

In the Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

LEAGUE OF WOMEN VOTERS, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

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TABLE OF CONTENTS

A.	Respondents lack Article III standing.....	3
B.	Section 1373 authorizes the modified SAVE system	7
C.	Respondents' Privacy Act and APA claims lack merit.....	13
D.	Respondents' Social Security Act claim lacks merit	16
E.	The remaining factors support a stay	17

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Respondents fail to rehabilitate—indeed, affirmatively undermine—the district court’s order, which threatens the integrity of the upcoming elections and myriad federal-benefit programs by impairing the federal government’s ability to satisfy its statutory duty to verify the citizenship of an individual at a State’s request. Congress has provided that the Department of Homeland Security (DHS) “shall respond” to a State’s request “to verify or ascertain the citizenship” of “any individual” by “providing the requested verification.” 8 U.S.C. 1373(c). But before May 2025, DHS’s SAVE system was not up to the job because it lacked comprehensive data about natural-born citizens, permitted searches only one record at a time, and required the user to supply a person’s alien registration number (or other DHS number)—which States often do not know, and which natural-born citizens do not have. DHS solved those problems in May 2025 by incorporating citizenship data from the Social Security Administration (SSA), allowing bulk uploads, and enabling a user to enter a person’s Social Security number (SSN), rather than his alien registration number. Respondents challenge (Opp. 1) the lawfulness of the updated SAVE system, even while claiming that the government does not “possess[] any dataset capable of providing accu-

rate, real-time verification of individuals' U.S. citizenship status.” In other words, while conceding that Congress imposed a duty on DHS to verify citizenship, they insist that Congress provided no means for DHS to do so accurately and that DHS thus must revert to failing to verify citizenship for a much larger set of individuals than it does under the updated SAVE system. The perversity of that position refutes both respondents' standing and their claim on the merits.

Respondents have not established Article III standing to challenge the change to the SAVE system. They primarily contend that States might react to the updated SAVE by seeking proof of citizenship from voters when SAVE cannot confirm their citizenship. But any such injury is caused by the States, not the federal government, and would not be redressed by relief against the federal government. Moreover, while it is true that the updated SAVE system sometimes cannot confirm the citizenship of actual citizens—as DHS then accurately informs the States—the old system could not confirm the citizenship of an even broader pool of actual citizens. Respondents thus do not and cannot dispute that their purported injuries would all be *exacerbated* if States asked DHS to verify the citizenship of every individual on their voters rolls *without* using the updated SAVE system, and they instead assume that States simply will stop asserting their statutory rights if DHS again becomes incapable of complying. But the government does not inflict an Article III injury by making a citizenship-verification tool better but not perfect. In other words, respondents have no “legally protected interest,” *Haaland v. Brackeen*, 599 U.S. 255, 295 (2023), in forcing DHS to breach its statutory verification duties to such a massive extent that States might just give up asking.

Respondents' claims likewise fail on the merits. Respondents contend that the updated SAVE system exceeds DHS's statutory authority and also violates the Pri-

vacancy Act and Social Security Act. But Congress has not only required DHS to provide to the States the requested verification of an individual's citizenship status, 8 U.S.C. 1373(c), but has further provided that, "[n]otwithstanding any other provision" of law, no one may "prohibit, or in any way restrict," DHS's sending or receiving of citizenship information, 8 U.S.C. 1373(a) and (b). Respondents identify no way for DHS to satisfy its verification duty under Section 1373(c) *other* than sharing information with other agencies, such as SSA, consistent with Sections 1373(a) and (b). Thus, their insistence that Congress still prohibited such sharing contravenes both the "notwithstanding" clauses in Section 1373 and the principle that imposition of a statutory duty carries with it the ordinary means necessary to satisfy it, see *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 478 (2025). In all events, even putting aside Section 1373, respondents' Privacy Act and Social Security Act claims fail on their own terms.

Finally, the equities favor a stay. The federal government, the States, and the public face irreparable harm from the invalidation of the updated system and the forced return to the older, less accurate, more cumbersome system. Respondents, by contrast, do not face even Article III injury, much less irreparable harm.

A. Respondents Lack Article III Standing

Respondents lack Article III standing to challenge the modifications to SAVE. That failing alone justifies a stay.

Voter injury. Respondents principally argue (Opp. 14-17) that they have standing because States could ask their members for proof of citizenship if SAVE fails to verify those members as citizens. But any such injury is not caused by, and would not be redressed by relief against, the federal government.

Any decision to question a person's citizenship or to cancel a registration is

made by the State, not the federal government. DHS's standard agreement with the States makes that clear when it provides that a SAVE response "is not intended to be, and should not be construed as, an opinion on the part of [the federal government] regarding any right or benefit"; that DHS "will not recommend" to the State "whether to issue" any benefit; and that the State "has the responsibility to determine" the "registered voter's eligibility." DHS A.R. 767. Respondents highlight (Opp. 15) a provision stating that, before a State may cancel someone's voter registration based on a SAVE response, it "must request additional verification." *Id.* at 762; see *id.* at 763 (a "State cannot deny a benefit based on a SAVE response" before "additional verification" has "been completed"). But far from injuring respondents, that provision institutes an additional safeguard against erroneous revocation of voter registrations.

Further attenuating the causal connection, the May 2025 modifications to the SAVE system made the system *more* complete and *more* accurate, not *less*. Before May 2025, SAVE could not confirm the citizenship of natural-born citizens; now, it can. See Appl. 6. Respondents note (Opp. 16) the district court's findings that the modified SAVE system still contains "inaccuracies," but those findings show only that the new system is not perfect. It does not show that the new system is worse than the old. Respondents concede as much when they admit (*ibid.*) that, although the modified system will sometimes be unable to confirm an actual citizen's citizenship, "the old SAVE system would provide the *same* (non-)response" for even more voters.

In the end, respondents' theory of standing boils down to the idea (Opp. 16) that, because the old SAVE system "did not allow bulk searches and 'could not verify citizenship status * * * [for] natural-born citizens,'" it "did not easily enable wholesale review of voter rolls." In other words, respondents claim to be injured because the new SAVE system works better than the old (though not perfectly), and they want

a court to “redress” that injury by making SAVE so much worse that States will simply give up on exercising their statutory right under Section 1373 to seek verification of the citizenship of all individuals on their voter rolls. To state that theory is to refute it.

Privacy injury. Respondents next contend (Opp. 17-19) that their members suffer privacy injury because of the disclosure of their “SSNs.” Respondents concede (Opp. 18), however, that SSNs are disclosed only “to DHS,” not to States. Respondents do not meaningfully explain how the disclosure of information *within the Executive Branch* causes a cognizable privacy injury. They analogize (Opp. 17-18) the disclosure to the tort of intrusion upon seclusion, but that tort requires an intrusion “upon the solitude or seclusion of another,” as by “entering his home” “over [his] objection” or “looking into his upstairs window with binoculars.” Restatement of Torts (Second) § 652B (1977). When one executive agency shares information already in its possession with another executive agency, it does not engage in any “intrusion” into anyone’s “solitude or seclusion.” *Ibid.* Article II creates a unitary Executive, and information sharing between the arms of that unitary entity does not impose a cognizable Article III privacy injury any more than the sharing of information among the employees within one of those arms does. Respondents also draw (Opp. 18) an analogy to “breach of confidence,” a tort that a defendant commits by revealing information that the plaintiff provided to it in confidence. But SSA is not revealing information that respondents’ members have provided to it in confidence. SSNs were issued *by* SSA *to* respondents’ members, not revealed by respondents’ members to SSA on condition of confidentiality.

Respondents relatedly contend (Opp. 18) that they suffer a privacy injury from SAVE’s disclosure of their “citizenship or immigration status” to the States. But they

do not explain how citizenship or immigration status could plausibly be regarded as “sensitive” “private information” protected from “unauthorized disclosure, *ibid.*, when Congress has *required* the federal government to verify “citizenship or immigration status” upon request by a State, 8 U.S.C. 1373(c).

Reputational injury. Respondents also argue (Opp. 19) that their members suffer reputational injury because SAVE “falsely” claims that they “[a]re not citizens.” SAVE, however, never definitively asserts that anyone is a noncitizen merely because the government is unable to confirm a person’s citizenship; instead, it truthfully indicates when the federal government is unable to confirm a person’s citizenship. Respondents emphasize (Opp. 20) that SAVE “affirmatively reports” the latest immigration status shown in the federal government’s records, but DHS’s standard agreement with the States makes clear that such a response “is not intended to be, and should not be construed as,” a definitive determination; that the State retains the “responsibility to determine” the “registered voter’s eligibility”; and that the State must take additional steps to verify citizenship before canceling registration. DHS A.R. 762, 764, 767. In other words, SAVE at most identifies certain individuals as “*potential* non-citizen[s]” because available federal records cannot confirm their citizenship. Opp. 20 (emphasis added). That is not false, much less analogous to “defamation.” *Ibid.* And again, the same purported “injury” would be inflicted on *far more* of respondents’ members if States asked DHS to satisfy its citizenship-verification duty under Section 1373 for all the same individuals *without* using the updated SAVE system.

Expenditure of resources. Respondents do not defend the district court’s theory that they suffered procedural injury simply because the government purportedly violated their procedural rights. See Appl. 18. But in a footnote (Opp. 21 n.12), they

substitute a different theory that the district court did not adopt: that the modified SAVE system injures some of the organizational plaintiffs by “forcing the organizations to expend greater resources” to help voters remain registered. SAVE, however, has not “forced” the organizations to do anything. The organizations may have *chosen* to spend more money in response to improvements to SAVE, but “an organization that has not suffered a concrete injury caused by a defendant’s action cannot spend its way into standing simply by expending money to [counteract that action].” *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024).

B. Section 1373 Authorizes The Modified SAVE System

On the merits, respondents contend (Opp. 24-30) that DHS lacked statutory authority under 8 U.S.C. 1373 to establish the modified SAVE system and that the Privacy Act and Social Security Act in any event limit the authority that Section 1373 grants. Each contention is likely to fail on appeal.

Statutory authority. Section 1373(c), captioned “OBLIGATION TO RESPOND TO INQUIRIES,” provides that DHS “shall respond to an inquiry” by a State “seeking to verify or ascertain the citizenship or immigration status of any individual within [its] jurisdiction * * * by providing the requested verification or status information.” 8 U.S.C. 1373(c). That provision requires DHS to verify citizenship—and so authorizes DHS to obtain the information needed to fulfill that obligation. See Appl. 19.

The update to SAVE is necessary to enable DHS to carry out its statutory duties. Section 1373(c) requires the federal government to verify the citizenship of “*any* individual.” 8 U.S.C. 1373(c) (emphasis added). Yet respondents acknowledge (Opp. 16) that the old SAVE system could not verify the citizenship of natural-born citizens because it required the user to enter “a DHS-specific immigration identifier,” “which natural-born citizens do not have.” The new system solves that problem by allowing

the user to supply a person's SSN rather than his DHS number and by using citizenship data from SSA. The update is thus an "ordinary and appropriate means," *Free Speech Coalition*, 606 U.S. at 478, of honoring the federal government's statutory duty to verify the citizenship of "any" individual, 8 U.S.C. 1373(c).

Notably, respondents never explain how DHS could fulfill its statutory duties without the update to SAVE. Respondents state (Opp. 1) that Congress has not authorized DHS to create its own "master citizenship database," a task DHS would in any event lack the capacity to accomplish using only its own records. To fulfill its statutory obligation to "respond to an inquiry by a * * * State * * * seeking to verify or ascertain the citizenship or immigration status of any individual," 8 U.S.C. 1373(c), therefore, DHS must obtain the requisite information from other agencies—most obviously, from SSA.

And to ensure that SSA and other agencies could provide DHS the information necessary to comply with Section 1373, Congress enacted Sections 1373(a) and (b). Those provisions state that, "[n]otwithstanding any other provision" of law, no one may "prohibit, or in any way restrict," any government entity from sending to (or receiving from) DHS any information regarding citizenship or immigration status. 8 U.S.C. 1373(a) and (b). Respondents note (Opp. 26-27) that those provisions are phrased as prohibitions rather than as grants of authority, but to say that no one may prohibit an agency from doing something necessarily implies that the agency has the authority to do that thing. Section 1373(b)'s caption, "ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES," confirms that reading. Although a caption cannot "take the place" of the operative text, Opp. 27 n.15, it provides "a useful clue" to the text's meaning, *Dubin v. United States*, 599 U.S. 110, 121 (2023). If, as respondents maintain (Opp. 26), the provision "is not 'an affirmative grant of power,'" then the caption

“ADDITIONAL AUTHORITY” would be inexplicable.

Finding no support for their position in the text of Section 1373, respondents turn elsewhere. They first argue (Opp. 25) that the statute that originally established SAVE, the Immigration Reform and Control Act of 1986 (IRCA), 42 U.S.C. 1320b–7 note, does not authorize the update to SAVE. But that statute is a red herring; the update to SAVE rests on Section 1373, not IRCA. True, DHS has chosen to fulfill its duties under Section 1373 by improving the SAVE system that it had already been using to fulfill its duties under IRCA, rather than by creating a brand-new database. But no principle of law prevents DHS from using one system to satisfy two sets of statutory obligations.

Respondents also draw (Opp. 29) a negative inference from a separate statute that provides that SSA “shall” establish a system for sharing data with DHS as part of the E-Verify program. But the *requirement* that SSA share information with DHS under the E-Verify program at the request of *employers* does not imply that SSA lacks the *authority* to share information with DHS under Section 1373 at the request of *States*. That is especially so here, given that the sharing of information with DHS enables DHS to fulfill its own obligations under Section 1373(c), and given that Section 1373(a) and (b) expressly contemplate that other federal agencies may exchange citizenship information with DHS “notwithstanding” any other federal law.

Respondents next contend (Opp. 30) that Congress has considered, but has not enacted, bills that would have modified SAVE in various ways. But a court should discern Section 1373’s meaning by focusing on the text Congress enacted, not on bills that Congress has failed to enact. Courts “walk on quicksand when [they] try to find in the absence of corrective legislation a controlling legal principle.” *Helvering v. Hallock*, 309 U.S. 106, 121 (1940) (Frankfurter, J.). At any rate, the bills cited by

respondents would have gone far beyond what DHS has done here. For example, they would have required documentary proof of citizenship for registering to vote, required photo identification for voting, and imposed various requirements on States. See, e.g., SAVE America Act, H.R. 7296 (2026). That Congress has not yet enacted those provisions sheds no light on the meaning of Section 1373.

Finally, respondents err in invoking (Opp. 29) the major-questions doctrine. Whether SAVE users may input SSNs rather than DHS numbers, or conduct searches in bulk rather than one at a time, is not an issue of “staggering” “political significance,” *Biden v. Nebraska*, 600 U.S. 477, 502 (2023), or a decision with “astounding” “economic” consequences, *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 246 (2026) (opinion of Roberts, C.J.). Nor does this case involve a “significant encroachment into the lives” of ordinary Americans, akin to an order that “84 million Americans * * * obtain a COVID–19 vaccine,” *NFIB v. OSHA*, 595 U.S. 109, 117 (2022) (per curiam). SAVE neither requires anyone to do anything nor forbids anyone from doing anything. The verification of citizenship or immigration status, moreover, stands squarely within DHS’s “wheelhouse,” *Nebraska*, 600 U.S. at 504, given that it is an express statutory duty of DHS under Section 1373. The updated SAVE system, in short, lacks the hallmarks of a major question; indeed, that doctrine more naturally applies to the district court’s judgment, which would essentially require DHS to massively breach a significant statutory duty imposed by Congress. Just as this Court surely would have rejected any attempt by DHS to claim the authority to flout Section 1373, it should not tolerate the district court’s effective mandate to do so.

Even if the major-questions doctrine applied, Section 1373 would provide the requisite “clear statement.” *Nebraska*, 600 U.S. at 506. It clearly requires DHS to verify citizenship for “any” individual, 8 U.S.C. 1373(c), and thus clearly authorizes

DHS to take the steps, such as updating SAVE, necessary to fulfill that duty. Respondents' policy objections to a "master database of U.S. citizens," Opp. 29, cannot override Congress's unambiguous directive that DHS "ascertain the citizenship or immigration status of any individual" upon request from a State, 8 U.S.C. 1373(c).

Interaction with other laws. Because Section 1373 applies "[n]otwithstanding any other provision" of law, 8 U.S.C. 1373(a) and (b), neither the Privacy Act nor the Social Security Act can be read to restrict the authority that Section 1373 confers.

Respondents emphasize (Opp. 26) that the word "notwithstanding" appears in subsections (a) and (b) rather than subsection (c). But provisions of a statute should be construed as "integral parts of a whole," *New Prime, Inc. v. Oliveira*, 586 U.S. 105, 111 (2019), not as "discrete" and unrelated provisions, Opp. 26. It makes perfect sense for Congress to address DHS's substantive obligations in one provision, see 8 U.S.C. 1373(c), and to address the interaction of those obligations with other statutes in two other provisions, see 8 U.S.C. 1373(a) and (b). Having said in subsection (a) that DHS may receive and send information "notwithstanding" other laws, and having repeated itself in subsection (b), Congress did not have to repeat itself once more in subsection (c). That is especially so since no law even arguably prevents DHS from merely verifying the citizenship of an individual under subsection (c)—the potential conflict arises from the information sharing with other agencies under subsections (a) and (b) that is necessary for DHS to provide the verification, which explains why the "notwithstanding" clauses appear in those sections.

Regardless, even viewed in isolation, Section 1373(c) defeats respondents' claims. Section 1373(c), again, commands DHS to respond to citizenship-verification requests concerning "any" person, including natural-born citizens. 8 U.S.C. 1373(c). The update to SAVE enables DHS to comply with that command, which respondents

effectively concede DHS otherwise cannot do. Given the principle that statutes should be interpreted in a way that renders them compatible rather than contradictory, see *Maracich v. Spears*, 570 U.S. 48, 68 (2013), a court should not read the Privacy Act or the Social Security Act to impede DHS's ability to fulfill that statutory obligation. Even if those provisions did stand in the way, the later-enacted Section 1373(c) would supersede them.

Similarly, Section 1373(a) and (b) lead to the same result, again even if they are viewed in isolation. Those provisions direct that, “[n]otwithstanding any other provision” of law, no one may “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 * * * of any individual.” 8 U.S.C. 1373(a); see 8 U.S.C. 1373(b) (similar). The district court, however, did the very thing that those provisions prohibit. It relied on “other provision[s]” of law—the Privacy Act and Social Security Act—to “restrict” SSA from “sending” “information regarding * * * citizenship” to DHS, and to “restrict” States from “receiving” such information from DHS. 8 U.S.C. 1373(a).

Respondents’ reliance on the presumption against implied repeals (Opp. 27-28) is misplaced. For one, the whole point of a “notwithstanding” clause is to overcome the presumption against implied repeals—a point respondents never address. See Appl. 22 (citing *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 621-623 (2011) (opinion of Thomas, J.)). For another, while Section 1373 supersedes the Privacy Act and Social Security Act in the narrow context of sharing citizenship information, those statutes remain controlling in the vast array of cases that have nothing to do with the sharing of citizenship information. This case accordingly does not involve an “implied repeal” of those statutes; instead, it involves the “classic judicial task of reconciling many

laws enacted over time, and getting them to ‘make sense’ in combination.” *United States v. Fausto*, 484 U.S. 439, 453 (1988).

C. Respondents’ Privacy Act And APA Claims Lack Merit

Even putting aside Section 1373, respondents err in contending (Opp. 30-37) that the update to SAVE violates the Privacy Act—and, as a result, the Administrative Procedure Act (APA) as well.

Right of action. The Privacy Act contains a comprehensive remedial scheme for violations of its provisions, see 5 U.S.C. 552a(g), and a party cannot circumvent that scheme by seeking to enforce that Act through the APA. Respondents do not dispute that the Privacy Act authorizes suit only by individuals (not organizations), see 5 U.S.C. 552a(g)(1), and injunctive relief only for two types of violations (which do not include the violation alleged here), see 5 U.S.C. 552a(g)(2)-(3). Respondents do not explain what purpose those limitations would serve if any plaintiff could seek injunctive relief for any violation simply by invoking the APA instead.

Respondents cite (Opp. 33) *FAA v. Cooper*, 566 U.S. 284 (2012), and *Doe v. Chao*, 540 U.S. 614 (2004), but neither case helps them. A footnote in *Cooper* noted the “possib[ility]” that the Privacy Act “allow[s] for injunctive relief” under the APA, 566 U.S. at 303 n.12, while a footnote in *Doe* stated that “it may be that” Privacy Act violations could be redressed through the APA, 540 U.S. at 619 n.1. The footnotes, in other words, simply leave the question open; they do not definitively resolve the issue in a way that might justify disregarding the plain import of the statutory text.

Respondents next invoke (Opp. 33) the presumption in favor of judicial review. But the Privacy Act does not preclude judicial review. It requires only that review be initiated by a particular type of plaintiff (an individual, not an organization), in a suit for a particular type of relief (damages, not an injunction). The presumption in favor

of judicial review is in any event just that: a presumption. It “may be overcome” by evidence “drawn from the statutory scheme as a whole.” *Patel v. Garland*, 596 U.S. 328, 347 (2022). The scheme here makes clear that judicial review is not available at the behest of these plaintiffs, or in a suit seeking this type of relief.

Respondents complain (Opp. 34) that the damages remedies provided by the Privacy Act are “impractical.” But the “remedies available are those ‘that Congress enacted into law,’” not those that courts consider “desirable” “as a policy matter,” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001)—a principle that has special force for rights that Congress itself created and thus can delimit as it wishes. The Privacy Act’s text and structure show that Congress considered damages suits brought by individuals sufficient except in certain narrow circumstances, and a court may not override that congressional judgment under the auspices of the APA. Respondents object (Opp. 34) to requiring “each of the millions of impacted Americans to litigate claims for monetary damages,” but our legal system provides mechanisms for addressing such concerns. See, e.g., Fed. R. Civ. P. 23 (class actions).

Substantive requirements. Even if respondents had a cause of action, their Privacy Act claim would fail. SSA’s disclosure of SSA records to DHS for use under the updated SAVE system fits within the Privacy Act’s “routine use” exception, which covers the “use of [a] record for a purpose which is compatible with the purpose for which it was collected.” 5 U.S.C. 552a(a)(7). The use of SSA data in the updated SAVE system is compatible with the purpose of that data: “keep[ing] track” of people and “matching” data with the right people. *Bowen v. Roy*, 476 U.S. 693, 710-711 (1986).

Respondents argue (Opp. 36) that the purpose of SSA records, such as SSNs and citizenship data, is limited to verifying “eligibility for SSA benefits.” But that

theory ignores “the SSN’s long-established role as a ‘nearly universal identifier.’” Appl. App. 148a (Katsas, J., dissenting); see *Roy*, 476 U.S. at 710 (SSNs “are used pervasively”). It also ignores that SSA can share citizenship data with DHS—and thus enable DHS to fulfill its statutory obligations under Section 1373—only if it first uses a person’s SSN to ensure that it has located the right person. The routine-use exception, in any event, does not require using a record for the very purpose for which it was collected; it requires only “a purpose *which is compatible with* the purpose for which it was collected.” 5 U.S.C. 552a(a)(7) (emphasis added). Under the “ordinary meaning” of the word “compatible,” “[a] disclosure of a record is ‘compatible’ so long as it does not conflict with or frustrate the purposes for which the record was collected.” Appl. App. 147a (Katsas, J., dissenting). “Even if [SSA] data was originally collected only to establish * * * eligibility for social-security benefits, disclosing that data to confirm eligibility for other benefits and voting neither conflicts with nor frustrates those initial purposes” under the circumstances here. *Ibid.*

Procedural requirements. Respondents’ procedural objections to the update to SAVE—whether viewed through the lens of the Privacy Act (Opp. 36-37) or the APA’s prohibition of arbitrary and capricious action (Opp. 30-32)—likewise lack merit. Respondents object (Opp. 31, 35-36) that DHS and SSA solicited public comments only after they had already updated SAVE, but that would show at most that the operation of SAVE was procedurally defective at some point in the past, not that any procedural defect remains ongoing today. They assert (Opp. 31, 37) that the agencies did not properly consider public comments, but the agencies have certified that they did consider the comments. See Appl. 27. They contend (Opp. 32, 37) that the agencies did not provide an adequate response to those comments, but the Privacy Act, unlike the APA, does not require responses to comments. See Appl. 29. They

claim (Opp. 37) that the agencies were insufficiently open-minded in considering the comments, but they identify no statutory text imposing any such open-mindedness requirement and flout the precedent barring judicial imposition of such a requirement. See Appl. 28. They assert (Opp. 31) that the government is relying on “[p]ost *hoc* rationalizations,” but that is wrong; the government is relying on the agencies’ own explanations of why they updated SAVE, see 90 Fed. Reg. 48,948 (Oct. 31, 2025); 90 Fed. Reg. 50,879 (Nov. 12, 2025), not on “appellate counsel’s *post hoc* rationalizations,” *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

D. Respondents’ Social Security Act Claim Lacks Merit

The Social Security Act provides that “[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, shall be confidential.” 42 U.S.C. 405(c)(2)(C)(viii)(I). Contrary to respondents’ contention (Opp. 21-24), the update to SAVE complies with that provision as well.

SSA’s disclosure of information to DHS does not violate Section 405(c)(2), which is limited to information maintained “pursuant to any provision of law enacted on or after October 1, 1990.” 42 U.S.C. 405(c)(2)(C)(viii)(I). SSA maintains SSNs “pursuant to laws enacted well before 1990.” Respondents ask (Opp. 22) “*which* pre-1990 ‘laws’” the government is relying on, but the answer is obvious and goes without saying: “The Social Security Act of 1935 authorizes the SSA to create and maintain SSNs.” Appl. App. 140a (Katsas, J., dissenting).

DHS’s disclosure of citizenship information to States, too, is lawful. Most importantly, DHS discloses the information under Section 1373. While that provision was enacted after 1990, it allows DHS to share citizenship information “[n]otwithstanding any other provision” of law. 8 U.S.C. 1373(a) and (b). Even putting aside

Section 1373, the update to SAVE comports with Section 405(c) because DHS does not reveal “[s]ocial security account numbers” or “related records.” 42 U.S.C. 405(c)(2)(C)(viii)(I). Respondents contend (Opp. 23) the disclosed information “concerning the individual’s citizenship status” is a “related record,” but that is incorrect. A “related record” is a record that indicates “the identity” of an SSN holder, 42 U.S.C. 405(c)(2)(viii)(IV), and the Social Security Act “distinguishes between the ‘identity’ of an individual * * * and ‘the fact that such individual is a citizen or a noncitizen,’” Appl. App. 141a-142a (Katsas, J., dissenting) (quoting 42 U.S.C. 405(c)(2)(B)(i)(III)). Thus, “information about the identified individual’s citizenship status” is “unprotected.” *Id.* at 142a.

Respondents insist (Opp. 21-22) that the government forfeited its arguments under the Social Security Act. But respondents do not dispute that their summary-judgment briefing relegated the Social Security Act to a single paragraph or that the government responded to that argument by invoking Section 1373. See Appl. 32. The government cannot reasonably be faulted for failing to comprehensively address an argument that respondents did not meaningfully develop in the first place.

In any event, respondents err in suggesting (Opp. 2) that the government’s Social Security Act arguments are “key” to its stay application. The government’s primary arguments here, as in the courts below, are that respondents lack standing and that Section 1373 overrides the statutory provisions on which respondents rely. Appl. 33. Those arguments, which everyone agrees the government preserved, provide an ample basis for a stay.

E. The Remaining Factors Support A Stay

Respondents do not dispute that, if the D.C. Circuit affirms the district court’s judgment, its decision would warrant this Court’s review. They do dispute (Opp. 37-

40) the equities, but their contentions lack merit.

Irreparable harm. The district court's order causes irreparable harm to the federal government, the States, and the public (whose interests all merge here). See *Nken v. Holder*, 556 U.S. 418, 435 (2009). The government has a statutory duty to verify citizenship upon request by a State, 8 U.S.C. 1373(c), and the district court's order prevents the government from fulfilling that obligation. Respondents argue (Opp. 38) that the government could still fulfill its duties through the old SAVE system so long as everyone put in "more work," but that is simply not so. Section 1373 requires DHS to verify citizenship upon request for "*any* individual." 8 U.S.C. 1373(c) (emphasis added). Yet as respondents concede (Opp. 16), the old SAVE system could not verify citizenship for natural-born citizens, and DHS has no means of satisfying its verification duty other than obtaining information from SSA.

Respondents also argue (Opp. 38) that the district court's order does not impair the federal government's and the States' interest in the administration of elections. As an initial matter, that argument ignores that the update to SAVE serves a variety of important purposes unrelated to voting. For example, it enables federal agencies to ensure that ineligible aliens do not receive federal public benefits. See Appl. 36. It enables States to verify eligibility for benefits such as commercial driver's licenses and housing programs. See *ibid.* And it ensures that malicious actors cannot exploit gaps in federal records to obtain government employment, entry into secure facilities, or government-issued credentials. See *ibid.* Leaving the district court's order in place would deprive the government of all those benefits while this litigation proceeds.

In any event, respondents' arguments are wrong even with respect to elections. Respondents argue (Opp. 38) that the National Voter Registration Act (NVRA), 52 U.S.C. 20507(c)(2)(A), "bars systematic voter-list maintenance within 90 days before

a federal election.” But the government has already addressed that point at length, explaining (Appl. 35) that it is an open question whether the cited provision restricts States’ authority to remove aliens from the voter rolls and that, even if it is now too late for States to conduct “systematic” voter-list maintenance, Opp. 38, the district court’s order still inflicts irreparable harm by preventing the use of the modified SAVE system for individualized decisions. Respondents simply ignore those points.

Balance of equities. Because the government has shown a high likelihood of success on the merits and serious irreparable harm—the “most critical” factors, *Nken*, 556 U.S. at 434—this is not a “close case[]” where respondents’ equities can tilt the balance against a stay, *NRCC v. Brown*, No. 26A274, slip op. 2 (Sept. 4, 2026) (per curiam). Regardless, those equities do not justify withholding a stay because the updated SAVE system does not cause respondents even Article III injury, much less irreparable harm.

Respondents argue (Opp. 39) that the updated SAVE system “is riddled with inaccuracies,” but that ignores two key points. First, by “inaccuracies,” respondents mean only that the updated SAVE system sometimes cannot confirm the citizenship of an individual even though he is actually a citizen. Second, the old SAVE system could not confirm citizenship for an even broader class of actual citizens (including all natural-born citizens). Any concern with making SAVE more accurate thus weighs in favor of granting a stay. It does not support denying a stay so that SAVE becomes so inaccurate for purposes of Section 1373 compliance that States are deterred from trying to use it anymore.

Finally, respondents are wrong to argue (Opp. 40) that “[r]einstating Modified SAVE now would needlessly introduce confusion and administrative burdens amid an ongoing election cycle.” Reinstating the updated SAVE system would not require

States, candidates, parties, or voters to do anything. It would simply make available to States additional information—namely, verification of individuals’ citizenship status. States that wish to use that information in the course of ensuring that only eligible citizens cast ballots this November should be free to do so.

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This Court should stay the order of the district court pending further proceedings in the D.C. Circuit and this Court.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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