



June 24, 2024

The Honorable Nancy Dahlstrom
Office of the Lt. Governor
P.O. Box 110015
Juneau, AK 99811

Dear Lieutenant Governor Dahlstrom:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

9

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Mike Dunleavy

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Wes Allen
Alabama Secretary of State
P.O. Box 5616
Montgomery, AL 36103

Dear Secretary Allen:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

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Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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Please sign full name (or put mark) ▲

Date: _____

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Kay Ivey

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable John Thurston
Arkansas Secretary of State Executive Office
State Capitol
500 Woodlane Avenue, Suite 256
Little Rock, AR 72201

Dear Secretary Thurston:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

9

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

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¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

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²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Sarah Huckabee Sanders

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Adrian Fontes
Office of the Secretary of State
1700 W Washington St, Fl 7
Phoenix, AZ 85007

Dear Secretary Fontes:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Katie Hobbs

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Shirley Weber, Ph.D.
California Secretary of State
1500 11th Street
Sacramento, CA 95814

Dear Secretary Weber:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

9

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Gavin Newsom

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Jena Griswold
Colorado Secretary of State
1700 Broadway, Suite 550
Denver, CO 80290

Dear Secretary Griswold:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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Please sign full name (or put mark) ▲

Date: / /
Month Day Year

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III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Jared Polis

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Stephanie Thomas
Secretary of the State
Attention: Capitol Office
P.O. Box 150470
Hartford, CT 06115

Dear Secretary Thomas:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

9

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Ned Lamont

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

Commissioner Anthony Albence
Office of the State Election Commissioner
Delaware Department of Elections
905 S. Governors Ave, Ste 170
Dover, DE 19904

Dear Commissioner Albence:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor John Carney

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Cord Byrd
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Dear Secretary Byrd:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Ron DeSantis

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Brad Raffensperger
Office of the Secretary
214 State Capitol
Atlanta, GA 30334

Dear Secretary Raffensperger:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

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- I meet the eligibility requirements of my state and subscribe to any oath required.
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Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Brian Kemp

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

Scott T. Nago
Chief Election Officer
Office of Elections
802 Lehua Avenue
Pearl City, HI 96782

Dear Mr. Nago:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

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DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

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Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Josh Green

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June 24, 2024

The Honorable Paul Pate
Secretary of State
First Floor, Lucas Building
321 E. 12th St.
Des Moines, IA 50319

Dear Secretary Pate:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁶ 52 U.S.C. § 21083(a)(2)(A).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

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The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Kim Reynolds

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Phil McGrane
Secretary of State
700 W. Jefferson St.,
Room E205
Boise, ID 83702

Dear Secretary McGrane:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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I have reviewed my state's instructions and I swear/affirm that:

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9

Please sign full name (or put mark) ▲

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DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

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V. Conclusion

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Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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June 24, 2024

Bernadette Matthews
Executive Director
Illinois State Board of Elections
2329 S. MacArthur Blvd.
Springfield, IL 62704

Dear Executive Director Matthews:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor J.B. Pritzker

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Diego Morales
Office of the Indiana Secretary of State
200 W. Washington St., Room 201
Indianapolis, IN 46204

Dear Secretary Morales:

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Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Eric Holcomb

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Scott Schwab
Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 66612

Dear Secretary Schwab:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

9

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Laura Kelly

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Michael G. Adams
Office of the Kentucky Secretary of State
700 Capital Avenue
Suite 152
Frankfort, KY 40601

Dear Secretary Adams:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
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9

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

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¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

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Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

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²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Andy Beshear

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Nancy Landry
Louisiana Secretary of State
P.O. Box 94125
Baton Rouge, LA 70809

Dear Secretary Landry:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
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Executive Director
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Cc: Governor Jeff Landry

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June 24, 2024

The Honorable William Francis Galvin
Secretary of the Commonwealth of Massachusetts
1 Ashburton Place
Boston, MA 02108

Dear Secretary Galvin:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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Date: / /
Month Day Year

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III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Maura Healey

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

Jared DeMarinis
State Administrator of Elections
P. O. Box 6486
151 West St., Suite 200
Annapolis, MD 21401

Dear Administrator DeMarinis:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

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Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Wes Moore

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Shenna Bellows
Office of the Secretary
148 State House Station
Augusta, ME 04333

Dear Secretary Bellows:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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I have reviewed my state's instructions and I swear/affirm that:

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9

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

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Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Janet Mills

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Jocelyn Benson
Secretary of State
430 W. Allegan St.
Richard H. Austin Building - 4th Floor
Lansing, MI 48918

Dear Secretary Benson:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

9

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Gretchen Whitmer

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Steve Simon
Office of the Minnesota Secretary of State
20 W. 12th Street
Suite 210
St. Paul, MN 55155

Dear Secretary Simon:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
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Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPT’ OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 20, 2023), <https://tinyurl.com/yszvcy3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Tim Walz

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable John R. Ashcroft
Office of the Secretary of State
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

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Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

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Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Mike Parson

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June 24, 2024

The Honorable Michael Watson
Office of the Secretary of State
401 Mississippi Street
Jackson, MS 39201

Dear Secretary Watson:

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Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

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Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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²⁰ 52 U.S.C. § 20510.

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²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Tate Reeves

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Christi Jacobsen
Montana Secretary of State
Montana Capitol Building
Room 260
Helena, MT 59620

Dear Secretary Jacobsen:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

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V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Greg Gianforte

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June 24, 2024

Executive Director Karen Bell
State Board of Elections
NC State Board of Elections
PO Box 27255
Raleigh, NC 27255

Dear Executive Director Bell:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

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⁶ 52 U.S.C. § 21083(a)(2)(A).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Roy Cooper

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Michael Howe
Office of the Secretary
600 E Boulevard Avenue
Department 108
Bismarck, ND 58505

Dear Secretary Howe:

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Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Doug Burgum

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Robert Evnen
Office of the Secretary
P.O. Box 94608
Lincoln, NE 68509

Dear Secretary Evnen:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

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⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Jim Pillen

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June 24, 2024

The Honorable David Scanlan
Secretary of State
State House, Room 204
107 North Main Street
Concord, NH 03301

Dear Secretary Scanlan:

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Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Chris Sununu

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Tahesha Way
Lieutenant Governor
NJ Division of Elections
P.O. Box 304
Trenton, NJ 08625

Dear Lieutenant Governor Way:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Phil Murphy

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Maggie Toulouse Oliver
Secretary of State
325 Don Gaspar Avenue
Suite 300
Santa Fe, NM 87501

Dear Secretary Oliver:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

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Date: / /

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III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEPT OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEPT OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Michelle Lujan Grisham

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Francisco V. Aguilar
Secretary of State
101 N Carson Street
Suite 3
Carson City, NV 89701

Dear Secretary Aguilar:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

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Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Joe Lombardo

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

Commissioner Henry T. Berger
Commissioner Peter S. Kosinski
New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207

Dear Commissioners Berger and Kosinski:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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Date: / /
Month Day Year

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Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Kathy Hochul

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Frank LaRose
Office of the Secretary
180 Civic Center Dr.
Columbus, OH 43215

Dear Secretary LaRose:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Mike DeWine

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

Paul Ziriak
Secretary of the State Election Board
Oklahoma State Election Board
PO Box 53156
Oklahoma City, OK 73152

Dear Secretary Ziriak:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

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⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
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Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolsky v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Kevin Stitt

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable LaVonne Griffin-Valade
Secretary of State
255 Capitol Street NE
Public Service Building Suite 126
Salem, OR 97310

Dear Secretary Griffin-Valade:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

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Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

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Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Tina Kotek

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Al Schmidt
Secretary of the Commonwealth of Pennsylvania
Office of the Secretary
401 North Street
Room 302
Harrisburg, PA 17120

Dear Secretary Schmidt:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

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Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Josh Shapiro

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Gregg M. Amore
Secretary of State
82 Smith Street
State House, Room 218
Providence, RI 02903

Dear Secretary Amore:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

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V. Conclusion

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Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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June 24, 2024

Executive Director Howard M. Knapp
State Election Commission
P.O. Box 5987
Columbia, SC 29250

Dear Executive Director Knapp:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Henry McMaster

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Monae L. Johnson
Secretary of State
Capitol Building
500 East Capitol Avenue
Suite 204
Pierre, SD 57501

Dear Secretary Johnson:

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Kristi Noem

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Tre Hargett
Secretary of State
Capitol Office
State Capitol
Nashville, TN 37243

Dear Secretary Hargett:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

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¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Bill Lee

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Jane Nelson
Secretary of State
Elections Division
P.O. Box 12060
Austin, TX 78711

Dear Secretary Nelson:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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Date: / /

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III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

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²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Greg Abbott

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Deidre Henderson
Lieutenant Governor
350 North State Street, Suite 220
P.O. Box 142325
Salt Lake City, UT 84114

Dear Lieutenant Governor Henderson:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

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⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Spencer Cox

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

Commissioner Susan Beals
Department of Elections
Washington Building
1100 Bank Street, FirstFloor
Richmond, VA 23219

Dear Commissioner Beals:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

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III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Glenn Youngkin

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Sarah Copeland Hanzas
Office of the Vermont Secretary of State
128 State Street
Montpelier, VT 05633

Dear Secretary Copeland Hanzas:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- 9 ■ The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: _____

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

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¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

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Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Phil Scott

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Steve Hobbs
Washington Secretary of State
PO Box 40220
Olympia, WA 98504

Dear Secretary Hobbs:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

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As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

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Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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9 I have reviewed my state's instructions and I swear/affirm that:

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Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁸ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹⁹ *Dobrovolny v. Nebraska*, 100 F.Supp.2d 1012 (2000).

²⁰ 52 U.S.C. § 20510.

²¹ *SAVE Agency Search Tool*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, <https://tinyurl.com/yc8d7jf4> (last visited June 17, 2024). The five States are Arizona, Colorado, Florida, Georgia, and Virginia.

²² *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Jay Inslee

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

Commissioner Ann S. Jacobs
Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707

Dear Commissioner Jacobs:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

⁹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION (available at <https://tinyurl.com/4wj6vm6r>) (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁰ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹¹ 52 U.S.C. § 20505(a)(1).

¹² The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹³ 570 U.S. 1 (2013).

¹⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁵ *Id.* (cleaned up) (emphasis added).

states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

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²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

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inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
America First Legal Foundation

Cc: Governor Tony Evers

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

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June 24, 2024

The Honorable Mac Warner
Secretary of State
Bldg. 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Secretary Warner:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

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⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

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⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

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Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

Because the National Voter Registration Act (NVRA) requires that States must “accept and use”¹¹ the form created by the EAC,¹² and because that form does not explicitly require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁴ However, the Court also held that the NVRA “*does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.*”¹⁵ Further, the Court noted that the NVRA only requires

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states to register eligible persons.¹⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁸

Additionally, the NVRA provides voters a private right of action to ensure that the voter rolls are maintained.¹⁹ An individual or organization aggrieved by an NVRA violation may seek declaratory or injunctive relief in federal district court against the state’s chief election official for failure to systematically remove ineligible voters from state voter rolls.²⁰

III. The DHS SAVE has a design flaw and does not fully solve the critical problem of foreign nationals voting in federal elections.

DHS’s U.S. Citizenship and Immigration Services (USCIS) makes available to the States a system for verifying the immigration status of foreign nationals: the SAVE program. Five States have already executed memoranda of understanding with USCIS to use SAVE to verify the citizenship status of applicants for voter registration.²¹

However, SAVE is hobbled by a critical design flaw: The system requires at least one of the following specific “numeric identifier[s]”: “Alien / USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization / Citizenship Certificate Number,” “Card / I-797 Receipt Number,” “Visa Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”²² As one federal judge recently observed, “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration numbers.”²³

¹⁶ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

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²³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ----, 2024 WL 862406, at *6 (D. Ariz. 2024).

Furthermore, SAVE does not process social security or driver's license numbers, which are the ID numbers that State and local officials are most likely to have at their disposal.

Thus, in practice, SAVE is practically useless for verifying the citizenship of voter registrants. It can only be of value when a State has the specific numeric identifiers that are the searchable variables in SAVE. Most States would not have access to these identifiers, in part because none of these identifiers are required under the current version of the EAC federal voter registration form. States cannot use the most readily available identifiers they have in their possession, including social security and driver's license numbers.

IV. Solution: States should submit requests to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, States have an alternative solution to obtain information about individuals on their voter rolls. And they can do so without the need for a specific identifier required by the SAVE system.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires 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.”²⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵

As explained above, federal law unambiguously requires that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. Federal law also imposes on States the duty of ensuring that ineligible voters are removed from voter rolls.²⁶ Also, many States impose citizenship requirements under State law, and 8 U.S.C. § 1644 confers on States unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a State to ask DHS about the citizenship status of presently registered voters.

²⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵ 8 U.S.C. § 1644.

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Plainly, State and local election officials have the authority and duty under federal law to obtain citizenship information about registered voters. Because SAVE cannot provide that information, State and local election officials have the authority under federal law to request that information directly from DHS.

Even if SAVE *did* accept inquiries without numeric identifiers, States would still have the authority to make direct requests to DHS because SAVE charges a fee per query: “\$1 per case in FY 2024,” and that fee will “incrementally increase to \$3.10 by FY 2028,”²⁷ but Sections 1373 and 1644 do not authorize DHS charging fees for inquiries under those sections. Indeed, such fees arguably represent an illegal obstacle to States with a clear statutory right to citizenship status information in the federal government’s possession.

Notably, DHS already can verify an individual’s citizenship without a numeric identifier. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁸ This means that, *right now*, DHS can answer all inquiries from State and local elections officials about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost to the States. State and local election officials already have the authority to submit citizenship inquiries about registered voters to DHS, and they can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* United States citizens, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to conduct further

²⁷ *SAVE Transaction Charges*, U.S. CITIZENSHIP AND IMMIGR. SERVS, (July 20, 2023), <https://tinyurl.com/yszvey3s>.

²⁸ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

inquiry of the individual in question to determine whether they should be removed from the State's list of eligible voters.²⁹

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁰

V. Conclusion

You have the unique authority and ability to remove foreign nationals from your voter rolls. Congress has provided you with a valuable tool to facilitate your ability to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Best regards,

/s/ Gene Hamilton
Gene Hamilton
Executive Director
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Cc: Governor Jim Justice

²⁹ One must also be mindful, of course, of the possibility of false positives and establish procedures for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

³⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS's failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).



June 24, 2024

The Honorable Chuck Gray
Secretary of State's Office
Herschler Building East
122 West 25th Street
Suite 100
Cheyenne, WY 82002

Dear Secretary Gray:

I write to advise you about two critical tools that Congress has provided to verify the citizenship status of individuals registered to vote in your State: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—sections 1373 and 1644 requests *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher. If you act now, there is likely still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your State's voter rolls before the fall elections.

I. Federal law prohibits foreign nationals from voting or registering to vote and imposes upon States an obligation to conduct voter list maintenance.

As you know, only U.S. citizens can legally vote in federal elections.¹ Further, it is a federal crime for any foreign national to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.”² It is also a federal crime for any foreign national to falsely claim United States citizenship to register to vote.³ No foreign national is authorized to register to vote in or to vote in federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls.

Accordingly, federal law requires you to remove ineligible voters from your voter rolls. The Help America Vote Act (HAVA)⁵ requires you to “perform list maintenance” of your voter rolls,⁶ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed from the computerized list.”⁷ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ Thus, separate from any independent State law obligations you may have, these black-letter federal statutory requirements logically and necessarily authorize States to ensure the removal of foreign nationals from their voter rolls.

¹ See, e.g., National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

² 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine).

³ E.g. 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ P.L. 107-252, 116 Stat. 1666 (2002).

⁶ 52 U.S.C. § 21083(a)(2)(A).

⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁸ 52 U.S.C. § 21083(a)(4)(A).

II. Even though the Supreme Court held that States cannot impose additional requirements for voters *registering* using the federal form, States are still required to conduct list *maintenance* and remove foreign nationals from voter rolls.

HAVA established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁹

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /

Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁰

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Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

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