



**Washington, D.C.
Regional Office**
1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

**National
Headquarters
Los Angeles
Regional Office**
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

**Chicago
Regional Office**
11 East Adams
Suite 700
Chicago, IL 60603
Tel: 312.427.0701
Fax: 312.427.0691

**San Antonio
Regional Office**
110 Broadway
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

**Sacramento
Policy Office**
1512 14th Street
Sacramento, CA 95814
Tel: 916.444.3031
Fax: 916.444.7207

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December 12, 2025

Mr. Matthew Ramsey
Head of Privacy and Disclosure Policy, Law and Policy
Social Security Administration
Room G-401 West High Rise, 6401 Security Blvd.,
Baltimore, Maryland 21235-6401

**RE: SSA Docket No. SSA-2025-0225, Privacy Act of 1974; System of Records;
Master Files of Social Security Number (SSN) Holders and SSN Applications,
60-0058.**

Dear Mr. Ramsey:

The Mexican American Legal Defense and Educational Fund (“MALDEF”) submits this public comment to request that the Social Security Administration (“SSA”) rescind its November 12, 2025 system of records notice (“SORN”) entitled Privacy Act of 1974; System of Records found in 90 Fed. Reg. 50880 (“SSA SORN”), modifying its Master File of Social Security Number (SSN) Holders and SSN Applications System of Records (“Enumeration System”) to authorize DHS’ SAVE system of records (“SAVE System”) to access Enumeration System records. Founded in 1968, MALDEF is the nation’s leading Latino legal civil rights organization. Described as the “law firm of the Latino community,” MALDEF promotes social change in the areas of immigrant rights, employment, education, voting rights, and freedom from open racial bias.

SSA has known, for a long time now, that its citizenship data is not accurate for the purpose of making citizenship determinations. It “did not begin to consistently maintain citizenship information until 1981[,]” and as a result, “does not have citizenship information for all individuals ... issued an SSN.”¹ A 2006 audit by the SSA’s Office of Inspector General estimated that its databases incorrectly identified about 3.3 million U.S. citizens as noncitizens “because they had become U.S. citizens after obtaining their SSN” and “had not updated their records with SSA.”² As SSA reiterated just two years ago, it only “maintains a snapshot of” individuals’

¹ SOC. SEC. ADMIN., *Letter from SSA Off. of Gen. Counsel to Fair Elections Ctr.* at 2 (July 13, 2023) (“July 2023 SSA Ltr.”), available at <https://perma.cc/KS2N-U2US>.

² SSA OFF. OF THE INSPECTOR GEN., *Congressional Response Report: Accuracy of the Social Security Administration’s Numident File* at iii (No. A-08-06-26100, Dec. 18, 2006) (“SSA Inspector General Report”), available at <https://perma.cc/5G2J-FF4V>.

“citizenship status at the time of their interaction with SSA[,]” and “there is no obligation for an individual to report a change in their immigration status unless the individual is receiving Social Security payments.”³ The federal government recently represented in court that these “inaccuracies likely still exist.”⁴ Even former Acting SSA Commissioner Leland Dudek, a longtime SSA employee who held that position as recently as May 2025, has gone on record stating that “SSA data is not a reliable way to determine citizenship” status.⁵

Despite this body of evidence, SSA has modified its Enumeration System to authorize DHS’ SAVE System (which itself has a longstanding history of its own accuracy issues)⁶ to allow user agencies to conduct bulk searches with full or partial SSNs to audit voter rolls for noncitizens. If SSA continues supplying DHS with information it knows to be inaccurate, the SAVE System will be unable to fulfill its intended purpose of providing reliable benefit determinations.

An even more inaccurate SAVE System will have a disproportionate effect on the Latino community. With a population of 68 million, Latinos comprise 20 percent of the U.S., according to the Pew Research Center, making them the country’s second largest racial or ethnic group.⁷ Additionally, Latinos are among the fastest-growing minority groups in the United States.⁸ Latinos thus continue to predominate in U.S. naturalization statistics year over year.⁹ As a group with hundreds of thousands of people changing in status from legal residents with SSNs to citizens eligible to vote every year, the Latino community will experience the bulk of the harms stemming from SSA’s decision to release inaccurate Enumeration System records to DHS for use in its SAVE System.

In addition to these important policy considerations, the modified Enumeration System violates the Privacy Act and Administrative Procedure Act (“APA”) several times over, as well as the Social Security Act.

I. Background

SSA’s Enumeration system is an online system of records.¹⁰ It was created to assist in the general administration of the Social Security Act, to ensure that wage records are accurately collected, and to

³ July 2023 SSA Ltr. at 2.

⁴ *League of Woman Voters et al. v. DHS et al.*, 1:25-cv-03501-SLS, Doc. 55 at 8 (D.D.C. Nov. 17, 2025) (Mem. Op.).

⁵ Vittoria Elliot, *Social Security Data is Openly Being Shared with DHS to Target Immigrants*, WIRED (Nov. 18, 2025) (quoting Mr. Dudek), <https://www.wired.com/story/social-security-data-shared-with-dhs-target-immigrants/>.

⁶ See, e.g., Amy Sherman, *Fact Check: Do States Verify U.S. Citizenship as a Condition For Voting?*, AUSTIN AMERICAN STATESMAN (December 7, 2020) (highlighting states abandoning the SAVE system due to accuracy issues), <https://www.statesman.com/story/news/politics/2020/12/07/do-states-verify-u-s-citizenship-condition-voting/6480041002/>; U.S. GOV’T ACCOUNTABILITY OFF., *Immigration Status Verification for Benefits: Actions Needed to Improve Effectiveness and Oversight* at 2 (March 2017) (outlining the inadequate information correction mechanisms in SAVE), available at <https://www.gao.gov/assets/gao-17-204.pdf>.

⁷ Gabriel Piña et al., *Key Facts About U.S. Latinos*, PEW RESEARCH CENTER (Oct. 22, 2025), <https://www.pewresearch.org/short-reads/2023/09/22/key-facts-about-us-latinos-for-national-hispanic-heritage-month/> (last visited Nov. 18, 2025).

⁸ *Id.*

⁹ See *Naturalization Statistics*, U.S. CITIZENSHIP AND IMM. SERVS., <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics> (last visited Nov. 18, 2025).

¹⁰ See generally SSA SORN.

prevent the issuance of multiple SSNs to a person or SSNs to fraudulent applicants, amongst other goals.¹¹ It contains all of the identifying information SSA collects in SSN applications, including “name, date and place of birth, sex identification, both parents’ names, reference number, and alien registration number[.]”¹² It also contains “a citizenship code that identifies the number holder’s status as a U.S. Citizen or the work authorization of a non-citizen[.]” and “a special indicator code that identifies types of questionable data or special circumstances concerning an application for an SSN[.]” amongst other personal identifying information.¹³

The SAVE System is an online system of records administered by the U.S. Citizenship and Immigration Services (“USCIS”).¹⁴ It was created to allow federal, state, and local agencies to verify the citizenship and immigration status of applicants for government benefits.¹⁵ Prior to April 2025, SAVE was limited in scope and functionality.¹⁶ DHS referred to the System as a database, and it only accessed records in DHS’ possession.¹⁷ It only permitted queries of, and access to databases containing, information about noncitizens and certain naturalized and derived U.S. citizens.¹⁸ To search the SAVE System, the user agency needed to use a DHS-issued identifier.¹⁹ User agencies could only search the System for one individual at a time.²⁰ And DHS did not claim the authority to collect data from other agencies for the purpose of auditing state voter rolls.²¹

DHS historically recognized the SAVE System as subject to the requirements of the Privacy Act. Indeed, for the prior *eight* modifications it made to the System, DHS published SORNs in the Federal Register, as required by the Privacy Act.²² So, too, had SSA recognized its Enumeration System as subject to the Privacy Act, repeatedly publishing SORNs for any updates it made to that System.²³ But in April 2025, in

¹¹ *Id.* at 50880.

¹² *Id.*

¹³ *Id.* at 50880-81.

¹⁴ *See, e.g.,* Privacy Act of 1974; System of Records; Department of Homeland Security United States Citizenship and Immigration Services–004 Systematic Alien Verification for Entitlements Program System of Records, 90 Fed. Reg. 48948 (Oct. 31, 2025) (“DHS SORN”).

¹⁵ *See id.* at 48949.

¹⁶ *See generally* Privacy Act of 1974; Notice of Modified System of Records, 85 Fed. Reg. 31798 (May 27, 2020) (“DHS 2020 SORN”).

¹⁷ U.S. DEP’T OF HOMELAND SEC., *Privacy Impact Assessment for the Systematic Alien Verification for Entitlements Program* at 2 (DHS Ref. No. DHS/USCIS/PIA-006(c), June 30, 2020) (“2020 SAVE PIA”), available at <https://perma.cc/HU2M-NTL8>; U.S. DEP’T OF HOMELAND SEC., *DHS, USCIS, DOGE Overhaul Systematic Alien Verification for Entitlements Database* (press release, April 22, 2025) (“April 2025 SAVE Press Release”), available at <https://perma.cc/Y8A5-YX3M>.

¹⁸ *See* DHS 2020 SORN at 31800; 2020 SAVE PIA at 3.

¹⁹ DHS 2020 SORN at 31799.

²⁰ *See id.*

²¹ *See generally* DHS 2020 SORN.

²² *See* DHS 2020 SORN; Privacy Act of 1974; Department of Homeland Security United States Citizenship and Immigration Services–004 Systematic Alien Verification for Entitlements Program System of Records, 81 Fed. Reg. 78619 (Nov. 8, 2016); Privacy Act of 1974; Department of Homeland Security United States Citizenship and Immigration Services–004 Systematic Alien Verification for Entitlements Program System of Records, 77 Fed. Reg. 47415 (Aug. 8, 2012); Privacy Act of 1974; USCIS–004 Verification Information System (VIS) System of Records Notice, 73 Fed. Reg. 75445 (Dec. 11, 2008); Privacy Act of 1974; USCIS–004 Verification Information System (VIS) System of Records Notice, 73 Fed. Reg. 10793 (Feb. 28, 2008); Privacy Act of 1974; USCIS–004 Verification Information System (VIS) System of Records Notice, 72 Fed. Reg. 17569 (Apr. 9, 2007); Privacy Act of 1974; System of Records, 67 Fed. Reg. 64134 (Oct. 17, 2002); Privacy Act of 1974; System of Records, 66 Fed. Reg. 46812 (Sep. 7, 2001).

²³ *See, e.g.,* Privacy Act of 1974; Social Security Administration Master Files of Social Security Number

response to various Executive Orders,²⁴ SSA and DHS joined forces to overhaul the SAVE System to prevent “voting illegally,”²⁵ entirely ignoring the requirements of the Privacy Act in the process.²⁶ Without any advanced public notice or opportunity for public comment, SSA began to provide DHS access to its Enumeration System, and DHS modified its SAVE System to query that data.²⁷

Today, DHS no longer refers to the SAVE System as a database of DHS records. It is now a tool to directly “search[] multiple government databases or systems to provide a SAVE response.”²⁸ The new SAVE System “match[es] data submitted through SAVE to SSA records in SSA’s” Enumeration System.²⁹ It allows user agencies to conduct bulk searches of individuals by partial SSN number, enabling uploads and searches of potentially millions of individuals’ sensitive SSA data in a single query.³⁰ And it now permits searches of, and accesses to databases containing, information on U.S.-born citizens.³¹

Only on October 31, 2025, did DHS eventually publish a SORN for the SAVE System identifying the changes it had already implemented, in which it now claimed the authority to collect citizenship data for the purpose of voter registration verification.³² Later, on November 12, 2025, SSA belatedly attempted to meet the requirements of the Privacy Act as well, issuing the SSA SORN for modifications it had already made to its Enumeration System.³³

(SSN) Holders and SSN Applications (60–0058) Correction, 90 Fed. Reg. 10025 (Feb. 20, 2025); Privacy Act of 1974; Social Security Administration Master Files of Social Security Number (SSN) Holders and SSN Applications (60–0058), 89 Fed. Reg. 107185 (Dec. 31, 2024); Privacy Act of 1974; Social Security Administration Master Files of Social Security Number (SSN) Holders and SSN Applications (60–0058), 87 Fed. Reg. (Jan. 4, 2022).

²⁴ See Exec. Order No. 14158, *Establishing and Implementing the President’s “Department of Government Efficiency”*, 90 Fed. Reg. 8441 (Jan. 20, 2025); Exec. Order No. 14243, *Stopping Waste, Fraud, and Abuse by Eliminating Information Silos*, 90 Fed. Reg. 13681 (Mar. 20, 2025); Exec. Order No. 14248, *Preserving and Protecting the Integrity of American Elections*, 90 Fed. Reg. 14005 (Mar. 25, 2025).

²⁵ April 22, 2025 SAVE Press Release.

²⁶ See *League of Women Voters, et al. v. DHS et al.*, 1:25-cv-03501-SLS, Doc. 55 at 5-6 (D.D.C. Nov. 17, 2025) (Mem. Op.)

²⁷ See SOC. SEC. ADMIN & DEP’T OF HOMELAND SEC., *Letter Agreement Providing for Information Sharing Between DHS, USCIS, and SSA Regarding Citizenship* at 4 (May 15, 2025) (“DHS-SSA May 15 Ltr.”), available at https://www.ssa.gov/foia/resources/proactivedisclosure/2025/May%2015,%202025%20SSA-DHS-USCIS%20Agreement_Redacted.pdf.

²⁸ DHS SORN at 48949.

²⁹ DHS-SSA May 15 Ltr. at 4.

³⁰ DHS SORN at 48951.

³¹ *Id.* at 48950.

³² DHS SORN.

³³ SSA SORN.

II. Analysis

A. The Privacy Act Prohibits SSA from Releasing Citizenship Records in its Enumeration System to DHS for Use in its SAVE System

The Privacy Act presumptively prohibits agencies from sharing records³⁴ contained within systems of records with each other.³⁵ A system of records is a “group of any records under the control of an agency from which information is retrieved by name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.”³⁶ The Act dictates that unless an agency receives a “written request” or receives the “prior consent” of an “individual to whom a record pertains,” “[n]o agency shall disclose any record which is contained in a system of records ... to another agency[.]”³⁷ This prohibition on disclosure of records is subject to 12 limited exceptions.³⁸

A commonly relied upon exception is the “routine use” exception.³⁹ To meet it, the disclosed record must be used “for a purpose which is compatible with the purpose for which [the record] was collected.”⁴⁰ If a disclosure meets this compatibility threshold, the disclosing agency must nevertheless first include in its annual publication in the Federal Register “notice” describing “each routine use of the records contained in the system, including the categories of users and the purpose of such use[.]”⁴¹ Without first providing notice of the routine use in the Federal Register, the agency cannot share those records under the routine-use exception.⁴²

When DHS first began to implement the modified SAVE System prior to the DHS SORN (and even still upon publication of that SORN), it was entirely unclear on what basis SSA believed it could share its Enumeration System records with DHS. However, in the subsequent November 2025 SSA SORN modifying the Enumeration System, SSA purports to share all these records with DHS under the routine-use exception.⁴³

As a threshold matter, because the SSA SORN has only now just proposed that these records may be shared under the routine-use exception, SSA’s sharing of Enumeration System records to date has been unlawful.⁴⁴ In acting “without observance of procedure required by law[.]” it has violated the APA in the process.⁴⁵

³⁴ A record is “any item collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.” 5 U.S.C. § 552a(a)(4).

³⁵ See *Id.* at §§ 552a(a)(5), (b).

³⁶ *Id.* at § 552a(a)(5). Both agencies recognize that the SAVE System and the Enumeration System are systems of records. DHS SORN; SSA SORN.

³⁷ 5 U.S.C. § 552a(b).

³⁸ See *id.*

³⁹ *Id.* at §§ 552a(b)(3), (a)(7).

⁴⁰ *Id.* at § 552a(a)(7).

⁴¹ *Id.* at §§ 552a(e)(4), (e)(4)(D).

⁴² *Id.*; see also, e.g., *Fattahi v. Bureau of Alcohol, Tobacco & Firearms*, 186 F. Supp. 2d 656, 660 (E.D. Va. 2002).

⁴³ SSA SORN at 50883.

⁴⁴ See 5 U.S.C. § 552a(e)(4)(D); see also, e.g., *Fattahi*, 186 F. Supp. 2d at 660.

⁴⁵ 5 U.S.C. § 706(2)(D).

But the Privacy Act prohibits SSA from sharing Enumeration System records with DHS for two additional reasons: first, because SSA's original purpose for collecting the records is not compatible with DHS' intended use of those records; and second, because the SSA SORN that finally included sharing Enumeration System records with DHS as a routine use does not provide adequate and meaningful notice to the public as to the purposes for which DHS will use their information.

1. The Original Purpose that SSA Collected its Enumeration System Records is not Compatible with DHS' Intended Use of Those Records

In determining whether an agency can disclose records under the routine-use exception, an agency must first identify its original purpose for collecting those records. In doing so, it must identify the statutory basis for creating the system of records.⁴⁶ For a disclosure of records to be compatible with that original purpose, "[t]here must be a [] concrete relationship or similarity, some meaningful degree of convergence, between the disclosing agency's purpose in gathering the information and in its disclosure."⁴⁷

SSA states that it created its Enumeration System for the purpose of implementing sections 205(a) and (c)(2) of the Social Security Act, codified in the U.S. Code at 42 U.S.C. §§ 405(a) and (c)(2), respectively.⁴⁸ But neither statute permits the SSA to collect data for a purpose compatible with DHS' new intended use of these records—to create a centralized citizenship verification tool to bulk-audit voter rolls for noncitizens.

Section 205(a) is a general grant of authority to the SSA commissioner to "make rules and regulations and to establish procedures ... which are necessary and appropriate to carry out" "the provisions of this subchapter[.]" and to "adopt reasonable and proper rules and regulations to ... provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder."⁴⁹ This is merely a general grant of authority to implement the Social Security Act and make benefit determinations under that Act. Record collection to enforce and implement the Social Security Act is not compatible with record collection for the purpose of creating a centralized citizenship verification tool to bulk-audit voter rolls.⁵⁰

Nor does subsection (c)(2) provide SSA the authority to collect records for a purpose compatible with DHS' intended use. Subsection (c) is titled "Wage records."⁵¹ It authorizes the Commissioner to "establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual[.]"⁵² The Commissioner may require individuals to "furnish satisfactory proof of a social security account number[.]" but only "as a condition for receipt of benefits under this subchapter."⁵³ The Commissioner is authorized to "obtain such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity" of an individual, but only for the purpose of

⁴⁶ See *Fattahi*, 186 F. Supp. 2d at 661 (E.D. Va. 2002).

⁴⁷ *Britt v. Naval Investigative Serv.*, 886 F.2d 554, 549-50 (3d Cir. 1989) (citing *Covert v. Harrington*, 876 F.2d 751, 755 (9th Cir. 1989) and *Mazaleski v. Treusdell*, 562 F.2d 701, 713 n.31 (D.C. Cir. 1977)).

⁴⁸ SSA SORN at 50880.

⁴⁹ 42 U.S.C. § 205(a).

⁵⁰ See *Britt*, 886 F.2d at 549.

⁵¹ 42 U.S.C. § 205(c).

⁵² 42 U.S.C. § 405(c)(2)(A).

⁵³ *Id.* at § 405(c)(2)(F).

determining whether “applicants” are entitled to a social security account number.⁵⁴ The Commissioner must “enter into such agreements as may be necessary with the Attorney General and other officials,” but only for the limited purposes of implementing subparagraph (B).⁵⁵ The subsection prohibits government employees from disclosing SSNs and related records obtained under laws passed after October 1, 1990.⁵⁶ The remainder of subsection (c)(2) is principally focused on identifying: (1) what other federal agencies may collect SSA information; (2) for what purpose they may obtain that information; (3) who within those agencies may view that information; and (4) any procedural safeguards those agencies must undertake.⁵⁷ Congress did not include DHS or any of its subagencies in this list.⁵⁸

Subsection (c)(2) thus authorizes the collection of data for the limited purpose of ensuring that SSA can determine whether an individual is entitled to a SSN or benefits under the Act, as the SSA SORN itself even reflects.⁵⁹ It imposes prohibitions on the disclosure of SSNs and related records, and where it authorizes other agencies to collect SSA information, it restrictively identifies select agencies, specifies the purpose for which they may collect SSA information, and imposes various limitations and safeguards upon those agencies.⁶⁰ Congress’ decision not to include DHS or its subagencies in this list must be treated as an intentional omission.⁶¹

Moreover, SSA recognizes the citizenship information it collects cannot be used for the purpose of making citizenship determinations. Again, former SSA Commissioner Dudek acknowledged that “SSA data is not a reliable way to determine citizenship and could risk disenfranchising people.”⁶² As SSA explained in 2023, its records “merely represent[] a snapshot of the individual’s citizenship status at the time of their interaction with SSA,” and there “is no obligation for an individual to report to SSA a change in their immigration status unless the individual is receiving Social Security payments.”⁶³ It went on to reiterate that SSA “is not the agency responsible for making citizenship determinations” and thus does not have or collect “definitive” data on individuals’ citizenship status.⁶⁴ Because SSA’s limited purpose for collecting Enumeration System records is not compatible with DHS’ intended use of those records, the routine-use exception does not apply.⁶⁵

⁵⁴ *Id.* at § 405(c)(2)(B)(ii).

⁵⁵ *See id.* at § 405(c)(2)(B)(i),(iii).

⁵⁶ *Id.* § 405(c)(2)(C)(viii)(I).

⁵⁷ *See id.* at § 405(c)(2)(C)-(H).

⁵⁸ *See id.*

⁵⁹ SSA SORN at 50880.

⁶⁰ *See id.* at § 405(c)(2)(C)-(H).

⁶¹ *See, e.g., Esteras v. United States*, 606 U.S. 185, 195 (2025) (relying upon the “well-established” *expressio unius est exclusio alterius* “canon of statutory interpretation” providing that “expressing one item of an associated group or series excludes another left unmentioned.”) (internal quotations and citations omitted) (cleaned up).

⁶² Vittoria Elliot, *Social Security Data is Openly Being Shared with DHS to Target Immigrants*, WIRED (Nov. 18, 2025) (quoting Mr. Dudek), <https://www.wired.com/story/social-security-data-shared-with-dhs-target-immigrants/>.

⁶³ July 2023 SSA Ltr. at 2.

⁶⁴ *Id.*

⁶⁵ *See Britt*, 886 F.2d at 549.

2. SSA Failed to Provide Meaningful and Adequate Notice to Individuals as to the Purpose for Which DHS Intends to Use Enumeration System Records

Even if a disclosure is compatible with its original purpose, the disclosing agency must still abide by the procedural requirements of the routine-use exception.⁶⁶ When an agency adds a routine use to its annual SORN publication for a system of records, it cannot do so in a perfunctory manner. The agency must instead “provide adequate” and “meaningful” “notice to individuals as to what information concerning them will be released and the purpose of such release.”⁶⁷

The SSA SORN’s routine-use exception for DHS only states that “information regarding the citizenship and immigration status, lawful or unlawful, of any individual [will be provided to DHS] pursuant to 8 U.S.C. 1373(a).”⁶⁸ This somewhat defines the information that SSA will provide to DHS. But it does not identify—at all—for what purpose that information will be used. Nor does the citation to section 1373(a) solve this glaring defect, as the text of that statute says nothing of the purpose for which DHS will use the citizenship information it obtains from SSA.⁶⁹ Because SSA has not adequately identified the purpose for which it is disclosing the records at issue under the routine-use exception, SSA has failed to comply with it.⁷⁰

B. Even if SSA Could Disclose its Enumeration System Records to DHS Under the Routine-Use Exception, the Agencies Have Created an Illegal Matching Program in Violation of the Privacy Act and the APA

1. The SAVE System’s Use of SSA Enumeration System Records is a Matching Program Under the Privacy Act

The Privacy Act places clear procedural requirements on the creation of “matching programs.”⁷¹ Matching programs are “any computerized comparison of” “two or more automated systems of records ... for the purpose of[,]” in relevant part, “establishing or verifying the eligibility of ... applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs.”⁷²

The DHS SORN states that SAVE now directly “searches multiple government ... systems[,]” including the Enumeration System, “to provide a SAVE response.”⁷³ Indeed, DHS admits that the modified SAVE System seeks “SSA support by *matching* data submitted through SAVE to SSA records in SSA’s” Enumeration System.⁷⁴ This is, unequivocally, a computerized comparison of two systems of records.

⁶⁶ 5 U.S.C. § 552a(e)(4), (e)(4)(D).

⁶⁷ *Britt*, 886 F.2d at 548.

⁶⁸ SSA SORN at 50883.

⁶⁹ *See* 8 U.S.C. § 1373(a).

⁷⁰ *See Britt*, 886 F.2d at 548.

⁷¹ 5 U.S.C. § 552a(a)(8); 552a(o).

⁷² *Id.* at §§ 552a(a)(8), (a)(8)(i), (a)(8)(i)(I).

⁷³ DHS SORN at 48949.

⁷⁴ DHS-SSA May 15 Ltr. at 4 (emphasis added).

Moreover, DHS and SSA's computerized comparison is "for the purpose of" making federal benefit determinations. While DHS is matching Enumeration System records to encourage states to use the SAVE system for auditing voter rolls, it nevertheless still concedes that "SAVE is an online intergovernmental service designed to help federal, state, territorial, tribal, local government agencies, [and] benefit-granting agencies ... determine the U.S. citizenship and immigration status of individuals within their jurisdiction *for the purpose of* granting benefits."⁷⁵ It further specifies that SAVE can be used "when issuing benefits such as Social Security numbers, public health care, Supplemental Nutrition Assistance Program payments, Temporary Assistance for Needy Families, Medicaid, [and the] Children's Health Insurance Program[.]"⁷⁶ all of which are "Federal benefit programs."⁷⁷ The phrase "for the purpose of," as it is used in the statute, merely requires that the records be matched for the "objective, goal, or end" of making such eligibility determinations.⁷⁸ SSA need not look further than the DHS SORN itself to confirm that the SAVE System matches records with the Enumeration System for the purpose of making benefit determinations.

2. SSA and DHS' Matching Program Violates Both the Privacy Act and APA

When a computer matching program is created, "no record ... contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency[.]"⁷⁹ Such agreements must include a myriad of requirements.⁸⁰ "Notwithstanding any other provision of law, no source agency may disclose any record ... to a recipient agency for a matching program if such source agency has reason to believe that the requirements of ... any matching agreement entered into pursuant to subsection (o), are not being met by such recipient agency."⁸¹

Because SSA and DHS have failed to execute such an agreement, they have violated the Privacy Act and acted "without observance of procedure required by law" in violation of the APA.⁸² Moreover, because DHS is not currently in compliance with the requirements of subsection (o), subsection (q)(1) prevents SSA from disclosing any records to DHS for the modified SAVE System.⁸³

C. Even if SSA and DHS did not Create an Illegal Matching Program, the Agencies Failed to Follow the Procedural Requirements for Modifying Systems of Records in Violation of the Privacy Act and the APA

The Privacy Act provides clear and easy-to-follow instructions regarding its notice-and-comment procedures. It requires agencies, "upon establishment or revision" of a system of records, to "publish" a "notice" in the "Federal Register" that includes a variety of requirements.⁸⁴ But "at least 30 days prior to

⁷⁵ DHS SORN at 48949 (emphasis added).

⁷⁶ *Id.*

⁷⁷ 5 U.S.C. § 552a(a)(8)(i)(I).

⁷⁸ *Purpose*, BLACK'S LAW DICTIONARY (12th ed. 2024).

⁷⁹ 5 U.S.C. § 552a(o)(1).

⁸⁰ *See id.*

⁸¹ *Id.* at § 552a(q)(1).

⁸² *Id.* at § 706(2)(D).

⁸³ 5 U.S.C. § 552a(q)(1).

⁸⁴ 5 U.S.C. § 552a(e)(4).

[this] publication[.],” the agency must “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[.]”⁸⁵ “In no circumstance may an agency use a new or significantly modified routine use as the basis for a disclosure fewer than 30 days following Federal Register publication.”⁸⁶

When SSA and DHS began to implement the modified SAVE System between April and August 2025, neither agency had opened the initial comment period under subsection (e)(11), nor had they published the subsequent formal notice of revision to their systems of records under subsection (e)(4). There can be no dispute that both agencies violated these notice-and-comment requirements, and as a result, both agencies acted “without observance of procedure required by law” in violation of the APA.⁸⁷

While both agencies have attempted to remedy these defects by issuing their respective SORNs (DHS on October 31st and SSA on November 12th),⁸⁸ they nevertheless remain out of compliance with the Privacy Act. Both SORNs appear to comply with the notice requirements of section 552a(e)(4). But the Privacy Act states that at least “at least 30 days prior to [this] publication[.]” the agency must “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[.]”⁸⁹ Moreover, the DHS SORN indicates that the “modified system [is] effective upon publication.”⁹⁰ But SSA may not disclose Enumeration System records to DHS under the routine-use exemption “fewer than 30 days following Federal Register publication.”⁹¹ Even if the November 12th SSA SORN was compliant with section 552a(e)(4) and (11) (which it is not), SSA could not begin to disclose Enumeration System records to DHS for the modified SAVE System until December 12, 2025, at the earliest. As a result, the agencies’ attempt to paper over their initial procedural defects are *still* deficient, and both agencies continue to act “without observance of procedure required by law” in violation of the APA.⁹²

D. Even if SSA Could Share its Enumeration System Records with DHS Under the Privacy Act, the Modified SAVE System Violates the Social Security Act

Congress has imposed clear limitations on the disclosure of SSNs and related records. The Social Security Act dictates that “social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.”⁹³ An “authorized person” includes any “officer or employee of the United States ... who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990.”⁹⁴ And a “related record” includes “any record, list, or compilation that

⁸⁵ *Id.* at § 552a(e)(11).

⁸⁶ OFF. OF MGMT. & BUDGET, *Circular No. A-108: Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act* at 7 (2016) (“OMB Circular No. A-108”), accessible at <https://perma.cc/N9QK-SDLE>.

⁸⁷ 5 U.S.C. § 706(2)(D).

⁸⁸ DHS SORN; SSA SORN.

⁸⁹ 5 U.S.C. § 552a(e)(11).

⁹⁰ DHS SORN at 48949.

⁹¹ OMB Circular No. A-108 at 7.

⁹² 5 U.S.C. § 706(2)(D).

⁹³ 42 U.S.C. § 405(c)(2)(C)(viii)(I).

⁹⁴ *Id.* at § 405(c)(2)(C)(viii)(III).

indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or request for a social security account number is maintained” under clause (viii).⁹⁵

The principal authorities DHS relies upon for its modified SAVE System, 8 U.S.C. §§ 1373 and 1644,⁹⁶ were enacted into law as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and Personal Responsibility and Work Opportunity Reconciliation Act of 1996, respectively.⁹⁷ Because these laws were enacted after October 1, 1990, the Social Security Act’s disclosure prohibitions apply to any DHS officer or employee. Thus, even if the cited immigration statutes provided DHS the legal authority to obtain SSA records to create a database to bulk-audit voter rolls for noncitizens (which they do not),⁹⁸ the Social Security Act prohibits DHS officers and employees from disclosing SSNs or related records.

The DHS SORN, however, states that the modified SAVE System may return data elements including “last name, first name, middle name, date of birth, [and] social security number[.]”⁹⁹ Because DHS officers and employees are prohibited from disclosing SSNs, they cannot create a database that automatically discloses such records on their behalf to user agencies. As a result, the modified SAVE System violates the Social Security Act, and SSA cannot continue disclosing Enumeration System records to DHS.

E. The INA Does Not Authorize Agencies to Disclose Citizenship Information to DHS Without Complying with the Privacy Act and the Social Security Act

As discussed above, SSA and DHS have violated the Privacy Act and the disclosure prohibitions in the Social Security Act. But in recent litigation regarding the SAVE System, the government appears to have taken the novel position that 8 U.S.C. §§ 1373 and 1644 impliedly repeal the Privacy Act and other federal disclosure prohibitions.¹⁰⁰ It thus seems to believe that *all* federal agencies, including SSA, need not comply with such prohibitions when disclosing citizenship information to DHS, and DHS need not comply with federal disclosure prohibitions when it discloses citizenship information. Such a construction of these INA statutes, however, runs headfirst into the presumption against implied repeals and the government’s own longstanding interpretation of these provisions.

The presumption against implied repeals dictates that “absent a clearly expressed congressional intention, ... repeals by implication are not favored.”¹⁰¹ An implied repeal may “only be found where provisions in the two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute.”¹⁰²

⁹⁵ *Id.* at § 405(c)(2)(C)(viii)(IV).

⁹⁶ See DHS SORN at 48950.

⁹⁷ Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. No. 104-208, § 642, 110 Stat 3009 (1996); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 434, 110 Stat 2105 (1996).

⁹⁸ See MALDEF, *Comment on USCIS, Privacy Act of 1974; System of Records at 7-9* (Comment ID USCIS-2025-0337-9237, Dec. 1, 2025), available at <https://www.regulations.gov/comment/USCIS-2025-0337-9237>.

⁹⁹ DHS SORN at 49850.

¹⁰⁰ See *League of Woman Voters et al. v. DHS et al.*, 1:25-cv-03501-SLS, Doc. 37 at 1-2 (arguing older laws such as the Privacy Act cannot trump congressional directives in these INA statutes).

¹⁰¹ *Branch v. Smith*, 538 U.S. 254, 273 (2003) (internal quotations and citations omitted).

¹⁰² *Id.* (internal quotations and citations omitted).

As the OLC has correctly concluded, the INA and federal statutory disclosure prohibitions are not in irreconcilable conflict.¹⁰³ It noted that, as SSA and DHS appear to attempt today, “[o]ne could read the text of § 1373(a) to supersede federal statutory prohibitions or restrictions on disclosure by concluding that the phrase a ‘federal, state, or local government entity or official may not prohibit, or in any way restrict’ includes within its terms the United States Congress acting pursuant to its lawmaking authority[.]”¹⁰⁴ But this interpretation is untenable, because “Congress may not, by statute, direct the Congress not to enact certain laws in the future.”¹⁰⁵ Nor could the OLC construct the provision to apply only retroactively to federal statutes, because it would be “strange” for Congress to have “intended” for the statute to “apply only retroactively” given how it was drafted.¹⁰⁶ In any event, the text could not be read to “apply both prospectively and retroactively to state and local laws [which the OLC concluded it did], but only retroactively to federal statutes.”¹⁰⁷ None of these interpretive oddities arise, however, if the statute is correctly “construed to apply only to disclosure prohibitions or restrictions *other than* those imposed by federal statute.”¹⁰⁸ To the extent that section 1373(a) applied to federal actors, it could only “be comfortably construed to limit the *discretionary* authority” of such actors.¹⁰⁹

The legislative history indicates these INA provisions only targeted local and state legislation as well, supporting the OLC’s interpretation. The House Conference Report explained that section 1373(a) would provide that “no *State* or *local* government entity shall prohibit or in any way restrict any government entity ... from sending to or receiving from [DHS]” information regarding citizenship status.¹¹⁰ And in explaining the thrust of section 1373(a), the Senate Report reasoned that the “exchange of immigration-related information by *State* and *local* agencies is consistent with, and of potentially considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.”¹¹¹

Nor can SSA or DHS argue that these INA statutes cover the whole subject of the Privacy or Social Security Acts or are clearly intended as a substitute. They may point to the INA provisions’ broad “notwithstanding clauses” as evidence to the contrary.¹¹² But as the leading treatise on statutory interpretation explains, “[s]uch clauses should be a legal nullity.”¹¹³ They “do not determine or support a finding of implied repeal because they do not declare any specific inconsistent or irreconcilable conflict.”¹¹⁴ The Supreme Court, too, has asserted that such clauses merely signal “the drafter’s intention that the ... ‘notwithstanding’ section override *conflicting* provisions of any other section.”¹¹⁵ The OLC thus concluded that the section 1373(a) notwithstanding clause is “best read to mean only that, notwithstanding a federal statute that would authorize federal ... entities to exercise their general

¹⁰³ See OLC Memo at *4.

¹⁰⁴ *Id.* at *5.

¹⁰⁵ *Id.* (citing *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) (Marshall, C.J.)).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (emphasis added).

¹⁰⁹ *Id.* (emphasis added).

¹¹⁰ H.R. CONF. REP. 104-828, 249 (1996) (emphasis added).

¹¹¹ S. REP. NO. 104-249, at 19-20 (1996) (emphasis added).

¹¹² See 8 U.S.C. §§ 1373(a), (b), and 1644.

¹¹³ 1A SHAMBLE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 23:8 (8th ed.).

¹¹⁴ *Id.*

¹¹⁵ *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (citing *Shomberg v. United States*, 348 U.S. 540, 547–48 (1955)) (emphasis added).

administrative discretion in a manner that would prohibit or restrict disclosures of the type identified in section 1373(a), such federal ... entities may not exercise such discretion.”¹¹⁶ As a result, it correctly found that the clauses do not intend to “repeal existing, federal statutory prohibitions or restrictions on disclosure.”¹¹⁷

There is no conflict between these INA statutes and the Privacy or Social Security Acts; nor were these INA statutes clearly intended as a substitute for the disclosure prohibitions in these statutes. The presumption against implied repeals thus prohibits the government’s apparent attempt to reinterpret these INA statutes as impliedly repealing the Privacy Act and other federal disclosure prohibitions.¹¹⁸

F. Even if the SSA Could Disclose its Citizenship Data to DHS for Use in its SAVE System, its Decision in this Instance was Arbitrary and Capricious in Violation of the APA

The APA prohibits agencies from taking action that is “arbitrary” and “capricious.”¹¹⁹ This standard “requires agencies to engage in reasoned decisionmaking,” and “to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach.”¹²⁰ To do so, the agency must make its decision based on “relevant factors” and cannot make “a clear error in judgment.”¹²¹ SSA’s disclosure of Enumeration System records for use in DHS’ SAVE System is arbitrary and capricious for many reasons, three of which this comment discusses below.

First, SSA entirely ignored the known unreliability of citizenship data it maintains in its Enumeration System for purposes of making citizenship determinations. SSA lacks complete citizenship data for U.S.-born citizens born before 1981.¹²² Moreover, SSA only receives “a snapshot of an individual’s citizenship status at the time of their interaction with SSA.”¹²³ Because “there is no obligation for an individual to report to SSA a change in their immigration status unless the individual is receiving Social Security payments[,]” this data is often inaccurate.¹²⁴ Indeed, an audit by the SSA’s Office of Inspector General estimated that the SSA’s databases incorrectly identified about 3.3 million U.S. citizens as noncitizens “because they had become U.S. citizens after obtaining their SSN” and “had not updated their records with SSA.”¹²⁵ Former Acting Commissioner Dudek publicly stated that “SSA data is not a reliable way to determine citizenship and could risk disenfranchising people.”¹²⁶ And the federal government just recently conceded in court that “such inaccuracies likely still exist.”¹²⁷

¹¹⁶ OLC Memo at *6.

¹¹⁷ *Id.* at *3.

¹¹⁸ *See Branch*, 538 U.S. at 273.

¹¹⁹ 5 U.S.C. § 706(2)(A).

¹²⁰ *Bhd. of Locomotive Eng’rs & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83, 115 (D.C. Cir. 2020) (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020)).

¹²¹ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (cleaned up).

¹²² July 2023 SSA Ltr. at 2.

¹²³ *Id.*

¹²⁴ *See id.*

¹²⁵ SSA Inspector General Report at iii.

¹²⁶ Vittoria Elliot, *Social Security Data is Openly Being Shared with DHS to Target Immigrants*, WIRED (Nov. 18, 2025) (quoting Mr. Dudek), <https://www.wired.com/story/social-security-data-shared-with-dhs-target-immigrants/>.

¹²⁷ *See League of Woman Voters et al. v. DHS et al.*, 1:25-cv-03501-SLS, Doc. 55 at 8 (D.D.C. Nov. 17, 2025) (Mem. Op.).

As one might expect, the integration of SSA data into the SAVE System has only made it even more inaccurate. Texas has begun to use the modified SAVE database to investigate its voter rolls, creating lists of alleged noncitizens impermissibly registered to vote and sending them to counties across the state.¹²⁸ Travis County officials identified that “[a]bout twenty-five percent of the noncitizen matches on Travis County’s list have a voter registration source code of 64 – Department of Public Safety[,]” which means that those voters “provided proof of citizenship at the time of registration.”¹²⁹ In other words, *at least 25%* of the SAVE System returns were likely inaccurate. In failing to consider this essential factor before disclosing Enumeration System records for this purpose, SSA acted arbitrarily and capriciously.

Second, the purported basis for creating this national citizenship database—a now urgent need to prevent noncitizens from committing voter fraud¹³⁰—is not based in reality. A Heritage Foundation nationwide database reaching back all the way to the 1980s identifies a grand total of 99 alleged instances of voter fraud by noncitizens.¹³¹ A recent study by the Center for Election Innovation and Research confirms just how exceedingly rare instances of noncitizen voter fraud are, explaining that the “vast majority of allegations of noncitizen registration or voting appear to arise from misunderstandings, mischaracterizations, or outright fabrications about complex voter data,” and even the scariest and largest claims of noncitizen voter fraud “never allege numbers that amount to more than a few tenths of a percent of the number of eligible voters in a state.”¹³² Indeed, when Louisiana officials recently ran their voter rolls through this modified SAVE System—which as previously discussed, has a high false-positive rate—they identified a measly 79 possible instances of voter fraud since 1980.¹³³

Fortunately for SSA and DHS, noncitizens rarely, if ever, engage in voter fraud. As there is no factual basis for drastically modifying the SAVE database in this manner for the purpose of preventing “voting illegally,”¹³⁴ SSA has failed to engage in reasoned decision-making in disclosing its Enumeration System records for this purpose.

Third, SSA and DHS departed from longstanding agency policies and practices without acknowledgement or explanation.¹³⁵ Both SSA and DHS used to comply with the procedural requirements of the Privacy Act before making modifications to the systems of records in question.¹³⁶ Even if the agencies incorrectly now believed they did not need to comply with the Privacy Act to make these modifications, their failure to explain their rationale violated the APA. Moreover, it has been the position of both DHS and SSA that SSA information regarding citizenship is not accurate for the purpose of making citizenship determinations.¹³⁷ The agencies’ failure to explain why they now believe SSA data is not just accurate

¹²⁸ *League of Woman Voters et al. v. DHS et al.*, 1:25-cv-03501-SLS, Doc. 47 at 3-5.

¹²⁹ *Id.* at 7.

¹³⁰ See, e.g., April 2025 SAVE Press Release.

¹³¹ *Election Fraud Map, Explore the Data*, THE HERITAGE FOUNDATION, <https://electionfraud.heritage.org/search> (sort search results by “Fraud Sub-category” of “Alien”) (last accessed Nov. 18, 2025).

¹³² See *Review of Allegations of Noncitizen Registrants and Voters*, CTR. FOR ELECTION INNOVATION & RSCH. (July 2025), <https://electioninnovation.org/research/noncitizen-analysis/> (last accessed Nov. 18, 2025).

¹³³ Wesley Muller, *Louisiana election investigation finds 79 noncitizens have voted since 1980s*, LOUISIANA ILLUMINATOR (Sept. 4, 2025), <https://lailluminator.com/2025/09/04/louisiana-election-investigation-finds-79-noncitizens-have-voted-since-1980s/>.

¹³⁴ April 2025 SAVE Press Release.

¹³⁵ See *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923-24 & n.3 (D.C. Cir. 2017).

¹³⁶ *Supra* nn.22-23.

¹³⁷ See WESTAT, *Report to DHS, Evaluation of the Accuracy of E-Verify Findings* at 51 (July 2012), available at <https://perma.cc/W348-NNUV>; *supra* nn.1, 2 & 5.

enough to include in the SAVE System, but accurate enough to allow user agencies to query the System using SSNs, also violates the APA.

III. Conclusion

The modified SAVE System is precisely the kind of “formal or de facto national data bank[], or centralized Federal information System[]” that Congress sought to prevent with the Privacy Act.¹³⁸ For the myriad of reasons discussed above, and the disproportionate harm that the modified SAVE System will cause to the Latino community, MALDEF recommends that the SSA rescind the SSA SORN in its entirety and restore the prior Enumeration System. Please feel free to contact us with any questions or concerns about these comments at (202) 559-1823 or jcalo@maldef.org.

Thank you.

Sincerely,



Jesse Calo

Legislative Staff Attorney

¹³⁸ S. COMM. ON GOV'T OPERATIONS & H.R. COMM. ON GOV'T OPERATIONS, 94th Cong., 2d Sess., *Legislative History of the Privacy Act of 1974 – S. 3418* (Pub. L. No. 93-579), *Source Book on Privacy* at 168 (1976), available at <https://perma.cc/9W9F-R5ZL>.