ORAL ARGUMENT NOT YET SCHEDULED
No. 26-5243, *consol. w.* No. 26-5301

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LEAGUE OF WOMEN VOTERS; LEAGUE OF WOMEN VOTERS OF VIRGINIA; LEAGUE OF WOMEN VOTERS OF LOUISIANA; LEAGUE OF WOMEN VOTERS OF LOUISIANA EDUCATION FUND; ELECTRONIC PRIVACY INFORMATION CENTER; LEAGUE OF WOMEN VOTERS OF TEXAS,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARKWAYNE MULLIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; SOCIAL SECURITY ADMINISTRATION; FRANK BISIGNANO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,

Defendants-Appellants,

STATE OF TEXAS,

Intervenor Defendant-Appellant.

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On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR INTERVENOR DEFENDANT-APPELLANT STATE OF TEXAS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) Parties, Intervenors, and *Amici Curiae*

Defendants–Appellants are the United States Department of Homeland Security; Markwayne Mullin, in his official capacity as Secretary of Homeland Security; the Social Security Administration; and Frank Bisignano, in his official capacity as Commissioner of the Social Security Administration.

Defendant–Intervenor–Appellant is the State of Texas.

Plaintiffs–Appellees are the League of Women Voters; League of Women Voters of Texas; League of Women Voters of Louisiana; League of Women Voters of Louisiana Education Fund; League of Women Voters of Virginia; and the Electronic Privacy Information Center.

Amici curiae that have appeared before the district court are United States Senator Alex Padilla; United States Senator Gary Peters; Campaign Legal Center; Travis County Tax Assessor-Collector Celia Israel; Travis County Clerk Dyana Limon-Mercado; Travis County, Texas; Texas Civil Rights Project; Lawyers Defending American Democracy, Inc.; Service Employees International Union; UnidosUS; Center for Media and Democracy; Common Cause; Protect Democracy Project; and American Civil Liberties Union.

Amici curiae that have appeared in before this Court are Steven Montenegro, Warren Peterson, the Honest Elections Project, and the States of Florida, Indiana, Iowa, and Ohio.

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(B) Ruling Under Review

Defendants seek review of the June 22, 2026, order and opinion of the district court (Sooknanan, J.) granting summary judgment to Plaintiffs and denying the State of Texas's motion to dismiss. JA 47–121, 122.

(C) Related Cases

This case has not previously been before the Court. Cases in other district courts raise similar issues, but the State of Texas is not aware of any other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ D. Bowie Duncan
D. BOWIE DUNCAN

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GLOSSARY OF ABBREVIATIONS

DHS	Department of Homeland Security
SAVE	Systematic Alien Verification for Entitlements
DPS	Texas Department of Public Safety

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INTRODUCTION

The State of Texas intervened in this lawsuit to protect its interest in maintaining accurate voter rolls. Both federal and state law require the State to implement and maintain a statewide computerized voter registration list to aid the State in ensuring the accuracy of its voter rolls. *See* 52 U.S.C. § 21083(a)(1)(A); Tex. Elec. Code § 18.061(a). In 1996, Congress authorized the federal government to assist the States in this effort by requiring the Department of Homeland Security ("DHS") to "respond to an inquiry" by a State "seeking to verify or ascertain the citizenship or immigration status" of any individual within the State "by providing the requested verification or status information." 8 U.S.C. § 1373(c). To fulfill that statutory obligation, DHS maintains an online service, the Systematic Alien Verification for Entitlements ("SAVE"), which allows users to verify a person's citizenship status.

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Prior to DHS's 2025 update to SAVE, Texas faced two significant hurdles to using that service to help ensure that non-citizens do not appear on its voter rolls. First, the State lacked access to the system because SAVE required users to enter identifying information, such as an alien registration number, that the Texas Secretary of State did not maintain and that illegal aliens would not have. Second, the State faced difficulties in obtaining prompt responses to its inquiries from DHS. The latter issue led Texas and its Secretary of State to file a lawsuit against DHS in October 2024 seeking to compel the agency to fulfill its obligations under section

1373. *See* Complaint, *Att'y Gen. of Tex. v. Mayorkas*, No. 4:24-cv-00049-DC (W.D. Tex. Oct. 22, 2024), Dkt. No. 1. That lawsuit remains pending.

In the spring of 2025, DHS addressed the first issue of access. In March, it executed a memorandum of understanding with the Texas Secretary of State authorizing Texas to use SAVE for citizenship-verification purposes. Shortly thereafter, in May, DHS updated SAVE so that a user could now access its database using an individual's Social Security number. In August, Texas was one of five States to participate in a "soft launch" of SAVE's new functionality. Since then, the changes have been, in the words of the Texas Secretary of State's Director of Elections, "transformational." The updates, now disabled following the district court's order, allowed Texas to more efficiently, promptly, and economically ensure the accuracy of its voter rolls. For example, Texas was able to run its entire list of 18 million voters through the SAVE program in bulk and for no cost. That process would have previously required the Secretary to pay DHS to proceed record-by-record—an undertaking that would have been cost-prohibitive even if the Secretary had the information required to access the earlier version of the SAVE database in the first place.

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The district court's final judgment in this case, requiring DHS to disable the modifications to its SAVE platform, undoes each of these gains in efficiency, accuracy, and accessibility. On the merits, the State agrees with DHS and the arguments set forth in its brief. Those arguments reflect what the Supreme Court already held in this case: "[S]ection 1373(c) requires DHS to respond to inquiries

from state and local agencies 'seeking to verify or ascertain the citizenship or immigration status of any individual.'" *DHS v. League of Women Voters*, No. 26A308, 2026 WL 2879700, at *3 (U.S. Sept. 25, 2026) (per curiam) (quoting 8 U.S.C. § 1373). Texas does not repeat those arguments but instead offers this brief to highlight the harms that the district court's order visits upon States, like Texas, that have come to rely on and benefit from DHS's modifications to SAVE.

Statement of Jurisdiction

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331. D. Ct. Dkt. No. 1 at 12.[1] The district court granted the State of Texas's motion to intervene on April 6, 2026. JA 37. The district court granted summary judgment to Plaintiffs and denied Texas's motion to dismiss on June 22, 2026. JA 122. Texas filed a notice of appeal on August 21, 2026. JA 149. On August 26, 2026, the Court consolidated the State of Texas's appeal, No. 26-5301, with the Federal Defendants' appeal, No. 26-5243. This Court has jurisdiction to review the district court's final judgment under 28 U.S.C. § 1291.

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Issues Presented

1. Whether the modifications to SAVE are authorized by 8 U.S.C. § 1373.
2. Whether the modifications to SAVE violate a confidentiality provision contained in the Social Security Act. 42 U.S.C. § 405(c)(2)(C)(viii)(I).

[1] Citations to "D. Ct. Dkt. No." refer to the District Court's docket in this case, No. 1:25-cv-03501-SLS.

3. Whether plaintiffs may invoke the APA to obtain relief for alleged violations of the Privacy Act and, if so, whether the modifications to SAVE violate the Privacy Act.

Statutes and Regulations

All applicable statutes and regulations are contained in the brief for the Federal Defendants.

Statement of the Case

The State of Texas incorporates the Statement of the Case from the brief for the Federal Defendants. *See* Federal Defendants Br. 5–20.

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Summary of the Argument

The State of Texas agrees with the Federal Defendants that Section 1373 authorizes DHS's modifications to the SAVE program, *id.* at 22–29, and that Plaintiffs' claims under the Privacy Act, Administrative Procedure Act, and Social Security Act are meritless even if it does not, *id.* at 30–57. Texas will not independently address those merits arguments in this brief but will instead explain how Texas's interest in maintaining accurate voter rolls has been greatly enhanced by DHS's modifications to the SAVE program and how the district court's judgment significantly impairs that interest.

Standard of Review

This Court reviews appeals from summary judgments *de novo*, applying the standards set forth in Federal Rule of Civil Procedure 56(a). *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Under Rule 56(a), summary judgment is

warranted if the movant shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Vanda Pharms., Inc. v. U.S. FDA*, 123 F.4th 513, 520 (D.C. Cir. 2024).

ARGUMENT

Texas incorporates fully the arguments the Federal Defendants made in their opening brief on the merits. Federal Defendants Br. 22–57. Instead of reiterating those arguments here, Texas first explains how the modified SAVE helps States like Texas ensure that their voter rolls are accurate and then explains how the district court's order undermines States' interests in maintaining accurate voter rolls.

I. DHS's Modifications to the SAVE Program Enhance Texas's Ability to Ensure the Accuracy of its Voter Rolls.

A. Both federal and Texas law forbid non-citizens from voting and registering to vote. *See* 18 U.S.C. §§ 611(a), 1015(f); 52 U.S.C. § 20504(c)(2)(C)(i); Tex. Elec. Code §§ 11.001(a)(1)–(2), 13.001(a)(2). Because the Constitution assigns the States the primary duty to regulate the time, manner, and place of elections, U.S. Const. art. I, § 4, cl. 1, the task of establishing a system of voter registration falls to the States—subject, of course, to the "complex superstructure of federal regulation" Congress has erected "atop state voter-registration systems" through the National Voter Registration Act, *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018) (quoting *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5 (2013)); *see also* 52 U.S.C. § 21083(a)(4) (requiring the States to "ensure that voter registration records in the State are accurate and are updated regularly").

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In Texas, the minutia of voter registration is typically managed by local county-level officials called voter registrars. *See* Tex. Elec. Code §§ 12.001, 13.071–13.073, 18.001–18.013. But as part of his duty to secure "uniformity in the application, operation, and interpretation" of the Election Code, *id.* § 31.003, the Texas Secretary of State is required to "implement and maintain a statewide computerized voter registration list that serves as the single system for storing and managing the official list of registered voters in the state," *id.* § 18.061(a). To ensure the accuracy of that list, state law requires the Secretary to tend to it regularly, *id.* § 18.068(a), work with the Texas Department of Public Safety ("DPS") to ensure its accuracy regarding voters' citizenship status, *id.* § 16.0332(a-1), and exercise oversight over county voter registrars to ensure they are complying with their obligations under the Election Code, *id.* § 18.065; *see also La Union del Pueblo Entero v. Nelson*, 163 F.4th 239, 258-59 (5th Cir. 2025) (describing the Secretary's voter-registration obligations).

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Federal law provides Texas with further assistance in maintaining the accuracy of its voter rolls. In 1986, for example, Congress enacted the Immigration Reform and Control Act, part of which instructed the federal government to "implement a system for the verification of immigration status . . . so that the system is available to all the States." 42 U.S.C. § 1320b-7 note. And in 1996, through the Illegal Immigration Reform and Immigrant Responsibility Act, Congress instructed DHS's predecessor agency to "respond to an inquiry by a Federal, State, or local 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." 8 U.S.C. § 1373(c).

B. In the lead-up to the 2024 general election, Texas invoked its section 1373 right to obtain federal assistance in verifying the citizenship of some 450,000 individuals who had registered to vote in the State but whose citizenship DPS could not confirm because they did not register to vote with DPS-issued driver's licenses or ID cards. *See* Complaint at 7–10 & Exs. 1, 3, *Mayorkas*, No. 4:24-cv-00049-DC, Dkt. Nos. 1, 1-1, 1-3. DHS responded by pointing to the SAVE program. Complaint at 8 & Ex. 2, *Mayorkas*, No. 4:24-cv-00049-DC, Dkt. Nos. 1, 1-2.

SAVE is "an online service administered by U.S. Citizenship and Immigration Services (USCIS) that provides point in time immigration status and U.S. citizenship information to federal, state, local, territorial, and tribal agencies." USCIS, *About SAVE* (March 3, 2026), https://tinyurl.com/mr3armzb. At its core, SAVE "[v]erifies a benefit or license applicant's immigration status or U.S. citizenship." *Id.* But according to DHS, although SAVE can confirm that its records reflect that a person is a U.S. citizen, it ordinarily does not definitively assert that a person is not a U.S. citizen but instead encourages the user to "contact the [individual] to obtain proof of U.S. citizenship." Federal Defendants Br. 10.

Before 2025, the SAVE program was afflicted by several limitations that prevented Texas from using it. *See League of Women Voters v. DHS*, No. 26-5243, 2026 WL 2653439, at *14–15 (D.C. Cir. Sept. 4, 2026) (Katsas, J., dissenting). For

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one thing, to access the SAVE system's database, a user was required to enter a unique DHS-issued immigration identifier, such as an alien registration number, that the Texas Secretary of State does not maintain and which illegal aliens would not possess anyway. *See* D. Ct. Dkt. No. 43-2 (¶ 7). For another, SAVE required users to submit a verification request one by one, making its use impractical for a user like Texas, who was seeking to verify the citizenship of millions of voters. *Id.* SAVE also previously "charged users a fee for each verification submitted to the SAVE system," which was cost-prohibitive for a large-volume user like Texas. *Id.* Given these shortcomings, in October 2024 Texas sued DHS seeking to compel the agency to comply with its statutory obligations to provide citizenship-verification assistance. The State contended that the SAVE program in its current form did not satisfy DHS's obligations under section 1373. Complaint at 8–10, *Mayorkas*, No. 4:24-cv-00049-DC, Dkt. No. 1. That lawsuit remains pending.

C. In the spring of 2025, in response to Texas's lawsuit and separate lawsuits of several other States,[2] DHS began making changes to the SAVE system. In March, President Trump signed an executive order acknowledging that federal law "require[s] States to maintain an accurate and current Statewide list of every legally registered voter in the state" and confirming that DHS "is required to share

[2] *See Indiana v. DHS*, No. 25-cv-732 (S.D. Ind. filed Apr. 16, 2024); *Florida v. DHS*, No. 3:24-cv-00509-TKW-HTC (N.D. Fla. filed Oct. 16, 2024), *appeal docketed*, No. 26-12533 (11th Cir. July 21, 2026); *Ohio v. DHS*, No. 3:24-cv-00283-MJN-PBS (S.D. Ohio filed Oct. 24, 2024); *Bird v. Noem*, No. 4:24-cv-00423-SHL-HCA (S.D. Iowa filed Dec. 3, 2024).

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database information with States upon request so they can fulfill this duty." Executive Order 14,248, *Preserving and Protecting the Integrity of American Elections*, 90 Fed. Reg. 14005, 14005-06 (Mar. 25, 2025). The President further instructed that the "Commissioner of Social Security shall take all appropriate action to make available the Social Security Number Verification Service, the Death Master File, and any other Federal databases containing relevant information to all State and local election officials engaged in verifying the eligibility of individuals registering to vote or who are already registered." *Id.* at 14007.

Thereafter, on April 22, DHS announced that it had begun "a comprehensive optimization of the Systematic Alien Verification for Entitlements (SAVE) database to ensure a single, reliable source for verifying non-citizen status nationwide." Dep't of Homeland Sec., *DHS, USCIS, DOGE Overhaul Systematic Alien Verification for Entitlement Database* (Apr. 22, 2025), https://tinyurl.com/37448fa2. One key change was that DHS "eliminate[d] fees for database searches." *Id.* Another, relevant here, was that DHS would now permit users to search the SAVE database using Social Security numbers and to do so "in bulk" rather than record by record. USCIS, *Optimizing SAVE: New Options to Create Cases with a Social Security Number and by Bulk Upload* (May 22, 2025), https://tinyurl.com/4wfphvyy. DHS later formalized these modifications by publishing a notice in the Federal Register. *See* Privacy Act of 1974; System of Records, 90 Fed. Reg. 48948 (Oct. 31, 2025).

D. DHS's changes to the SAVE program were, in the words of the Texas Secretary of State's Director of Elections, "transformational" for the State's efforts

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to maintain the accuracy of its voter rolls. D. Ct. Dkt. No. 43-2 at 2 (¶ 8). In March 2025, Texas entered into a Memorandum of Understanding with DHS allowing the State to use SAVE for voter-verification purposes. Motion to Dismiss at 6 & Ex. 2, *Mayorkas*, No. 4:24-cv-00049-DC, Dkt. Nos. 12, 12-2 (Dec. 23, 2025). In April, Texas submitted its first SAVE verification request; in May, it submitted its first bulk upload request; and in August, Texas participated in a "soft launch" of SAVE's new functionality using Social Security numbers. Motion to Dismiss at 6 & Ex. 1 at 8, *Mayorkas*, No. 4:24-cv-00049-DC, Dkt. Nos. 12, 12-1.

Since then, Texas has become "the most prolific SAVE user in the United States—having submitted more than double the number of requests of the second-place user." Motion to Dismiss at 6 & Ex. 1 at 9 (¶ 45), *Mayorkas*, No. 4:24-cv-00049-DC, Dkt. Nos. 12, 12-1. The changes to the SAVE system "allowed the Texas Secretary of State to run the entire statewide list of more than 18 million Texas voters through the system" "at no charge" rather than pay DHS to "go[] through a cumbersome process of searching one record at a time." D. Ct. Dkt. No. 43-2 at 2 (¶¶ 9–10). This has made Texas's process for verifying the accuracy of its voter rolls more efficient and economical. By "ma[king] the [SAVE] system functional for use by Texas," the federal government has supplied Texas with "another effective tool to use in fulfilling its obligation to maintain clean, up-to-date voter registration rolls." *Id.* at 2, 3 (¶¶ 8, 11).

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II. The District Court's Order Impairs Texas's Interest in Maintaining Accurate Voter Rolls.

The district court's order in this case, which "sets aside and vacates the SAVE 'modified system,'" JA 121, reverses the gains in efficiency, accessibility, and accuracy achieved by DHS's 2025 updates to SAVE. The court's order makes the citizenship-verification process more cumbersome, more expensive, and less accessible to states attempting to discharge their legal obligations to maintain accurate voter-registration records. *See* 52 U.S.C. §§ 21083(a)(4), 20501(b)(4). Moreover, Texas, like other states, has relied on the SAVE database to ensure accurate voter rolls in past election cycles. D. Ct. Dkt. No 43-2 at 2 (¶ 10).

The Supreme Court has noted that the States have an "important interest in accurate voter lists." *Marston v. Lewis*, 410 U.S. 679, 681 (1973) (per curiam); *see Burns v. Fortson*, 410 U.S. 686, 687 (1973) (per curiam) (applying *Marston* to recognize the same); *cf. Clingman v. Beaver*, 544 U.S. 581, 595–96 (2005) (recognizing that "without registration rolls that accurately reflect likely or potential . . . voters," the interests of political parties may be imperiled too). That interest, which entitles states to "some period of time—prior to an election—in order to prepare adequate voter records," is grounded at least partly in "protect[ing] . . . electoral processes from possible frauds." *Marston*, 410 U.S. at 680. And "[o]ne strong and entirely legitimate state interest is the prevention of fraud." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 672 (2021).

"Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in

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the election process." *Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 196 (2008); *see Democratic Nat'l Comm. v. Wisc. State Legislature*, 592 U.S. 1039, 1044 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (identifying "the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election"). And "[t]he State has a valid interest in participating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient," *Crawford*, 553 U.S. at 191, like the SAVE program at issue here.

The district court's order in this case is not only wrong on the merits, as the Federal Defendants explain, but also imperils each of these compelling state interests. By forcing the States to utilize an outdated and inefficient SAVE program, the district court's order undermines Texas's interest in maintaining accurate, up-to-date voter rolls—which in turn impedes Texas's interest in ensuring voter confidence and administering an orderly election. The district court's order is especially troubling given that the 2025 updates are aimed at "improv[ing] and moderniz[ing]" an "antiquated and inefficient" SAVE system. *Id.* In short, the district court's order needlessly frustrates Texas's efforts to ensure all voters on its voter rolls are lawfully registered, its duties under federal and state law, and prevents Texas from receiving the information from DHS to which federal law entitles it. *See Dep't of Homeland Sec. v. League of Women Voters*, No. 26A308, 2026 WL 2879700, at *3 (U.S. Sept. 25, 2026) (per curiam) ("Lest there be any doubt, section 1373(c)

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requires DHS to respond to inquiries from state and local agencies 'seeking to verify or ascertain the citizenship or immigration status of any individual.'" (quoting 8 U.S.C. § 1373(c)).

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Conclusion

For the foregoing reasons, this Court should reverse the judgment of the district court.

Date: November 13, 2026

Respectfully submitted.

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Certificate of Compliance

I hereby certify that the State of Texas's Brief complies with Federal Rule of Appellate Procedure 32(f) and (g), and this Court's October 7, 2026, Order, because it contains 3,171, as counted by the Microsoft Word software to produce this brief, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1), and, together with the Electric Generator Petitioners, does not exceed 6,500 words. This brief also complies with the requirements of Federal Rule of Appellate Procedure 27(d)(1)(E), 32(a)(5) and (6) because it was prepared in 14-point font using a proportionally spaced typeface.

/s/ D. Bowie Duncan
D. Bowie Duncan

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Certificate of Service

I hereby certify that I caused a copy of the foregoing State of Texas's Brief to be filed on November 13, 2026, using the Court's CM/ECF system and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ D. Bowie Duncan
D. Bowie Duncan