



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

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>.

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 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.

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).