

Privacy + Security Forum

Session:

**Data, DOGE & Danger: Accountability
for the Federal Government's Activities**

Speakers

Data, DOGE & Danger: Accountability for the Federal Government's Activities



Maya A. Bernstein
Former Senior Advisor
for Privacy Policy,
HHS



Charles J. Borges
Former CDO,
Social Security Admin



Nikhel Sus
Chief Counsel,
Citizens for
Responsibility and
Ethics in Washington



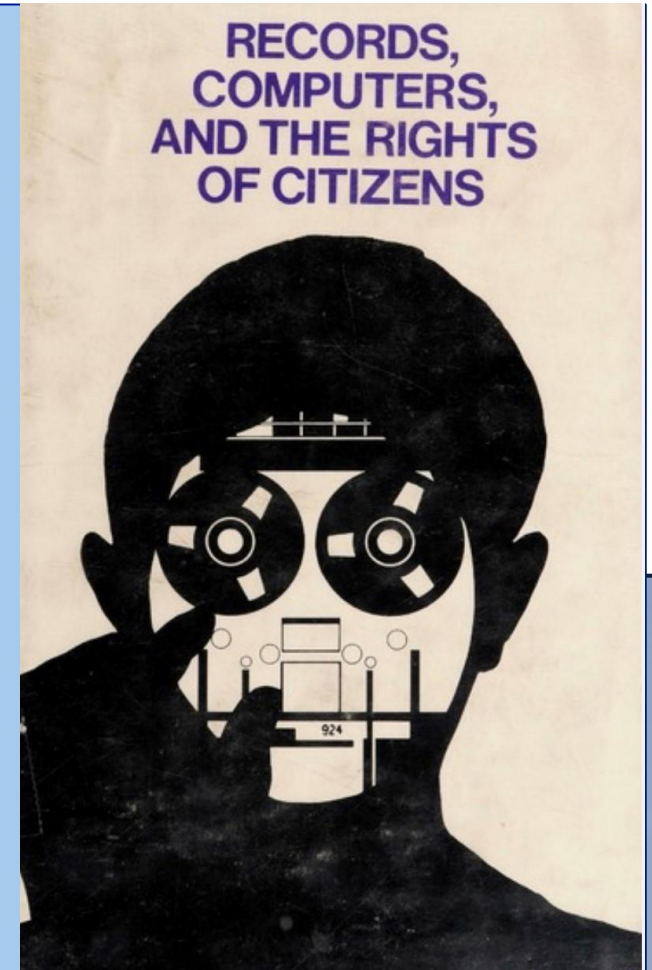
Bethanne Barnes
Former Acting CDO,
Administration for
Children and Families,
HHS

Agenda

- Introductions
- Quick level set on the Privacy Act
- Different perspectives on privacy and current govt activities
- Relationship to Data Governance
- Looking Forward: What is happening?
- Looking Forward: What can be done?
 - Blowing the Whistle
 - Talking to the press
 - Supporting others who are doing these things:
 - Education, outreach, technical assistance
 - Suing the government
 - Commenting on public notices: SORNs, PRA, regulations

Review: Origins of the Privacy Act of 1974

- **1960s/early 70s:** shift from paper to automated/computerized dbases.
 - Congressional concern about easy cross-referencing of personal data
 - Fear of "standard universal identifier" to link individuals' details across agencies
- ***Records, Computes & the Rights of Citizens***
 - Product of an advisory committee under Secretary of HEW in 1973
 - Code of Fair Information Practice became the basis of all privacy laws worldwide



Review: Origins of the Privacy Act of 1974

- **Watergate:** distrust of government = catalyst for legislation action
- **The Goals:** prevent the federal government from:



- Secretly monitoring individuals
- maintaining "dossiers" on people who were not suspected of a crime
- Creating a massive, centralized federal database that could be easily ab/used to track every citizen

Whistle blower disclosure

- What data was of concern?
- How is that data used?
- How could that data be used erroneously?
 - E.g. SSA citizenship data v. voting data
- What rules were bypassed causing the concern?

Expected data governance process

- Administrative processes
 - Review of plans
 - Assessment of risks
 - Risk mitigation and management plan
 - Signatures
 - Notices, publication
- Technical/platform
 - Access controls, passwords, etc.
 - Exfiltration tracking
 - User, activity logging

Risk Management, Assessment, Boundaries

- Govt operates on officials' willingness to operate under norms
 - Ethical boundaries
 - Fear of consequences (fines, reputation, prison)
- There are normally multiple checkpoints
- But, if unscrupulous officers of high enough rank are willing to assume risks, then they can bypass security checks
- The guardrails fail if everyone just “does what they are told”

How do the Feds track and manage outcomes?

- The federal government is poor at tracking things.
- Lack of centralized tracking, and
- Lack of understandable, usable framework
 - makes it easier to obfuscate rules and norms
- Difficult to track wrongdoers
- Difficult to carry out enforcement

Recent prioritization of cross-agency data consolidation

- Executive Order 14158 — Implementing DOGE (1/20/25)
 - Creating DOGE and directing agencies to give DOGE access to systems
- EO 14243 — Eliminating Information Silos (3/20/25)
 - Promoting intra- and inter-agency sharing and consolidation of unclassified records”
- EO 14248 — Preserving the Integrity of Elections (3/28/25)
 - Directing DHS and SSA to share data with state/local officials to “identify unqualified voters registered in the States” (using the SAVE system)
- EO 14399 — Citizenship Verification & Integrity in Fed. Elections (3/31/26)
 - Directing DHS and SSA to create “State Citizenship Lists” using SAVE and SSA

What is the SAVE system?

- Systematic Alien Verification for Entitlements (SAVE)?
- Point in time verification of immigration status, citizenship
- Run by USCIS/DHS
- Directly queries multiple federal, state databases
- Also queries non-governmental entities (NLETS)
- Returns responses (“hits”) to user agencies

How is the SAVE system useful?

- Helps federal, state, local, territorial, tribal agencies verify citizenship and immigration status to decide eligibility for benefits, licenses, and other lawful purposes:
 - Benefits eligibility decisions
 - Health care (like ACA marketplace)
 - Social security
 - Education grants or assistance
 - Professional licensing
 - State driver's licenses
 - Identification cards
 - Occupational licensing
- ❖ And now eligibility to vote

History of the SAVE system

- **1986:** Created under Immigration Reform and Control Act
 - Immigration and Naturalization Service was still at Justice
 - Authorized INS to create system for the “Verification of immigration status of aliens applying for benefits under certain programs.”
 - Not designed to be used on U.S. citizens nor for voter eligibility checks
- **1996:** Significant expansion
 - Personal Responsibility and Work Opportunity Reconciliation Act
 - aka “Welfare Reform”
 - Illegal Immigration Reform and Immigrant Responsibility Act
 - aka “Immigration Reform”

History of the SAVE system (cont'd)

- **2003:** Jurisdiction moved to USCIS (U.S. Citizenship and Immigration Services under newly formed Department of Homeland Security)
- **2009:** Some state/local officials started using SAVE for voter registration and list maintenance, but the system:
 - 1) only allowed individualized searches
 - 2) only queried immigration-related databases and not systems on U.S. born citizens, and
 - 3) required a “DHS numeric identifier” (no search-by-SSN function)

Changes to SAVE in 2025

- **May 2025:** DHS and DOGE announce major SAVE “overhaul”
 - mass voter eligibility and benefits checks
 - federal, state, and local user agencies
 - Relying on authority in first Elections EO of 3/28/25
 - DHS touts SAVE as “a single, reliable source for verifying immigration status and U.S. citizenship.”
- 2 new major features:
 - Allows users to directly search SSA and other agencies using SSNs
 - no need for a DHS numeric identifier to run a search
 - Allows “bulk uploads” by states
 - entire statewide voter registration lists used in mass “voter verification”

The latest SAVE developments

- **Sept 2025:** DHS publishes updated SAVE SORN
 - plans to expand SAVE to state driver's license databases
 - Plans to expand to National Law Enforcement Telecommunications System (NLETS)
 - a non-govt information system used by law enforcement
 - Federal, state, local data sharing across US and Canada
 - Shares driver's licenses, vehicle registration, criminal records, and Interpol
- **TODAY:** SAVE has grown from a small, mostly manual process to a massive service used by over 1,300 federal, state, and local agencies.

The LWV v. DHS litigation – the parties

- League of Women Voters
 - And state affiliates in Texas, Louisiana, and Virginia
- Electronic Privacy Information Center (EPIC)
- Amici
 - members of Congress
 - local election officials, and
 - voting, privacy, and pro-democracy groups
- v. Department of Homeland Security

The LWV v. DHS litigation – major claims

- No statutory authority for DHS (or any agency) for
 - creating a master registry of U.S. citizens
 - Using data pooled across federal and state agencies
- Reliance on faulty citizenship data
 - causing some eligible U.S. citizen voters to be identified as non-citizens
 - infringing their voting and privacy rights
- Wrong data for the purpose
- Violation of Privacy Act notice-and-comment requirements
- Arbitrary and capricious decision-making

How accurate is SSA Data for Citizenship?

- SSA data on citizenship status is collected to support work authorization and benefits eligibility decisions ONLY
 - not to verify U.S. citizenship for purposes of voting
- A person can be work-authorized in multiple immigration statuses
- A non-citizen when issued an SSN can later obtain citizenship
 - Citizenship may be obtained through naturalization or derivation
 - Such a person is not required to update citizenship status with SSA
 - SSA will only update citizenship status if the person makes an appointment and appears in person at an SSA office with documents to prove citizenship
- Therefore, SSA data on citizenship is often incorrect or out of date.

Concerns with DHS repurposing citizenship data?

- If states run “bulk” voter registration queries through SAVE with a purpose to identify potential non-citizen voters:
 - Foreign-born U.S. citizens will be falsely identified as non-citizens based on out-of-date SSA data
 - SSA data was never intended to be used to verify real-time citizenship status
- This is not hypothetical — it has already happened
 - TX declarants in LWV case include naturalized and derived U.S. citizens
 - SAVE wrongly identified them as non-citizens
 - They were forced to provide proof of citizenship to retain their voter registration
 - One was prevented from voting in the March primary because the citizen’s registration was cancelled due to Texas’ use of SAVE.

Secondary Legal Issues?

- What is the nature of a Privacy Act SORN?
 - Should it be more like APA notice and comment?
 - Is it an empty formality?
- Relying on outdated “routine uses” from old SORNs
 - Do not support sharing new data in new ways
- Skirting restrictions on computer “matching programs”
 - “Matching programs” under the Privacy Act include many protections
 - But are limited to federally funded benefit and loan eligibility checks

Authorities being cited to move data around

Repeatedly cited to enable cross-agency disclosures of data:

- 1) Privacy Act 5 USC § 552a(b)(7) exception for law enforcement requests (in combination with programmatic authorities)
- 2) Privacy Act 5 USC § 552a(b)(3) Routine Use exception
 - Agencies publishing routine use for audits
 - Citing EO 14249, “Protecting America’s Bank Account Against Fraud, Waste, and Abuse” (aka “DNP Routine Uses”)
- 3) 2 C.F.R. § 200.337 — audit authorities of grantees

Authorities being cited to move data around

Authority	Being used for	Related Executive Orders		Frequently combined with
(b)(7) Law enforcement exception	<ul style="list-style-type: none"> Moving data to DHS -ICE enforcement -Voter Rolls -re-disclosing to Treasury 	<ul style="list-style-type: none"> EO 14243 EO 14159 EO 14288 EO 14395 	<ul style="list-style-type: none"> EO 14218 EO 14248 EO 14385 EO 14399 	<ul style="list-style-type: none"> -INS authorities -“Sending” program audit and oversight authorities -Citations to the EOs
DNP Routine Use	<ul style="list-style-type: none"> Moving data to Treasury -Stopping payments -re-disclosing to DHS 	<ul style="list-style-type: none"> EO 14218 EO 14249 EO 14395 	<ul style="list-style-type: none"> EO 14243 EO 14247 EO 14398 	<ul style="list-style-type: none"> -Citations to the EOs -“Sending” program audit and oversight authorities
2 CFR 200.337	<ul style="list-style-type: none"> Moving data from grantees to federal agencies -re-disclosing to DHS -re-disclosing to Treasury 	<ul style="list-style-type: none"> EO 14218 EO 14249 EO 14399 	<ul style="list-style-type: none"> EO 14243 EO 14395 	<ul style="list-style-type: none"> -Program specific oversight authorities -T & C citations

SORNs are not consistently being updated

- Updates seem to be associated with cross-agency data sharing
 - More than 300 SORNs updated to include the Do Not Pay (DNP) routine use
 - SSA SORNs have been updated to permit disclosure to DHS for immigration
 - [Master Files of Social Security Number \(SSN\) Holders and SSN Applications, 60-0058 \(11/12/2025\)](#)
 - [Electronic Disability \(eDIB\) Claim File, 60-0320 \(4/15/26\)](#)
- Existing SORNs may not be updated for new data coming in
 - DOJ seems to be stockpiling voter data collected from states:
 - “JUSTICE/CRT – 001, Central Civil Rights Division Index File and Associated Records” (“Central CRT Index File”), [68 Fed. Reg. 47610, 611 \(August 11, 2003\)](#), [70 Fed. Reg. 43904 \(July 29, 2005\)](#), and [82 Fed. Reg. 24147 \(May 25, 2017\)](#)
- New SORNs for new collections are disturbingly broad
 - Department of the Treasury, [DO .0197—Financial Assistance Programs \(2/4/26\)](#)

Prognosticating / What to watch

Legislation, Executive Orders

- EO 14395 on fraud/waste/abuse
- EO 14399 on voter roles
 - Both seem to require two agencies sending data back and forth
 - Expect implementation plans, guidance ~May - June 2026
- H.R. 8463 “The Fraud Prevention and Accountability Act”

Prognosticating / What to watch

Administrative actions

- New attempts to grab data, esp. from new/unusual sources
 - Requests for universe data under a “desk audit” or as a T&C
 - OPM’s [notice](#) regarding Federal Employees Health Benefits claims
 - Intimate details about federal beneficiaries’ private medical conditions and care
 - Beneficiaries include employees, retirees, spouses, and children
- New attempts to collect data unrelated to mission and keep it
 - DOJ Capturing voter registration data at the federal level
- Potential re-regulation of 2 CFR § 200 Uniform Guidance (audit authority)
- Paperwork Act changes affecting SAM.gov (grants, contracts)
 - Enable expansion of 2 CFR 200.337 auditing to new programs?

News Articles of Interest

“Whistleblower Responds After DOJ Confirms DOGE Mishandled Social Security Data” (PBS NewsHour interview with Chuck Borges, Jan 27, 2026) <https://www.pbs.org/newshour/show/whistleblower-responds-after-doj-confirms-doge-mishandled-social-security-data>

Jen Fifield, “Details of DHS Agreement Reveal Risks of Trump Administration’s Use of Social Security Data for Voter Citizenship Checks” *ProPublica* (Oct 30, 2025) <https://www.propublica.org/article/dhs-social-security-data-voter-citizenship-trump>

Jen Fifield and Zach Despart, “A federal tool to check voter citizenship keeps making mistakes. It led to confusion in Texas.” *Texas Tribune* and *ProPublica* (Feb 13, 2026) <https://www.texastribune.org/2026/02/13/save-voter-citizenship-tool-mistakes-confusion/>

Eli Hager, “DHS Seeks Access to Massive Employment, Salary and Family Database Legally Restricted to Use in Child Support Cases” *ProPublica* (Mar 11, 2026) <https://www.propublica.org/article/dhs-trump-child-support-federal-parent-locator-service-immigration>

Jude Joffe-Bloch, “As DOJ prepares to share state voter data with DHS, a key privacy officer resigns” *National Public Radio* (Apr 3, 2026) <https://www.npr.org/2026/04/03/nx-s1-5768455/privacy-doj-dhs-voter-data>

Natalie Alms, “Treasury is creating a database with pandemic aid recipients’ sensitive information,” *NextGov/FCW* (Apr 8, 2026) <https://www.nextgov.com/digital-government/2026/04/treasury-creating-database-pandemic-aid-recipients-sensitive-information/412722/>

Other Useful References

Chuck Borges Whistleblower Disclosure (Aug 26, 2025) <https://www.documentcloud.org/documents/26074874-charles-borges-ssa-disclosure/>

League of Women Voters briefs regarding SAVE overhaul

- Memorandum in Support of Plaintiff's Motion for Summary Judgment, *League of Women Voters v. Dept of Homeland Security*, Case No. 25-cv-3501-SLS, (D.D.C. Mar 12, 2026) <https://storage.courtlistener.com/recap/gov.uscourts.dcd.285454/gov.uscourts.dcd.285454.66.1.pdf>
- Plaintiffs' Combined Reply in Support of their Motion for Summary Judgment and Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, *League of Women Voters v. Dept of Homeland Security*, Case No. 25-cv-3501-SLS, (D.D.C. Apr 24, 2026). <https://storage.courtlistener.com/recap/gov.uscourts.dcd.285454/gov.uscourts.dcd.285454.100.0.pdf>

Common Cause suit regarding DOJ national voter database: <https://www.citizensforethics.org/legal-action/lawsuits/voting-rights-groups-sue-doj-to-block-national-voter-surveil-and-purge-database/>

Roundup of the Administration's data consolidation efforts

Citizens for Responsibility and Ethics in Government, "The Trump admin wants to put your private data in one place. That's illegal." (Apr 29, 2026) <https://www.citizensforethics.org/reports-investigations/crew-reports/the-trump-admin-wants-to-put-your-private-data-in-one-place-thats-illegal/>

Stay in touch: Continue the conversation with us

Maya A. Bernstein

MAB Information Policy Insights
maya@mabinsights.com

Chuck Borges

info@chuck4md.com

Nik Sus

Citizens for Responsibility and
Ethics in Washington
nsus@citizensforethics.org

Bethanne Barnes

Bethanne Barnes Consulting
bethanne@bethannebarnes.com