenship data would *impair* the proper administration of elections by burdening the voting rights of lawful voters. And the main change made by Modified SAVE is that the system now sweeps in *U.S.-born* citizens, who indisputably have a right to vote.

The government also overstates the impact of the district court’s decision on the upcoming November 2026 election. As the court of appeals noted, App.131a, the National Voter Registration Act (“NVRA”) bars systematic voter-list maintenance within 90 days before a federal election. 52 U.S.C. § 20507(c)(2)(A). In fact, the government *itself* argued, in opposing preliminary relief in the district court, that this 90-day limitation *precluded* use of Modified SAVE for systematic voter-list maintenance. *See* App.131a; Dkt.37 at 35-36. And as the court of appeals noted, “[b]y the time the government sought a stay pending appeal in this court, that limitation was already operative in several states and soon would be in many more,” undercutting any claim of harm. App.131a. Thus, it is “federal law itself—in the form of the NVRA—which constrains the principal election-related use of modified SAVE during the relevant period” and “[d]enying a stay thus does not deprive the government or the states of an otherwise available opportunity to undertake

¹⁷ The court of appeals did not reach the factors of irreparable harm and balance of the equities, finding no likelihood of success on appeal, but noted several persuasive considerations that would inform that inquiry. App.130a-132a.

systematic voter-list maintenance while ordinary appellate review proceeds.” App.130a-131a. And, in any event, *individualized* searches in support of *individualized* voter eligibility determinations can still be run on the pre-2025 SAVE system, which remains available and would not violate the NVRA’s 90-day cut-off for systematic voter removal programs. 52 U.S.C. § 20507(c)(2)(A).

The government’s remaining arguments are equally unpersuasive and unsupported by the record. The government argues that the order causes harm “[b]y preventing DHS from updating its own records with more current citizenship and immigration information held by SSA.” App.36. But SSA has made clear it does *not* maintain “current” citizenship data and “is *not* the custodian of U.S. citizenship records,” SSA-AR-44 (emphasis added), so it cannot be true that it has “more current citizenship and immigration information” than DHS, the agency that administers immigration and citizenship laws. Nor does the cost of maintaining both versions of SAVE establish irreparable harm. As the district court found, this argument is factually unsupported, App.89a n.6, and nothing in its vacatur order *requires* maintenance of Modified SAVE or any parallel systems of records. To the extent that the government is voluntarily making that choice, “[s]uch self-imposed costs are not properly the subject of inquiry on a motion for stay.” *Dep’t of Educ. v. California*, 604 U.S. 650, 652 (2025).

B. The Balance of Equities and Public Interest Favor Denying a Stay

The balance of the equities likewise supports denying the requested stay. *See* App.89a-99a. The public interest is best served by allowing the district court’s judgment to remain in effect, pending the appeal process, because it will protect millions of Americans’ privacy and voting rights. As the district court found and Applicants do not contest, Modified SAVE is riddled with inaccuracies. *See* App.69a, 90a, 111a. And Applicants’ desire to expand the use of Modified SAVE risks

broadening the harms that erroneously flagged American citizens have already experienced. *See* App.32a-35a. With a major federal election 49 days away and many states' voter registration deadlines fast approaching in the first week of October, erroneously identifying and removing voters based on indication of non-citizenship in stale, unreliable SAVE data would cause substantial harm to the rights of naturalized and derived citizen voters, including Respondents' members.

Moreover, the privacy interests Applicants dismiss as insufficiently "concrete," App.16, are precisely the same interests that Congress *already weighed* in passing the Social Security Act and Privacy Act, "recognizing that the statutory protections might lead to decreased government efficiency." App.90a. Courts should not "reject the balance that Congress has struck" among competing policy concerns. *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001).

Finally, for all practical purposes, the status quo was altered by the district court on June 22. Modified SAVE has been vacated for nearly three months, and the November general election is already underway. Reinstating Modified SAVE now would needlessly introduce confusion and administrative burdens amid an ongoing election cycle.¹⁸

On balance, the equities strongly favor denial of a stay.

CONCLUSION

The application for a stay should be denied.

¹⁸ Amici wrongly argue that *Purcell v. Gonzalez*, 549 U.S. 1 (2006), counsels in favor of a stay. *See* Br. of Ariz. Sen. Pres. and Speaker of the Ariz. House of Reps. at 3-5, 8-9. *Purcell* dictates that "federal courts ordinarily should not alter *state election laws* in the period close to an election." *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring) (emphasis added). That principle has no application in this APA suit challenging federal agency action. In any event, *Purcell's* logic would caution *against* a stay for the reasons stated above.

September 15, 2026

Respectfully submitted,

Aman T. George
Sophie R. Gelber
Johanna M. Hickman
Mark B. Samburg
Ronald A. Fein
Robin Thurston
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, DC 20043

Jon Sherman
Michelle Kanter Cohen
FAIR ELECTIONS CENTER
1629 K St. NW, Suite 300
Washington, DC 20006

/s/ Nikhel S. Sus

Nikhel S. Sus

Counsel of Record

John B. Hill
Lauren C. Bingham
Reuven Dashevsky
Samantha Y. Suman
Samantha M. Creighton
CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON
P.O. Box 14596
Washington, DC 20044
nsus@citizensforethics.org
(202) 408-5565

Counsel for Respondents