No. 26A

In the Supreme Court of the United States

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

v.

LEAGUE OF WOMEN VOTERS, ET AL.

APPLICATION TO STAY THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) 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 Bisgnano, in his official capacity as Commissioner of Social Security. Respondents (plaintiffs-appellees below) are the League of Women Voters, League of Women Voters of Texas, League of Women Voters of Louisiana, League of Women Voters Louisiana Education Fund, League of Women Voters of Virginia, and the Electronic Privacy Information Center (plaintiffs-appellees below). The State of Texas intervened as a defendant in the district court but has not participated in the appeal.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

League of Women Voters v. *DHS*, No. 25-cv-3501 (June 22, 2026)

United States Court of Appeals (D.C. Cir.):

League of Women Voters v. *DHS*, No. 26-5243 (Sept. 4, 2026)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants U.S. Department of Homeland Security (DHS), et al.—respectfully requests that this Court stay the order issued by the U.S. District Court for the District of Columbia (App., *infra*, 76a-77a) pending further proceedings in the D.C. Circuit and this Court.

The district court has issued an indefensible order that threatens the integrity of upcoming elections by vacating the federal government's authority to internally use Social Security data when fulfilling its duty to respond to requests by States to verify the citizenship of individuals for voting and other purposes. The court's order exceeds its jurisdiction, as the organizations challenging the government's policy lack Article III standing. The court's order also fails on the merits, as the policy is consistent with all applicable federal statutes. The order will irreparably harm the federal government, the States, and the public by depriving the government of an effective tool to verify the eligibility of registered voters and benefits applicants under various state and federal programs.

Congress has directed DHS to "implement a system for the verification of immigration status" that is "available to all the States," 42 U.S.C. 1320b–7 note, and also 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 * * * by providing the requested verification or status information," 8 U.S.C. 1373(c). DHS fulfills those obligations through Systematic Alien Verification for Entitlements, or SAVE, an online service that enables users to verify a person's citizenship status, often within seconds. Yet, until recently, SAVE suffered from serious limitations: Among other things, it could verify a person's citizenship status only if the user supplied that person's alien registration number (or other DHS number)—which States often do not know, and which natural-born citizens do not have.

In May 2025, DHS updated SAVE so that a user could enter a person's Social Security number, rather than his alien registration number, as a numeric identifier (and so that requests could be made in bulk, rather than one at a time). Those updates made SAVE significantly more responsive. The updated system processed more than a million requests each day, for purposes such as verifying eligibility to register to vote and to receive public benefits. But in the decision below, the district court—at the behest of several voting-rights and privacy-rights organizations, who are respondents here—universally vacated both the notices articulating the SAVE updates and the modified SAVE system itself. The court concluded that the modified system violates statutory restrictions on the sharing of data within and by the federal government. The district court and the D.C. Circuit both denied a stay pending appeal.

This Court should stay the district court's order, which is unlikely to withstand appellate review. To start, respondents lack standing to challenge the updated SAVE

system. The district court reasoned that respondents' members face voter injury (because States might revoke voters' registrations if SAVE cannot confirm their citizenship), privacy injury (because of the sharing of information about respondents' members), and reputational injury (because gaps in Social Security records might sometimes leave SAVE unable to confirm the citizenship of individuals who are in fact citizens). But SAVE does not disqualify any voter; instead, it merely notifies the States whether the federal government can confirm citizenship. Thus, any voter injury is caused by the States, not by the federal government, and would not be redressed by the relief the court entered against the federal government. SAVE also does not invade any judicially cognizable privacy interest: The information it discloses to the States—whether the federal government can confirm that a person is a citizen—is not the type of private information traditionally protected by privacy torts, and the sharing of Social Security data within the government is not a cognizable injury at all. Nor does SAVE cause reputational harm; it never asserts that anyone is not a citizen, only that it sometimes cannot confirm citizenship.

Respondents' claims also fail on the merits. When a State "seek[s] to verify or ascertain the citizenship or immigration status of any individual," Section 1373 commands DHS to "provid[e] the requested verification or status information." 8 U.S.C. 1373(c). Section 1373 also specifies that, "[n]otwithstanding any other provision" of federal law, other federal entities may not prohibit or restrict the exchange of information regarding citizenship or immigration status. 8 U.S.C. 1373(a)-(b). By requiring DHS to provide citizenship verification, Section 1373 authorizes DHS to take steps—such as checking Social Security records—that are reasonably necessary to perform that duty. And by twice using the word "notwithstanding," Section 1373 overrides restrictions that the Privacy Act and Social Security Act might otherwise

impose on such sharing.

Even putting aside Section 1373, respondents' claims fail. The district court concluded that SAVE's use of Social Security records violates the Privacy Act, 5 U.S.C. 552a, but that statute expressly limits when prospective (rather than monetary) relief is available, and courts cannot end-run those limits by invoking the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.* In any event, the federal government has complied with the Privacy Act's substantive and procedural requirements. The court also concluded that SAVE's use of Social Security records violates a provision of the Social Security Act, 42 U.S.C. 405(c)(2)(C)(viii)(I), but that clause applies only to records obtained or maintained "pursuant to any provision of law enacted on or after October 1, 1990." The Social Security Administration (SSA) obtains Social Security numbers pursuant to a law enacted long before that date, and DHS does not share Social Security numbers at all. The court of appeals concluded that the government forfeited its arguments under the Social Security Act, but that is incorrect; in any event, the government's remaining arguments, which were indisputably preserved, suffice to establish the government's likelihood of success.

The remaining factors favor a stay. The district court's order warrants review because it universally vacates an important governmental policy—the improvement of a system that has processed millions of citizenship-verification requests every week and that is used for purposes ranging from maintaining voter rolls to ensuring that ineligible aliens do not wrongly receive federal benefits. The federal government, the States, and the public face irreparable harm from the court's sudden upending of the updated system and from being required to return to an older, more cumbersome, and less reliable version of the system. Those harms dwarf any harms faced by respondents, who cannot show even an Article III injury, much less irreparable injury.

STATEMENT

A. Legal And Factual Background

1. In 1986, Congress required 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; see Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 121, 100 Stat. 3391. In 1996, in a provision captioned "OBLIGATION TO RESPOND TO INQUIRIES," Congress required the Immigration and Naturalization Service—whose functions have since been transferred to DHS—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); see Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 642(c), 110 Stat. 3009–707; 8 U.S.C. 1551 note. To ensure DHS can satisfy this duty, the statute twice provides that "[n]otwithstanding any other provision of Federal, State, or local law," no federal entity or official (among others) may "prohibit, or in any way restrict," the sharing with or by DHS of "information regarding" citizenship or immigration status. 8 U.S.C. 1373(a)-(b). Separately, each State has a federal statutory duty to "ensure that voter registration records in the State are accurate and are updated regularly." 52 U.S.C. 21083(a)(4).

To fulfill the federal government's statutory obligations, and to help the States fulfill theirs, DHS operates Systematic Alien Verification for Entitlements, or SAVE. SAVE is an "online service * * * that provides point in time immigration status and U.S. citizenship information to federal, state, local, territorial, and tribal agencies." USCIS, *About SAVE* (Oct. 7, 2025), https://perma.cc/5888-TH46. SAVE can verify a

person's "immigration status or U.S. citizenship * * * within seconds." *Ibid.* But SAVE does not "[d]etermine [a person's] eligibility for a specific benefit." *Ibid.* That determination is instead made by the agency responsible for issuing the benefit, most often a state or local agency. *Ibid.*

Since 2005, States have entered into agreements with DHS to use SAVE to verify putative voters' citizenship status. See D. Ct. Doc. 77-2, ¶ 20 (Apr. 2, 2026). Yet, until recently, SAVE suffered from significant limitations. Most importantly, it could not verify citizenship status without a DHS-specific immigration identifier, such as an alien registration number (or "A-number")—which States do not always know, and which natural-born citizens do not have. See USCIS, *Guide to Understanding SAVE Verification Responses* 3 (Apr. 2022) (*SAVE Guide*), https://perma.cc/BW9M-WJUT. SAVE could also accept only one verification request at a time. See USCIS, *Optimizing SAVE* (May 22, 2025), https://perma.cc/LM3N-RB76.

2. In April 2025, DHS began a comprehensive update to SAVE. In May 2025, it announced the two changes relevant here: users may now make requests using Social Security numbers, and they may enter multiple requests at once. See *Optimizing Save*.

Under the updated system, a SAVE user manually enters the following data into a spreadsheet: first name; last name; date of birth; full or partial Social Security number, A-number, or other DHS numeric identifier; and the reason for verification. DHS A.R. 1443. The user uploads the spreadsheet, and SAVE then checks SSA databases to determine whether the supplied information matches Social Security records, whether the individual is a citizen, and whether the individual is deceased. 90 Fed. Reg. 48,948, 48,950 (Oct. 31, 2025).

If that check matches SSA records but does not confirm that the individual is

a living U.S. citizen, and a DHS numeric identifier is available either from the user's initial input or from Social Security records, SAVE automatically checks 16 additional systems across the federal government. DHS A.R. 1450-1458. If that check, too, does not confirm that the individual is a U.S. citizen, the case is referred to an analyst for manual review. D. Ct. Doc. 77-2, ¶ 15. That manual review includes a variety of searches in systems available to DHS, including, if necessary, physical records. *Id.* ¶ 16.

If the search identifies the individual as a citizen, SAVE returns that result to the user, and no further steps are required. DHS A.R. 1507-1508. But if the search fails to confirm that the individual is a citizen, the user is prompted to "contact the [individual] to obtain proof of U.S. citizenship" (or to provide further information to continue the SAVE search). DHS A.R. 762. SAVE never definitively asserts that a person is not a U.S. citizen.

B. Proceedings Below

1. In September 2025, the League of Women Voters and other advocacy organizations (respondents here) challenged the modified SAVE system in the United States District Court for the District of Columbia. App., *infra*, 12a. The court denied respondents' motion for a preliminary injunction, finding that they had failed to show irreparable harm. See D. Ct. Doc. 55, at 11 (Nov. 17, 2025). The district court later granted summary judgment to respondents. App., *infra*, 1a-75a. The court held that respondents' members face several types of injuries that give rise to Article III standing. First, it concluded that respondents' members face "voter injuries" because States might ask them to prove citizenship, and might cancel their voter registrations, if inaccuracies in Social Security records prevent SAVE from confirming their citizenship. *Id.* at 31a; see *id.* at 31a-38a. Second, the court concluded that respond-

ents' members face "privacy injuries" from the disclosure of private information contained in their Social Security records. *Id.* at 24a; see *id.* at 25a-29a. Third, the court concluded that respondents' members suffer "reputational injuries" if SAVE fails to confirm their citizenship. *Id.* at 24a; see *id.* at 29a-31a. Finally, the court concluded that respondents have suffered "procedural injuries" from the government's alleged violation of their procedural rights under the Privacy Act and the APA. App., *infra*, 23a; see *id.* at 38a-40a.

Turning to the merits, the district court concluded that the modified SAVE system is unlawful. The court first concluded that the updated system violates a restriction in the Social Security Act on the disclosure of Social Security numbers and related records. App., *infra*, 43a-44a. The court also concluded that the updated system violates the Privacy Act and the APA, reasoning that DHS and SSA had not complied with applicable substantive and procedural limits on the sharing of information. *Id.* at 44a-65a. Last, the court rejected the contention that 8 U.S.C. 1373 overrides the limits that the Social Security Act and the Privacy Act might otherwise impose on SAVE. *Id.* at 65a-72a.

As a remedy, the district court "vacate[d] and se[t] aside" two notices issued under the Privacy Act—one by DHS, the other by SSA—articulating the modifications to SAVE. App., *infra*, 76a. The court also "vacate[d] and se[t] aside the SAVE 'modified system' described in" DHS's notice. *Ibid.* Applicants moved for a stay pending appeal, which the court denied. *Id.* at 78a-100a.

2. A divided panel of the D.C. Circuit denied applicants' motion for a stay pending appeal, after considering it for nearly two months. App., *infra*, 102a-154a.

The panel majority concluded that applicants had not shown a likelihood of success on appeal. App., *infra*, 110a-130a. The majority first endorsed the district

court's conclusion that respondents' members faced voter injuries. *Id.* at 110a-112a. On the merits, it concluded that the government had forfeited its arguments that the modified SAVE system complies with the Social Security Act, *id.* at 113a-120a; concluded in the alternative that those arguments lack merit, *id.* at 122a-130a; and rejected the argument that Section 1373 overrides any limits that statute might otherwise impose on SAVE, *id.* at 120a-122a. The majority did not consider the district court's remaining merits holdings. *Id.* at 132a.

Because the majority found that applicants were unlikely to succeed on the merits, it had "no occasion to consider the remaining stay factors." App., *infra*, 130a. It nonetheless "briefly note[d]" its view that the equities do not support granting interim relief here. *Ibid.*; see *id.* at 130a-132a.

Judge Katsas dissented. App., *infra*, 133a-154a. Observing that a court may consider standing and the merits in either order at the stay stage, he concluded that applicants are likely to prevail on the merits and so did not consider standing. *Id.* at 139a (citing *Mullin* v. *Doe*, 146 S. Ct. 2121, 2137 (2026) (plurality opinion)). Judge Katsas opined that the modified SAVE system likely complies with the Social Security Act, *id.* at 139a-142a, and that any forfeiture of that argument should be excused, *id.* at 142a-145a. He further opined that the district court's remaining rationales on the merits are unlikely to withstand appellate review. *Id.* at 148a-151a. Finally, he concluded that the equities favor a stay. *Id.* at 151a-153a.

C. Parallel Proceedings In *Florida* v. *DHS*

In 2024 and 2025, before the update to SAVE, five States filed suits claiming that the federal government was violating 8 U.S.C. 1373 because the old SAVE system could not provide meaningful responses to most of their verification requests. One suit was filed by Florida and later joined by Iowa, Indiana, and Ohio, see *Florida* v. *DHS*,

No. 24-cv-509 (N.D. Fla.) (filed Oct. 16, 2024); the other suit was brought by Texas, see *Attorney General of Texas* v. *Noem*, No. 24-cv-49 (W.D. Tex.) (filed Oct. 22, 2024).

After DHS updated SAVE, the federal government entered into a settlement agreement that resolved *Florida*. 24-cv-509 D. Ct. Doc. 30-1 (N.D. Fla. Nov. 28, 2025). In the settlement, DHS agreed that SAVE would maintain certain minimum capabilities, such as "allow[ing] searches with full Social Security Numbers (SSNs) to be used as a non-DHS enumerator" and "[t]he capacity to process bulk upload verification requests so that users of the system will not need to input verification requests one-by-one." *Id.* ¶ 10. In light of the settlement, the U.S. District Court for the Northern District of Florida issued an order dismissing Florida's suit. 24-cv-509 D. Ct. Doc. 31 (Dec. 1, 2025). The order stated that the *Florida* court "retains jurisdiction * * * for the purpose of enforcement of the parties' settlement agreement, which is approved by and incorporated by reference into this order." *Id.* at 1-2.

Months later, the district court in this case entered its final judgment, and the federal government immediately came into compliance by disabling the modified SAVE system, while promptly seeking a stay pending appeal. See D. Ct. Doc. 126, at 3 (July 10, 2026). But the *Florida* court then issued a conflicting order, over the government's objection, requiring DHS to "immediately comply" with the settlement "by reinstating [the plaintiff States'] access" to certain features of the updated SAVE system. 24-cv-509 D. Ct. Doc. 45, at 9 (N.D. Fla. July 7, 2026). To comply with both courts' orders to the greatest extent possible, the government has restored certain features of the updated SAVE system for the four States in *Florida*, while continuing to disable those features for everyone else. Respondents then intervened in *Florida* and appealed to the Eleventh Circuit. See 24-cv-509 D. Ct. Doc. 54 (N.D. Fla. Jul. 19, 2026); 24-cv-509 D. Ct. Doc. 55 (N.D. Fla. Jul. 20, 2026).

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay of a vacatur order pending review in the court of appeals and in this Court, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *NRCC* v. *Brown*, No. 26A274, slip op. 4 (Sept. 4, 2026) (per curiam). In "close cases," the Court balances the equities and weighs the relative harms. *Ibid.*

All those factors warrant a stay here. The government is likely to succeed on appeal because respondents lack Article III standing; because the district court's order contravenes 8 U.S.C. 1373; and because respondents' Privacy Act, Social Security Act, and APA claims lack merit. And the government, the States, and the public will suffer irreparable harm from the district court's order, which undermines the government's ability to fulfill its duty to verify an individual's citizenship upon request by a State, and thereby impairs determinations of an individual's eligibility to vote and to qualify for various federal benefits.

A. Respondents Lack Article III Standing

To establish the existence of an Article III case or controversy, a plaintiff must show that it has standing—*i.e.*, that it suffered a judicially cognizable injury, that the injury was likely caused by the defendant's challenged action, and that the injury would likely be redressed by judicial relief. See *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). The district court credited multiple theories of standing, of which the court of appeals majority endorsed only the first. None is sound.

Voter injury. The lower courts concluded that respondents have standing because their members face "voter injuries." App., *infra*, 31a; see *id.* at 112a. The district court found that, after using SAVE, Texas asked four of respondents' members—

naturalized citizens who had not updated their Social Security records—to confirm their citizenship. *Id.* at 25a, 32a-33a. Two provided the requested citizenship information and remain registered; the other two failed to do so, and their voter registrations remain revoked. *Id.* at 33a. The district court concluded that respondents have standing because two members' registrations remain revoked. *Id.* at 34a-35a. The district court and court of appeals also found standing because other States could ask other members for proof of citizenship in the future. *Id.* at 35a-36a, 110a-112a.

Even setting aside several objections to treating those "voter injuries" as injuries in fact, respondents lack standing because they cannot show that the injuries were likely "caused by the defendant's conduct." *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 382 (2024). That requirement is usually "easy" to satisfy where, unlike here, the challenged governmental action "require[s] or forbid[s] some action by the plaintiff." *Ibid.* But where, as here, the federal government has neither required nor forbidden the plaintiff to act, and the claimed injury "hinges on the response of [a] third party to the government action," standing is "substantially more difficult to establish." *Id.* at 382-383. This Court has often rejected "standing theories that rest on speculation about the decisions of independent actors." *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 414 (2013); see, *e.g.*, *Alliance for Hippocratic Medicine*, 602 U.S. at 383; *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561-562 (1992).

SAVE does not require respondents or their members "to do anything or to refrain from doing anything." *Trump* v. *New York*, 592 U.S. 125, 134 (2020) (per curiam). SAVE instead provides information to States. DHS's standard agreement with States specifies that a SAVE response "is not intended to be, and should not be construed as, an opinion on the part of DHS-USCIS or the United States regarding

any right or benefit or any program administered by the User Agency." DHS A.R. 767. The agreement further specifies that States must obtain "additional verification" for any "voter that does not verify as a U.S. citizen on initial verification," must provide "notice and hearing or other due process available under State or other applicable law" before "any removal from a voter roll," and must comply with all other applicable federal and state laws. DHS A.R. 762, 764. Reflecting those limitations, SAVE never asserts that an individual is *not* a citizen, instead prompting users to seek additional verification.

Any injuries to the four Texas voters were thus caused by Texas, not the federal government. It was Texas, applying Texas law and acting through Texas officials, that asked those individuals to provide proof of their citizenship. See App., *infra*, 32a-33a. And it was Texas, applying procedures set out in Texas law, that revoked those voters' registrations. See *id.* at 33a. Similarly, any future injuries to voters in other States would be attributable to those States. The fact that respondents have asserted actual voter injuries only with respect to four individuals in Texas—even though 27 States have agreed to use the modified SAVE system to check the voter rolls, and even though there have been 59.7 million voter-verification requests between January 1, 2025, and April 1, 2026, see D. Ct. Doc. 77-2, ¶¶ 21-22—confirms the point. What produces the claimed injury is a State's decision to act after receiving a SAVE response, not the SAVE response itself.

Reinforcing the absence of standing, a SAVE response is neither necessary nor sufficient for a State to demand proof of citizenship or to revoke a voter's registration. It is not necessary, because a State's ability to demand proof of citizenship from any of its registered voters, and revoke registrations under state law, does not require any federal involvement at all. And it is not sufficient, because a SAVE response, on

its own, changes no voter's status; only the State's independent decision to question or cancel a registration does that. SAVE thus provides, at most, only one input into a determination that the State controls as it administers its own voting laws and manages its own voter rolls. Respondents cannot establish standing through "speculation" about the States' "'unfettered choices.'" *Amnesty International*, 568 U.S. at 415 n.5.

Making the causal connection even more dubious, respondents cannot tie their asserted voter injuries to the specific conduct they challenge, the modifications to the SAVE system made in May 2025. Under both the old and the improved system, a State could ask SAVE to verify citizenship. Under both the old and the improved system, gaps in government records might sometimes leave SAVE unable to verify a person's citizenship, even when the person is a citizen—in fact, the old system's input restrictions made it much *less* able to confirm the citizenship of actual citizens. See p. 6, *supra*. And under both the old and the improved system, a State can decide for itself whether to act on that non-response by demanding proof of citizenship. Respondents cannot establish standing given that they would have faced the same injury both before and after the May 2025 update.

Notably, the lower courts never found that the May 2025 update somehow made SAVE less accurate. The voter-injury theory instead boils down to the notion that the government has injured respondents by making SAVE *more* accurate and easier to use. Before the May 2025 update, the theory seems to go, SAVE was so outdated, incomplete, and cumbersome that most States made little or no use of it. But after the update, the theory continues, the system verifies more voters as citizens, leaving a smaller pool of putative voters for States to scrutinize. Neither respondents nor the lower courts have cited any authority for the counterintuitive proposition that

a voter-verification system can injure someone by working better.

For similar reasons, respondents cannot establish that the relief entered against the federal government would likely redress the asserted voter injuries. Respondents complain that Texas sought proof of citizenship from four voters and revoked the registrations of two of those voters, but nothing in the district court's judgment requires Texas to reinstate those registrations. Respondents likewise complain that other States could seek proof of citizenship from voters or revoke their registrations, but the States remain free to take those steps even after the court's judgment. Because the judgment "would not give [respondents] legally enforceable protection from the [asserted voter injuries]," "they cannot satisfy Article III." *Haaland* v. *Brackeen*, 599 U.S. 255, 293-294 (2023).

The D.C. Circuit majority concluded that "the threatened injuries are fairly traceable and redressable because setting aside modified SAVE removes the federal response that sets the [States' citizenship-verification] process in motion." App., *infra*, 112a. But the district court's remedy does not "remov[e] the federal response." *Ibid.* To the contrary, the old SAVE system would provide the *same* (non-)response—that the federal government cannot confirm a person's citizenship—for an even larger pool of people. See p. 6, *supra*. The majority also found it "predictable" that States would react to SAVE by demanding proof of citizenship from voters. App., *infra*, 112a. But as to respondents' members, that prediction appears to have panned out for only four voters in one State, out of tens of millions of verification requests in 27 States. See p. 13, *supra*. That just underscores that any voter injury is caused by the States, not the federal government.

The district court, meanwhile, sought to paper over those shortcomings by emphasizing that Texas has intervened as a defendant in this case. See App., *infra*, 36a-

37a. But that does not change the reality that respondents have sued and obtained relief against the federal government—even though the federal government has not caused their injuries and even though relief against the federal government would not redress those injuries. Texas's participation as an intervenor does not create standing to sue and obtain a judgment against the United States.

Privacy injury. The district also concluded that respondents face "privacy injuries" because SAVE discloses "their members' private information in SSA records (including their [Social Security numbers] and citizenship status)" to the States. App., *infra*, 24a. But the asserted privacy injury is not concrete; it lacks the requisite "close historical or common-law analogue." *TransUnion*, 594 U.S. at 424.

As for SAVE's limited disclosure of information *to the States*, that does not cause any cognizable privacy injury. SAVE never reveals anyone's Social Security number to the States; instead, a State must already have a person's partial or full Social Security number if it wishes to include that information as part of a SAVE request. All SAVE discloses to the State is whether the federal government can confirm that the individual in question is a citizen. See pp. 6-7, *supra*. The district court viewed a person's "citizenship status" as the type of "private information" whose disclosure can give rise to "privacy injuries," but it cited no authority for that extraordinary claim. App., *infra*, 24a. Putative voters must attest that they are citizens when registering to vote; stating whether the federal government can confirm such attestations does not somehow reveal the type of information that the law has traditionally treated as private. In fact, far from treating citizenship status as private, federal law affirmatively requires DHS to verify citizenship status in response to requests from States. See 8 U.S.C. 1373(c).

As for the disclosure of information *within the Executive Branch*, that too does

not cause any cognizable privacy injury. When a SAVE user makes a request containing a partial Social Security number, and that partial number matches other information in the request, SSA discloses the full Social Security number to DHS. See 90 Fed. Reg. at 48,950. Such intra-governmental information sharing lacks a "close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion*, 594 U.S. at 425. The district court noted that the common law provides redress for torts such as intrusion upon seclusion and breach of confidence, see App., *infra*, 25a-29a, but those torts involve disclosures to the public, not the sharing of information within the government. The court sought to cabin its novel holding to the "unauthorized" sharing of information, App., *infra*, 26a, but injury in fact does not depend on legal authorization. See *TransUnion*, 594 U.S. at 427 ("[A]n injury in law is not an injury in fact."). The court's rationale thus implies, illogically, that an individual suffers an Article III injury whenever the government internally shares Social Security numbers in a perfectly lawful manner—for instance, when using the numbers to confirm the identity of an individual seeking entry to a secure facility.

Reputational injury. The district court next held that respondents' members face "reputational injuries" when SAVE identifies them as "potential non-citizens." App., *infra*, 23a, 25a. But SAVE never definitively asserts that a putative voter is not a citizen. Instead, it informs the user that it cannot verify a person's citizenship and prompts the user to seek further proof. See pp. 6-7, *supra*. The statement that SAVE cannot confirm a person's citizenship—which is factually true—does not cause cognizable reputational harm. The court analogized the alleged harm here to the harm caused by the tort of defamation, see App., *infra*, 29a-31a, but true statements are not defamatory, see *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 489 (1975).

Respondents also cannot show that the asserted reputational harms were fairly traceable to, or would be redressed by the relief entered against, the challenged updates to SAVE. As discussed, the district court did not find that the update reduced SAVE's accuracy. See p. 14, *supra*. Instead, the update *increased* the number of individuals whose citizenship the system could verify. Respondents thus cannot identify any individual whose citizenship would have been verified under the old system—thus avoiding the putative reputational injury—but would not be verified under the improved system. That, too, defeats standing on this theory.

Procedural injury. Finally, the district court held that respondents face "procedural injury" because they claim that the government has violated their procedural rights under the Privacy Act and the APA. App., *infra*, 38a. "But deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing." *Summers* v. *Earth Island Institute*, 555 U.S. 488, 496 (2009); see *Department of Education* v. *Brown*, 600 U.S. 551, 562 (2023). Procedural injury suffices only when a person "has been accorded a procedural right to protect his concrete interests." *Defenders of Wildlife*, 504 U.S. at 572 n.7. Because respondents lack cognizable concrete interests for the reasons discussed above, their procedural-injury theory also fails.

B. Section 1373 Establishes That DHS Has Statutory Authority To Adopt The Modified SAVE System

On the merits, respondents primarily contended below that DHS lacks the statutory authority to verify citizenship status through SAVE. See, *e.g.*, C.A. Stay Opp. 16. The district court declined to rely on that theory, instead principally holding that the Privacy Act and the Social Security Act prohibit the sharing of Social Security data under the modified SAVE system. See App., *infra*, 43a-56a. But 8 U.S.C.

1373 forecloses that rationale. Section 1373 authorizes DHS to verify citizenship through SAVE after obtaining relevant information from other agencies, and it also expressly displaces any prohibition on such information-sharing that other federal statutes may impose. As even the D.C. Circuit majority acknowledged, that argument is "properly preserved" for appeal. App., *infra*, 120a. And the lower courts' rejection of the argument, see *id.* at 69a-72a, 120a-122a, was manifestly erroneous.

Statutory authority. Section 1373 consists of three subsections. 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 * * * of any individual." 8 U.S.C. 1373(a). Section 1373(b), captioned "ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES," 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 * * * of any individual." 8 U.S.C. 1373(b). Finally, 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).

Section 1373(c) thus unambiguously requires, and so authorizes, DHS to "verify or ascertain the citizenship or immigration status of any individual." 8 U.S.C. 1373(c). That provision is framed as a command, and "[c]ommand includes permission." Antonin Scalia & Bryan A. Garner, *Reading Law* 193 (2012). "If you must do something, then you are necessarily allowed to do it." *Ibid.*

Sections 1373(a) and (b), too, authorize the update to SAVE. By prohibiting interference with DHS's sending and receiving of information regarding citizenship status, Section 1373(a) necessarily implies that DHS possesses the authority to send and receive that information. And Section 1373(b)'s caption, "ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES," shows that it grants governmental entities the authority to engage in the activities it lists—sending, requesting, exchanging, and maintaining information regarding immigration status.

The district court questioned whether obtaining information from SSA is "absolutely necessary" to verify citizenship, App., *infra*, 69a, but that absolute-necessity standard is too strict. Section 1373 authorizes SSA to share with DHS "information regarding [an individual's] citizenship status," 8 U.S.C. 1373(a), and SSA information qualifies whether or not it is absolutely necessary to verify citizenship. See *Patel* v. *Garland*, 596 U.S. 328, 339 (2022) (the word "regarding" "generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject"). Moreover, under a principle known as the predicate-act canon, the authorization of an act also authorizes a "reasonably" necessary "predicate act." Scalia & Garner 192-193 (emphasis omitted). In other words, when a legal text grants a power, it also authorizes the recipient of the power to use any "ordinary and appropriate means" of exercising it. *Free Speech Coalition, Inc.* v. *Paxton*, 606 U.S. 461, 478 (2025). It makes no difference that "some other approach" is "less restrictive" or "equally or more effective." *Id.* at 497-498.

The update to SAVE satisfies that test. Section 1373 requires and authorizes DHS to verify the citizenship status of "*any* individual." 8 U.S.C. 1373(c) (emphasis added); see 8 U.S.C. 1373(a) ("any individual); 8 U.S.C. 1373(b) ("any individual"). Yet the old SAVE could not verify the citizenship of natural-born citizens, both be-

cause they lack alien registration numbers and because individuals who never had any encounters with DHS did not appear in DHS records. See *SAVE Guide* 3. The updated SAVE overcomes the former problem by allowing users to enter Social Security numbers rather than alien registration numbers as numeric identifiers, and the latter problem by using SSA records (which do cover natural-born citizens). That is an ordinary, appropriate, and reasonably necessary means of fulfilling DHS's obligation to verify the citizenship status of any individual. Indeed, neither of the lower courts explained how DHS can reasonably comply with its obligation under Section 1373 to verify the citizenship of *any* individual a State asks about *without* obtaining SSA information.

Interaction with other statutes. Section 1373 does not just authorize DHS to verify citizenship (and to use SSA records to do so). For two reasons, it also precludes courts from relying on other statutes, such as the Privacy Act and the Social Security Act, to block citizenship-verification responses based on the sharing of Social Security information.

First, statutes "should be interpreted in a way that renders them compatible, not contradictory. There can be no justification for rendering provisions in conflict if they can be interpreted harmoniously." *Maracich* v. *Spears*, 570 U.S. 48, 68 (2013) (quoting Scalia & Garner 180) (brackets and ellipsis omitted). As explained in more detail below, the government's reading of the Privacy Act and Social Security Act enables it to comply with those laws while still fulfilling its obligations under Section 1373(c). See pp. 23-33, *infra*. On the district court's reading, by contrast, the Privacy Act and the Social Security Act effectively prevent the government from complying with Section 1373(c).

Second, even if the Privacy Act or the Social Security Act did prevent the shar-

ing of SSA information that DHS uses to verify citizenship status under Section 1373, the latter statute would prevail. Section 1373 was enacted in 1996—after the Privacy Act (1976) and the Social Security Act provision at issue (1990). In general, later statutes take precedence over earlier ones. See *EC Term of Years Trust* v. *United States*, 550 U.S. 429, 435 (2007). Moreover, Section 1373 applies "notwithstanding any other provision" of law. 8 U.S.C. 1373(a)-(b). The word "notwithstanding" "shows which provision prevails in the event of a clash." *NLRB* v. *SW General, Inc.*, 580 U.S. 288, 301 (2017) (quoting Scalia & Garner 126-127).

The district court reasoned that reading Section 1373 to override the Privacy Act and the Social Security Act would violate the presumption against implied repeals. App., *infra*, 65a-66a. But that presumption does not apply where, as here, a statute includes a notwithstanding clause. See *PLIVA, Inc.* v. *Mensing*, 564 U.S. 604, 621-623 (2011) (opinion of Thomas, J.). Such a clause—also known as a *non obstante* clause, after the Latin for "notwithstanding"—"acknowledge[s] that the statute might contradict prior law and instruct[s] courts not to apply the general presumption against implied repeals." *Id.* at 622. When Congress enacts such a clause, a court "need look no further than 'the ordinary meaning'" of the new statute; it "should not distort [the statute] to accommodate" other laws. *Id.* at 623. For the reasons discussed above, the ordinary meaning of Section 1373 permits the update to SAVE.

The D.C. Circuit majority, for its part, saw "little basis to read § 1373(c)'s general instruction to answer citizenship inquiries as * * * *silently displacing* an otherwise applicable confidentiality restriction." App., *infra*, 121a (emphasis added). But the majority entirely ignored Section 1373(a) and (b), which specify that Section 1373 applies "notwithstanding any other provision." 8 U.S.C. 1373(a) and (b). The whole point of the phrase "notwithstanding any other provision," *ibid.*, is to *expressly* "dis-

plac[e]" other laws, App., *infra*, 121a.

C. Respondents' Privacy Act And APA Claims Lack Merit

Even putting aside Section 1373, the district court erred in holding that the update to SAVE violates the Privacy Act (and, as a result, also violates the APA). App., *infra*, 44a-65a. Respondents lack a right of action to seek prospective relief for violations of the Privacy Act, and their substantive and procedural contentions under that Act are incorrect regardless. While the court of appeals majority expressly declined to address those issues, see App., *infra*, 132a, Judge Katsas's dissent agreed with the government on the merits arguments (without reaching the right-of-action argument), see *id.* at 146a.

Right of action. The Privacy Act contains a comprehensive remedial scheme for violations of its provisions. See 5 U.S.C. 552a(g). That scheme permits suit only by an "individual," 5 U.S.C. 552a(g)(1), a term defined to mean a citizen or lawful permanent resident, 5 U.S.C. 552a(a)(2). For two types of violations—refusals to amend records or to provide access to records—the Act authorizes individuals to seek prospective relief. See 5 U.S.C. 552a(g)(2)-(3). For all other violations, the Act authorizes individuals to seek only damages, and only if the violation was intentional or willful. See 5 U.S.C. 552a(g)(4). Because respondents are all organizations rather than individuals, the Act does not authorize them to sue at all. And because the violations alleged here fall in the catchall category for which the Act provides only damages, the Act does not authorize prospective relief. Respondents accordingly have no right of action under the Act to seek vacatur of the modified SAVE system. The district court did not suggest otherwise.

Nevertheless, the district court held that respondents could invoke the APA to obtain prospective relief for violations of the Privacy Act. See App., *infra*, 45a-49a.

But respondents may not invoke the general right of action conferred by the APA to evade the restrictions imposed by the Privacy Act's specific remedial scheme.

In statutory interpretation, "the specific governs the general," and where "a general authorization and a more limited, specific authorization exist side-by-side," "[t]he terms of the specific authorization must be complied with." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012). Otherwise, the "specific provision [would be] swallowed by the general one, 'violating the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.'" *Ibid.* (brackets omitted). As a result, "a precisely drawn, detailed statute pre-empts more general remedies." *Hinck* v. *United States*, 550 U.S. 501, 506 (2007). Consistent with that principle, this Court has repeatedly held that plaintiffs may not use the APA "to evade limitations on suit contained in other statutes." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 215 (2012). For instance, a plaintiff may not use the APA to end-run a specific statute's limits on who may sue, see *Block* v. *Community Nutrition Institute*, 467 U.S. 340, 345-348 (1984); its exhaustion requirement, see *ibid.*; or its limitations period, see *Block* v. *North Dakota ex rel. Board of University & School Lands*, 461 U.S. 273, 286 n.22 (1983). By the same logic, respondents may not invoke the APA here to end-run the Privacy Act's limits on the available relief.

Confirming that conclusion, the APA does not authorize review where other "statutes preclude judicial review," 5 U.S.C. 701(a)(1), or where "any other statute * * * expressly or impliedly forbids the relief which is sought," 5 U.S.C. 702. The Privacy Act "impliedly forbids the relief which is sought" here, *ibid.*, because it explicitly authorizes suit only by individuals and prospective relief only for two specific categories of violations, see 5 U.S.C. 552a(g)(1)-(3). It thus necessarily denies author-

ization for suits by organizations and prospective relief for other categories.

The same conclusion follows from the provisions stating that the APA permits review only of final agency action "for which there is no other adequate remedy in a court," 5 U.S.C. 704, and that a plaintiff may sue under the APA only if "the special statutory review proceeding relevant to the subject matter" is "inadequa[te]," 5 U.S.C. 703. The Privacy Act provides an adequate remedy: It expressly authorizes individuals to seek damages for "intentional or willful" violations. 5 U.S.C. 552a(g)(4). Damages are the classic example of an adequate remedy at law that forecloses equitable relief. See, *e.g.*, *Schoenthal* v. *Irving Trust Co.*, 287 U.S. 92, 95 (1932). And damages are the traditional remedy for the privacy torts to which the district court analogized the Privacy Act violations here. See App., *infra*, 25a-31a. In all events, the Privacy Act's reticulated remedial scheme reflects Congress's own judgment about what remedies are adequate for Privacy Act violations, and courts cannot second-guess that legislative choice through the APA.

The district court concluded that the D.C. Circuit had already rejected those arguments in *Doe* v. *Stephens*, 851 F.2d 1457 (D.C. Cir. 1988). See App., *infra*, 46a. But *Stephens* permitted an APA action to enforce a different statute—a law governing veterans' records—that borrowed some of the Privacy Act's substantive standards but contained no remedial scheme of its own. See 851 F.2d at 1465-1467. In any event, the D.C. Circuit's decision does not bind this Court.

The district court also found it significant that Congress has codified both the APA and the Privacy Act in Title 5 of the U.S. Code. See App., *infra*, 47a. But when Congress codified Title 5, it expressly instructed that "[a]n inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act." Act of Sept. 6, 1966, Pub. L. No. 89-554, § 7(e), 80

Stat. 631. Such "interpretation clauses are to be carefully followed." Scalia & Garner 225; see *United States* v. *Dixon*, 347 U.S. 381, 385-386 (1954). Regardless, the codification of both the APA and the Privacy Act in Title 5 does not affect the crucial point: Respondents may not invoke a general provision (whether labeled the APA or 5 U.S.C. 702) to circumvent and nullify the limits of a specific provision (whether labeled the Privacy Act or 5 U.S.C. 552a).

Substantive requirements. Even if respondents had a right of action, their Privacy Act claim would still fail. The district court held that SSA's disclosure of SSA records under the updated SAVE system violates a provision of the Privacy Act that prohibits an agency from disclosing a record without the consent of the individual concerned. 5 U.S.C. 552a(b). But that provision is subject to exceptions, and the disclosures here fit within the exception for "routine use." 5 U.S.C. 552a(b)(3).

The Privacy Act defines "routine use" as 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). A core "purpose" of Social Security numbers, *ibid.*, is to identify a particular individual. "Social Security numbers are unique numerical identifiers and are used pervasively in [federal] programs" for "keep[ing] track" of people and "matching" data with the right people. *Bowen* v. *Roy*, 476 U.S. 693, 710-711 (1986). The use of Social Security numbers in the updated SAVE system is "compatible" with that purpose, 5 U.S.C. 552a(a)(7), because SAVE uses those numbers to ensure that the citizenship information returned by SSA is matched with the correct individual. See 90 Fed. Reg. at 48,950.

The district court rejected that argument because it believed that the "purpose" of Social Security numbers is limited to verifying "work authorization and eligibility for SSA benefits." App., *infra*, 51a. But that cramped understanding of the purpose

of Social Security numbers is flawed. Social Security numbers are used in many contexts besides employment and Social Security benefits: tax returns, bank accounts, Selective Service System registration forms, passport applications, and driver's license applications, to name just a few. Social Security numbers are thus all-purpose numeric identifiers—which is why most Americans remember their Social Security numbers, but not, say, their driver's license numbers. SAVE's use of Social Security numbers is entirely compatible with that broad purpose. The district court wrongly "fram[ed] the collection purpose at too low a level of generality, which is at odds with both the statute's forgiving text ('compatible') and * * * the SSN's long-established role as a 'nearly universal identifier.'" *Id.* at 148a (Katsas, J., dissenting).

Procedural requirements. The district court separately concluded that the government failed to comply with the Privacy Act's notice-and-comment procedures, see App., *infra*, 56a-61a, and that those procedural defects rendered the update to SAVE arbitrary and capricious under the APA, see *id.* at 61a-65a. These procedural objections are baseless.

The Privacy Act provides that, to invoke the routine-use exception, an agency must first "publish in the Federal Register notice of 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 to the agency." 5 U.S.C. 552a(e)(11). There is no dispute that DHS and SSA published notices about the updated SAVE system in the Federal Register. See 90 Fed. Reg. 48,948 (Oct. 31, 2025); 90 Fed. Reg. 50,879 (Nov. 12, 2025). There is also no dispute that the agencies solicited public comment for the 30-day period required by statute. See 5 U.S.C. 552a(e)(11). Both agencies then certified that they received and considered the comments submitted. See D. Ct. Doc. 64-1 (Mar. 2, 2026); D. Ct. Doc. 65-1 (Mar. 11, 2026). The Privacy Act requires

no more.

The district court observed that the agencies updated SAVE in May 2025 but published the notices in October and November 2025. See App., *infra*, 57a. In doing so, the court overlooked that respondents have sought only prospective relief to redress alleged future harm, not damages to redress past harm. See *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 111-113 (1983) (distinguishing future from past harm). The court's observation about the timing of the notices shows at most that the past operation of the updated SAVE system may have violated the Privacy Act's procedural requirements. But as to the current and future operation of the system—the only conduct respondents seek to prohibit through this suit and the only purported harm redressed by the district court's vacatur order—the statutory notice-and-comment requirements have been satisfied. In other words, "now that the agencies *have* provided the requisite notice and opportunity to comment, any past procedural violations cannot justify *forward*-looking relief against modified SAVE." App., *infra*, 149a (Katsas, J., dissenting).

The district court also concluded that the agencies were insufficiently "open-minded" when reviewing comments. App., *infra*, 58a. But this Court has rejected the open-mindedness test in the context of APA notice-and-comment procedures, see *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania*, 591 U.S. 657, 685 (2020), and its reasons for doing so apply equally to the Privacy Act, see App., *infra*, 149a-150a (Katsas, J., dissenting). Like the APA, the Privacy Act requires an agency to satisfy certain "objective criteria"—namely, providing notice and providing an opportunity to comment. *Little Sisters*, 591 U.S. at 685. It does not require an agency to satisfy subjective criteria, such as maintaining a particular level of "open-mindedness." *Ibid.* In nonetheless applying such a criterion, the district court vio-

lated "the general rule against inquiring into 'the mental processes of administrative decisionmakers,'" *Department of Commerce* v. *New York*, 588 U.S. 752, 781 (2019), and disregarded the "presumption of regularity" owed to the agencies' certifications that they considered the comments, *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14 (1926).

The district court next faulted the agencies for not issuing written responses to the comments, see App., *infra*, 63a, but that rationale ignores the differences between the APA's and the Privacy Act's notice-and-comment procedures. The APA requires an agency to provide "notice," to provide an opportunity to submit "written data, views, or arguments," *and* then to issue "a concise general statement of [the rule's] basis and purpose" reflecting "consideration of the relevant matter presented." 5 U.S.C. 553(c). The Privacy Act, by contrast, requires only "notice" and opportunity to submit "written data, views, or arguments"; it says nothing about issuing a statement reflecting consideration of the comments. 5 U.S.C. 552a(e)(11). This Court "do[es] not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and [its] reluctance is even greater when Congress has shown elsewhere * * * that it knows how to make such a requirement manifest." *Jama* v. *ICE*, 543 U.S. 335, 341 (2005); see App., *infra*, 149a (Katsas, J., dissenting). Moreover, it is a "basic tenet of administrative law" that agencies may "fashion their own rules of procedure" and that courts are "not free to impose" "procedural requirements" beyond those legislated by Congress. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, Inc.*, 435 U.S. 519, 524, 544 (1978). Confirming that reading, agencies ordinarily do not provide responses to comments under the Privacy Act.

Finally, the district court erred in holding that the agencies' lack of a response to the comments rendered their actions arbitrary and capricious. See App., *infra*,

61a-65a. The obligation to respond to comments in APA rulemakings arises not from the APA's arbitrary-and-capricious standard but from its notice-and-comment clauses—which, as just explained, do not apply here. To be sure, an agency acts arbitrarily if it "entirely fail[s] to consider an important aspect of the problem" (whether or not raised in comments). *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983). The court suggested that the agencies had committed such an error because they did not consider "the reliance interests of persons who had provided information to SSA," App., *infra*, 62a, but no such reliance interests exist. Social Security numbers are issued *by* SSA *to* individuals—not provided to the agency by individuals who have reliance interests in how the numbers are used. There is no plausible argument that any of respondents' members would not have sought issuance of Social Security numbers if they had known that SSA would share information with DHS under the modified SAVE system. Indeed, lacking any Social Security number would make it far *more* likely that the voter and reputational injuries they allege would occur, given that the lack of a Social Security number would strongly suggest that they were not citizens.

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). Without any meaningful analysis, the district court concluded that the "modified SAVE system violates this prohibition," App., *infra*, 43a, because the provision forbids both SSA's disclosure of information "to DHS" and DHS's later disclosure of information "to SAVE users," *id.* at 44a. That is wrong.

SSA's disclosure of information to DHS does not violate Section 405(c)(2). The

cited clause, by its plain terms, protects only numbers and related records that were "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) (emphasis added). But SSA has issued Social Security numbers since 1936 and has required proof of citizenship or immigration status to obtain such numbers since October 1972. See Carolyn Puckett, SSA, *The Story of the Social Security Number* (July 2009), https://perma.cc/8Z3Z-DDB3. The agency thus "obtains and maintains its relevant records pursuant to laws enacted well before 1990." App., *infra*, 140a (Katsas, J., dissenting).

DHS's disclosure of information to SAVE users likewise does not violate Section 405(c)(2), for two independent reasons. For one, as the D.C. Circuit majority noted, DHS provides citizenship information through SAVE pursuant to Section 1373. See App., *infra*, 125a. As discussed, that statute applies "[n]otwithstanding any other provision" of law. 8 U.S.C. 1373(a)-(b), see p. 22, *supra*. Even the majority recognized that the government had preserved that argument, see App., *infra*, 120a, and it provides a complete defense to respondents' Social Security Act claim.

For another, responses to SAVE users do not violate the requirement that "[s]ocial security account numbers and related records" be kept "confidential." 42 U.S.C. 405(c)(2)(C)(viii)(I). DHS, again, does not share Social Security numbers with SAVE users. See App., *infra*, 141a (Katsas, J., dissenting). Nor does it share "related records," a term defined to mean records that "indicat[e], directly or indirectly, the identity of any individual" whose Social Security records are maintained. 42 U.S.C. 405(c)(2)(C)(viii)(IV); see App., *infra*, 141a (Katsas, J., dissenting). The only information that DHS discloses to the SAVE user is whether the person identified by the user is a citizen (and whether he is deceased)—not information that reveals anyone's identity. Identifying information flows the other way; it is supplied *by* the SAVE user

to DHS when making a SAVE request. Thus, DHS *does* preserve the confidentiality of the Social Security records that it obtains from SSA.

The lower courts asserted that the government had forfeited its argument about the meaning of the Social Security Act—though not its argument about Section 1373—in its summary-judgment briefing. See App., *infra*, 81a-85a, 114a. But that briefing just reflects how respondents have litigated this case. The D.C. Circuit majority's assertion that respondents "squarely invoked § 405(c)(2)(C)(viii)(I)," App., *infra*, 115a (citing D. Ct. Doc. 66-1, at 32-33 (Mar. 12, 2026)), is an overstatement. Respondents' summary-judgment brief primarily argued over the course of ten pages that the statutes establishing SAVE did not authorize its use for voter verification at all, see D. Ct. Doc. 66-1, at 26-35, and relegated the Social Security Act provision on which the district court ultimately relied to a *single paragraph* in the pages cited by the D.C. Circuit majority, see *id.* at 32-33. For that reason, the government appropriately focused its response on the argument that the use of SAVE for voter verification is statutorily authorized, while just as briefly invoking Section 1373 to refute respondents' cursory invocation of Section 405(c)(2). See D. Ct. Doc. 77-1, at 45-52 (Apr. 2, 2026). Applicants cannot be faulted for failing to preemptively address an argument that was not meaningfully raised in respondents' briefing and that took on prominence only in the district court's opinion.

Regardless, "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992). Relatedly, "[w]hen an issue or claim is properly before the court, the court * * * retains the independent power to identify and apply the proper construction of governing law." *Kamen* v. *Kemper Financial Services, Inc.*, 500 U.S. 90, 99 (1991). The question

whether the updated SAVE system complies with the Social Security Act is properly before this Court. The government may therefore raise, and this Court may consider, any arguments that it does. Addressing those arguments "would n[ot] prejudice the plaintiffs"; the government, at a minimum, "made its likely winning argument in stay motions before the district court and [the court of appeals]," and respondents "thoroughly responded on the merits." App., *infra*, 145a (Katsas, J., dissenting).

In all events, contrary to the D.C. Circuit majority's suggestion, the government's arguments under the Social Security Act are not its "central ground for a stay." App., *infra*, 114a. The government's stay motion in the court of appeals, like its application here, primarily argued that respondents lack standing, see Gov't C.A. Stay Mot. 10-15, and that Section 1373 overrides the statutory provisions on which respondents rely, see *id.* at 17-18, 23. Those concededly preserved contentions independently justify a stay.

E. The Remaining Factors Support A Stay

In deciding a stay application, this Court also considers the applicant's likelihood of obtaining certiorari; its likelihood of suffering irreparable harm; and, in close cases, the balance of the equities. See p. 11, *supra*. Those factors support a stay here.

Certworthiness. If the D.C. Circuit affirms the district court's judgment, its decision would warrant this Court's review. Instead of granting individualized relief to particular litigants, the district court "vacate[d] and se[t] aside the SAVE 'modified system'" universally. App., *infra*, 76a. The order's universal scope weighs in favor of this Court's review. See *Labrador* v. *Poe*, 144 S. Ct. 921, 931 & n.3 (2024) (Kavanaugh, J., concurring). The order's universal scope also limits percolation in other courts and hampers the development of a circuit conflict. See *Trump* v. *Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring). This Court often grants review when

lower courts universally vacate important agency actions, even absent a circuit conflict. See, *e.g.*, *Bondi* v. *VanDerStok*, 604 U.S. 458, 467 (2025); *Department of Education* v. *Career Colleges & Schools of Texas*, 145 S. Ct. 1039 (2025); *United States* v. *Texas*, 599 U.S. 670, 675 (2023).

SAVE's importance underscores the need for this Court's review. Around 1350 federal, state, local, and tribal agencies nationwide use SAVE for a range of purposes, such as checking eligibility to vote, to receive public benefits, and to obtain licenses. See D. Ct. Doc. 116-2, ¶ 4 (July 1, 2026); D. Ct. Doc. 77-2, ¶ 7. In Fiscal Year 2025, SAVE completed 198.9 million verifications. See D. Ct. Doc. 77-2, ¶ 19. And before the district court's vacatur order, the updated SAVE system processed more than one million verification requests every day. See D. Ct. Doc. 116-2, ¶ 5.

Irreparable harm. The district court's order causes irreparable harm to the government and the public (including the States), whose interests merge here. See *Nken* v. *Holder*, 556 U.S. 418, 435 (2009). The government has a statutory obligation to verify citizenship upon request by a State. See 8 U.S.C. 1373(c). The district court's order precludes the government from using the system best suited to that task and instead forces the government to use an older, slower, more cumbersome, and less capable process. As noted above, that older system could not verify citizenship status without a DHS-specific immigration identifier (which States often do not know, and which natural-born citizens do not have) and required users to enter requests one by one rather than in bulk. See p. 6, *supra*.

By making SAVE more difficult to use, the district court's order impairs the proper administration of federal elections. Many States rely on SAVE to help fulfill their federal statutory obligation to "ensure that voter registration records in the State are accurate and are updated regularly." 52 U.S.C. 21083(a)(4). Since May

2025, the updated SAVE system has verified more than 65 million voters across 26 States as U.S. citizens, while flagging 28,635 potential non-U.S. citizens on state voter lists. See D. Ct. Doc. 116-2, ¶ 12. The district court's order, however, makes it harder to detect ineligible voters, undermining the integrity of federal elections and public confidence in the results of those elections. Because reversal of the district court's judgment "would come too late for the 2026 midterms," those harms are irreparable. *Trump* v. *California*, No. 26A124, slip op. 9 (Aug. 24, 2026) (per curiam).

The court of appeals majority discounted those election-related harms on the ground that "federal law constrains systematic voter-list maintenance * * * within the 90-day period preceding a federal primary or general election." App., *infra*, 131a (citing 52 U.S.C. 20507(c)(2)(A)). But that assumes that the cited provision restricts States' authority to remove aliens from the voter rolls. While two circuits have read the provision that way, another circuit has read it the opposite way, and it is for now an open question in the remaining circuits—one that this Court is poised to decide in the coming Term. See Gov't Cert. Br. at 14-16, *RNC* v. *Mi Familia Vota*, No. 25-1017. Accordingly, a stay would not come too late for most of the States in the country to use the modified SAVE system insofar as they agree with the government's position that the 90-day provision does not apply to noncitizens who were never properly registered in the first place. See Gov't Br. at 31-44, *Mi Familia Vota*, *supra* (No. 25-1017); see also *Beals* v. *Virginia Coalition for Immigrant Rights*, No. 24A407, 2024 WL 4608863, at *1 (Oct. 30, 2024) (staying injunction restricting removal of noncitizens from the voter rolls within the 90-day period). In addition, even if it is now too late for States to conduct "systematic" voter-list maintenance, App., *infra*, 131a, the district court's order inflicts irreparable harm by preventing the use of the modified SAVE system for *individualized* decisions that all agree are not covered by the 90-

day provision, see *id.* at 152a n.4 (Katsas, J., dissenting).

Adding to the irreparable harm caused by the district court's order, SAVE is used for a variety of purposes beyond verifying voter eligibility. The President has ordered executive agencies to take appropriate action to ensure that federal public benefits are not provided to ineligible aliens. See Exec. Order 14,159, § 20, 90 Fed. Reg. 8443, 8447 (Jan. 29, 2025); Exec. Order 14,218, § 2, 90 Fed. Reg. 10,581, 10,581 (Feb. 25, 2025). Consistent with those orders, "multiple federal agencies have submitted over 298 million verification requests through SAVE, mostly using a combination of the SSNs and the bulk upload tool." D. Ct. Doc. 116-2, ¶ 6. Further, the Department of Transportation requires States to use the updated SAVE system to verify eligibility for commercial driver's licenses, see 91 Fed. Reg. 7044 (Feb. 13, 2026), and the Department of Housing and Urban Development had planned to require States to use the updated system to verify applicants' eligibility for certain housing programs, see 91 Fed. Reg. 8151 (Feb. 20, 2026). Many States also use SAVE to verify eligibility for state-provided benefits. See D. Ct. Doc. 116-2, ¶ 7.

The irreparable harm caused by the district court's order does not end there. By preventing DHS from updating its own records with more current citizenship and immigration information held by SSA, the order creates gaps in the government's ability to verify identity and status. See D. Ct. Doc. 116-2, ¶ 8. Malicious actors could exploit those gaps to obtain benefits fraudulently or to gain government employment, entry into secure facilities, or government-issued licenses or credentials. See *id.* ¶ 11. In addition, the court's order has forced DHS, at substantial cost, to maintain both the old SAVE system and the upgraded SAVE system in parallel. See *id.* ¶ 10. And the order interferes with the government's ability to comply with another federal court's order enforcing an earlier settlement that resolved several States' challenges

to the old SAVE system. See App., *infra*, 151a (Katsas, J., dissenting).

Balance of the equities. Respondents would not suffer any irreparable harm from a stay. See App., *infra*, 153a (Katsas, J., dissenting). The updated SAVE system does not cause respondents even an Article III injury, see pp. 11-18, *supra*, much less irreparable harm. Moreover, the district court denied respondents' motion for a preliminary injunction, finding that they had failed to establish irreparable harm at that time. See D. Ct. Doc. 55, at 11 (Nov. 17, 2025). A stay would therefore preserve the status quo that had existed for over a year (from the May 2025 update until the court's June 2026 order), not inflict some new injury on respondents. In all events, this is not the type of "close cas[e]" where the balance of equities matters in considering a stay application, see *Brown*, No. 26A274, slip op. 4 (citing *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam)), because, as demonstrated above, the government has shown a high likelihood of success on the merits and serious irreparable harm, which are the "most critical" factors, *California*, No. 26A124, slip op. 3 (quoting *Nken*, 556 U.S. at 434).

CONCLUSION

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

Respectfully submitted.

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