

No. 26-1878

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JARED DEMARINIS, in his official capacity as State Administrator of Elections
for the State of Maryland,

Defendant-Appellee,

MARYLAND/DC ALLIANCE FOR RETIRED AMERICANS; COMMON
CAUSE; OUT FOR JUSTICE, INC.; CARL SNOWDEN; MYRIAM PAUL;
LUIS SIMS,

Intervenor-Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND AT BALTIMORE

**RESPONSE BRIEF OF INTERVENOR-DEFENDANT-APPELLEE
MARYLAND/DC ALLIANCE FOR RETIRED AMERICANS**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 26-1878 Caption: United States v. DeMarinis

Pursuant to FRAP 26.1 and Local Rule 26.1,

Maryland/DC Alliance for Retired Americans
(name of party/amicus)

who is Appellee-Intervenor/Defendant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? ☐ YES ☒ NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Uzoma Nkwonta

Date: 7/14/2026

Counsel for: Appellee-Intervenor/Defendant

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JURISDICTIONAL STATEMENT

The Alliance adopts Administrator DeMarinis's jurisdictional statement.

STATEMENT OF THE ISSUES

1. Whether Title III of the CRA requires Administrator DeMarinis to provide DOJ with a complete, unredacted copy of Maryland's statewide voter registration list.
2. Whether DOJ provided a sufficient statement of the basis and the purpose for its CRA demand.
3. Whether DOJ's demand violates the federal Privacy Act.

STATEMENT OF THE CASE

The Alliance adopts Administrator DeMarinis's statement of the case.

SUMMARY OF THE ARGUMENT

The Privacy Act requires that, before DOJ establishes or revises any "system of records," it must "publish in the Federal Register . . . a notice of the existence and character of the system of records," also known as a "SORN." 5 U.S.C. § 552a(e)(4). DOJ does not dispute that Maryland's unredacted SVRL qualifies as a "system of records," yet it cannot identify a valid SORN that would cover its collection. Thus, an order compelling Maryland to produce the SVRL would also impermissibly command a violation of federal law.

STANDARD OF REVIEW

The Alliance adopts Administrator DeMarinis's statement of the standard of review.

ARGUMENT

I. The CRA does not cover state-created, dynamic records like Maryland's SVRL.

The Alliance adopts Administrator DeMarinis's argument that Title III does not entitle DOJ to Maryland's SVRL.

II. DOJ failed to provide a sufficient statement of the basis and purpose for its CRA demand.

The Alliance adopts Common Cause Appellees' argument that DOJ did not provide a written demand that sets forth the basis and purpose of DOJ's data request as required by Title III.

III. DOJ has not complied with the Privacy Act.

The record below provides additional grounds to affirm the district court's ruling: the mass data collection DOJ seeks would violate the Privacy Act. *See United States v. Weber*, 816 F. Supp. 3d 1168, 1192–94 (C.D. Cal. 2026), *appeal docketed*, No. 26-1232 (9th Cir. argued May 19, 2026); *cf. Willner v. Dimon*, 849 F.3d 93, 103 (4th Cir. 2017) (recognizing Court may affirm on any grounds supported by the record).¹ The Privacy Act protects against governmental use and retention of

¹ This claim should not be confused with the one the Supreme Court expressed reservations about in separate litigation. In *Department of Homeland Security v.*

identifiable personal information by requiring agencies to comply with procedural safeguards. Because DOJ has not done so, it may not obtain the data that it demands. This deficiency warranted dismissal—and now, affirmance—because it remains plain from “the face of the complaint.” *Leichling v. Honeywell Int’l, Inc.*, 842 F.3d 848, 850 (4th Cir. 2016).

The Privacy Act governs any agency that “maintains” a “system of records.” 5 U.S.C. § 552a(e). A “system of records” is “a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.” *Id.* § 552a(a)(5). The term “maintain” is defined to include “maintain, collect, use, or disseminate.” *Id.* § 552a(a)(3). DOJ does not contest that Maryland’s SVRL—which contains the names of all registered voters in the state together with their voter registration identifiers and other identifying information—qualifies as a “system of records” under the Privacy Act. *Accord Schwier v. Cox*, 412 F. Supp. 2d 1266, 1271–72 (N.D. Ga. 2005) (holding a voter list

League of Women Voters, No. 26A308, 2026 WL 2879700 (U.S. Sep. 25, 2026), the Court stayed a judgment that had blocked the Department of Homeland Security’s (DHS) modified Systematic Alien Verification for Entitlements (SAVE) program, which facilitates bulk comparison of voter data with federal citizenship records. The Supreme Court did not resolve whether DHS complied with the Privacy Act. Instead, it concluded on an interim posture that an immigration statute allowing information-sharing with *DHS*—which would not apply to *DOJ*’s collection of Maryland’s voter file—likely authorized the modified SAVE program. *Id.* at *2–3.

is a system of records), *aff'd*, 439 F.3d 1285 (11th Cir. 2006). Accordingly, for DOJ to “collect,” “use,” or “maintain” Maryland’s SVRL, it must first comply with obligations imposed by the Act. *See* 5 U.S.C. § 552a(e); *Weber*, 816 F. Supp. 3d at 1193.

One such obligation is that, before an agency may “establish[] or revis[e]” a “system of records,” it must “publish in the Federal Register . . . a notice of the existence and character of the system of records.” 5 U.S.C. § 552a(e)(4). The System of Records Notice or “SORN” must include a defined set of information about the records stored in the system, including the “purposes for which the information is intended to be used,” whose records are at issue, and the types of records covered. *Id.* § 552a(e).

DOJ does not contest that it was required to issue a compliant SORN before engaging in activity covered by the Act. DOJ Br. 60–61; *LULAC v. Exec. Off. of the President*, 818 F. Supp. 3d 34, 115–16 (D.D.C. 2026), *appeal docketed*, No. 25-5476 (D.C. Cir. July 2, 2026). But to demonstrate compliance, DOJ merely points to a preexisting SORN identified as “JUSTICE/CRT – 001,” the “Central Civil Rights Division Index File and Associated Records.” DOJ Br. 61. This SORN is deficient several times over.

First, it does not disclose what DOJ intends to do with the data—indeed, it does not even *mention* the NVRA, HAVA, or the CRA, which DOJ has identified as

the bases for its data collection. *See, e.g.*, DOJ Br. 1, 5–6, 8–9. DOJ notes that the SORN refers to the Civil Rights Division’s website, which in turn mentions the statutes, *see id.* at 62 n.10, but the Privacy Act requires information in the SORN to be “publish[ed] in the Federal Register,” 5 U.S.C. § 552a(e)(4)—not on an agency’s webpage. Moreover, the Division’s website merely lists the statutes enforced by the Voting Section; it does not disclose the intended “routine use[s]” of the mass data collection DOJ seeks, as required by the Privacy Act. 5 U.S.C. § 552a(e)(4)(D).

Second, the SORN says DOJ may maintain information about the “[s]ubjects of investigations, victims, [and] potential witnesses.” Privacy Act of 1974; Systems of Records, 68 Fed. Reg. 47610, 47611 (Aug. 11, 2003). DOJ insists this language covers its demand because every Maryland registered voter is simultaneously a “subject” and “victim” in its “investigation into . . . voter fraud.” DOJ Br. 62–63. Maryland’s voters would be aghast to learn that DOJ views each and every one of them as a “subject”—a designation serious enough that it would normally trigger a well-advised recipient to seek criminal defense counsel. *See id.* at 62 (DOJ recognizing that a “subject” is a person whose “conduct” is under “investigation”). And it is similarly implausible to call every voter a “victim” in an investigation purportedly about the sufficiency of the State’s voter roll maintenance.

Third, the SORN describes the categories of covered records as “case files, matters, memoranda, correspondence, studies, and reports relating to enforcement

of civil rights laws and other various duties of the Civil Rights Division.” 68 Fed. Reg. at 47611. Although this language may cover run-of-the-mill files maintained for specific investigations and litigation, it would be remarkable to conclude—as DOJ insists—that these terms extend to permit proactively seizing each State’s full, unredacted voter list.

In sum, the SORN does “nothing to put a member of the American public on notice that specifically, their voter registration data is going to be collected on [such] an unprecedented level.” *Weber*, 816 F. Supp. 3d at 1193–94; *see also* Privacy Act of 1974, Pub. L. No. 93-579, § 2(b)(1), 88 Stat. 1896, 1896 (Congress enacted the Act to “permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated” by federal agencies). If DOJ could rely on a preexisting SORN that says nothing about voter registration databases to collect voter data, one of the Privacy Act’s central purposes would be defeated entirely.²

The failure to comply with the Privacy Act requires dismissal because courts may not “command[] unlawful conduct.” *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 79–80 (1982) (declining to “command[] unlawful conduct”); *accord Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 193 (1978) (federal courts cannot grant relief that would

² The “law enforcement” exception DOJ references means only that DOJ is not *categorically* barred from collecting First Amendment information. *See* 5 U.S.C. § 552a(e)(7). There is no law enforcement exception to the Act’s SORN requirement. *Id.* § 552a(e)(4).

violate specific commands of Congress); *see also South Carolina v. United States*, 243 F. Supp. 3d 673, 696 (D.S.C. 2017) (order “could not compel the agency to take an unlawful action”), *aff’d*, 907 F.3d 742 (4th Cir. 2018). And although DOJ cites *United States v. McAnlis*, 721 F.2d 334, 337 (11th Cir. 1983), for the proposition that it need not comply with the Privacy Act—thus inviting this Court to order a violation of federal law—that decades-old and out-of-circuit case is distinguishable. *McAnlis* did not involve a SORN deficiency but a separate notice provision of the Privacy Act, 5 U.S.C. § 552a(e)(3), and the court there concluded that the individual at issue “suffered no prejudice in failing to receive a Privacy Act notice,” 721 F.2d at 337. By contrast, millions of Marylanders, including the Alliance’s members, would be severely prejudiced if their sensitive personal data is disclosed.

At the very least, DOJ’s noncompliance with the Privacy Act defeats its request that the Court “remand with instructions to order Administrator DeMarinis to immediately produce the requested unredacted SVRL.” DOJ Br. 63. If this Court does not affirm it should still remand for further proceedings in the district court.

CONCLUSION

The Court should affirm.

September 30, 2026

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Intervenor-Defendant-Appellee Maryland/DC Alliance for Retired Americans respectfully submits that oral argument is appropriate because this case presents important issues of first impression in this Circuit. As explained in its opposition to Appellant's now-denied motion to expedite, the Alliance disagrees with Appellant that oral argument should be scheduled on an expedited basis. *See* Doc. 22.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 1,620 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it was prepared using Microsoft Word in Times New Roman 14-point font, a proportionally spaced typeface.

September 30, 2026

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta

TEXT OF RELEVANT PRIVACY ACT PROVISIONS

5 U.S.C. § 552a – Records maintained on individuals.

(a) Definitions. — For purposes of this section—

- (1) the term “agency” means agency as defined in section 552(e)(1) of this title;
- (2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (3) the term “maintain” includes maintain, collect, use, or disseminate;
- (4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
- (5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;
- (6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;
- (7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

[. . .]

(e) Agency Requirements. — Each agency that maintains a system of records shall—

- (1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;
- (2) collect information to the greatest extent practicable directly from the

subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

- (3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—
 - (A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;
 - (B) the principal purpose or purposes for which the information is intended to be used;
 - (C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and
 - (D) the effects on him, if any, of not providing all or any part of the requested information;
- (4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—
 - (A) the name and location of the system;
 - (B) the categories of individuals on whom records are maintained in the system;
 - (C) the categories of records maintained in the system;
 - (D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
 - (E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
 - (F) the title and business address of the agency official who is responsible for the system of records;
 - (G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

- (H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
 - (I) the categories of sources of records in the system;
- (5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;
 - (6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;
 - (7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;
 - (8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;
 - (9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;
 - (10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;
 - (11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or

arguments to the agency; and

- (12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules. — In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

- (1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;
- (2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;
- (3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;
- (4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and
- (5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.