Supreme Court allows expanded Homeland Security database to purge voter rolls ahead of midterm elections

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On Friday, September 25, the US Supreme Court ruled that the Trump administration can utilize an expanded Department of Homeland Security (DHS) database of citizens and noncitizens alike, to carry out a March 2025 Trump executive order aimed at purging state voter rolls.

In an unsigned order, the right-wing majority on the court granted the administration's emergency request for a stay of a lower court injunction that had blocked the database on the grounds that it violates privacy rights laid down in the 1935 Social Security Act and the Privacy Act of 1974. The latter law, enacted in the aftermath of the Watergate scandal, prohibits "formal or de facto databanks" or "centralized federal information systems" built from sensitive personal data.

In the name of blocking non-citizens from voting—a virtually non-existent phenomenon—Trump ordered a massive expansion of a 40-year-old database known as Systematic Alien Verification for Entitlements (SAVE). The data system has been used by state governments to check the eligibility of residents for certain social benefits. Trump's 2025 order expanded SAVE to include natural-born citizens' records, access Social Security Administration information, and allow state and local officials to conduct bulk searches, rather than only individual checks.

The additional data contained in Social Security files includes personal information about hundreds of millions of Americans: full names, Social Security numbers, dates and places of birth, citizenship indicators and death records, according to a notice in the Federal Register.

Under the executive order, state and local officials can request that DHS run lists of potential voters through the expanded SAVE system and flag names that are not listed as citizens. Social Security records are notoriously inaccurate when it comes to updating the status of naturalized citizens.

As a result, just five weeks before the November 3 midterm elections, with early voting having already begun in many states, the Supreme Court ruling could enable Republican officials to run multiple checks of voters in Democratic precincts, flagging hundreds of thousands and perhaps millions of suspected "illegal" voters and preventing many of them from casting ballots.

This is not a remote threat. The Trump administration is widely hated, its poll numbers are at record lows, the Iran war is massively unpopular, and soaring prices for gas, rents, mortgages, healthcare and consumer goods all point to a political debacle for the Republican Party in November. Trump is openly working either to rig the elections, block them altogether or overturn the results.

The Democrats, far more fearful of an eruption of mass opposition by the working class than the prospect of a presidential dictatorship, are doing nothing more than wringing their hands and filing court suits. They are completely opposed to any popular mobilization to defend the right to vote.

The September 25 Supreme Court ruling has the character of an interim decision. The court has not ruled on the legality of the March 2025 executive order and expansion of SAVE, which is still being litigated. It has thus far only lifted the block imposed by the lower courts.

In June, a US district judge in Washington D.C. blocked the administration from allowing states to use

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the online system to screen their voting rolls. Judge Sparkle L. Sooknanan, appointed by Biden, found that federal agencies "haphazardly combined and repurposed the private information of millions of Americans, including citizenship data that they knew to be unreliable." She concluded that the expanded database "trampled on the privacy rights of American citizens in a manner that threatens the sacred right to vote."

Earlier in September, the US Court of Appeals for the First Circuit rejected the Trump administration's emergency appeal for a stay of the D.C. court ruling.

The plaintiffs—the League of Women Voters, its Virginia and Louisiana chapters, and the Electronic Privacy Information Center—compared the expanded database to the surveillance dossiers in George Orwell's *1984*. Following the ruling they issued a statement warning that the court had put "millions of Americans at risk of being unlawfully targeted by the administration's unreliable voter purge database weeks before the midterm elections."

In their ruling, the majority on the court cited—illegitimately—a 1996 anti-immigration law signed by Democratic President Bill Clinton (the Illegal Immigration Reform and Immigrant Responsibility Act) as their authority for overriding the privacy protections included in the Social Security Act and the Privacy Act of 1974.

Justice Ketanji Brown Jackson issued a dissent that was joined by the other two liberal justices—Elena Kagan and Sonia Sotomayor. Jackson wrote:

> The harm caused by burdening or disenfranchising even a few lawful voters outweighs the nonexistent harm that the government experiences when it is prevented from taking an action that it likely lacks the authority to take.

She said the court should have left intact the lower court order that blocked the system while litigation proceeds. Jackson also commented that because of a federal law barring major changes in voter rolls in the 90 days leading up to an election, the ruling was likely to have "minimal short-term impact."

While it may be technically correct, Jackson's observation assumes that officials in Republican-run states will abide by the 90-day rule, rather than claiming that Trump's executive order takes precedence. Also, the 90-day rule would not bar post-election challenges to the legitimacy of the vote, such as the refusal of the House, presently under Republican control, to seat newly elected Democrats on January 3, 2027, when the House will convene to certify the election results.

In its argument before the Supreme Court, the Justice Department claimed that the expanded SAVE system is legal because it is a voluntary tool, to be used at the discretion of state and local officials. In fact, the DHS has sought to force states to run their voter rolls through SAVE by conditioning federal disaster and anti-terrorism funding on the database's use. And earlier this year, Homeland Security Secretary Markwayne Mullin threatened election officials with criminal charges if they do not use SAVE. He said:

> The states who choose not to participate with the SAVE program and they choose not to participate in secure elections, we will make sure that we make those states a priority to look at who voted in their states and will hold them, the election officials, accountable.

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