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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 RYON LESLIE ROOT,
Petitioner/Plaintiff,
v.
19 UNITED STATES DEPARTMENT OF
STATE,
Respondent/Defendant.

No. 8:23-cv-00070-CJC-ADS

Hearing Date: August 28, 2023
Hearing Time: 1:30 p.m.
Ctrm: 9 B
Hon. Cormac J. Carney, United States District Judge

- 23 1. DEFENDANT’S NOTICE OF MOTION AND MOTION TO DISMISS;
- 24 2. MEMORANDUM OF POINTS AND AUTHORITIES.

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that, on August 28, 2023 at 1:30 pm, as soon thereafter as they may be heard, Defendant the U.S. Department of State will, and hereby does, move this Court for an order dismissing the complaint without leave to amend. This motion will be made in the Ronald Reagan Federal Building and Courthouse before the Honorable Cormac Carney, United States District Judge, located at 411 West Fourth Street, Santa Ana, CA 92701.

Defendant brings the motion on the ground that Petitioner is not entitled to a writ of mandamus and that his filings fail to state a claim on which relief may be granted, as set forth further in the accompanying Memorandum of Points and Authorities.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which was held on July 12, 2023.

1 Dated: July 19, 2023

Respectfully submitted,

2
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Federal law authorizes the State Department to reject passport applications that omit
4 the applicant’s assigned social security number (SSN). Petitioner here refused to provide
5 his SSN, and the State Department therefore denied his passport application. Petitioner
6 now seeks a writ of mandamus compelling the State Department to reverse its denial and
7 issue him a passport. He contends that the statute authorizing the State Department to deny
8 passport applications that omit the applicant’s issued SSN unconstitutionally infringes on
9 his right to privacy; infringes on his right to travel internationally; and is unconstitutionally
10 “overbroad.”

11 The petition for a “writ of mandate” should be denied: The proper vehicle for
12 petitioner’s claim is an ordinary civil suit under the Administrative Procedure Act, not a
13 petition for a writ of mandamus. But, in any event, Petitioner has no valid legal claim: the
14 challenged statute advances the government’s interests in combatting fraud and tax
15 evasion, among other interests, and easily survives constitutional scrutiny.

16 **II. STATEMENT OF FACTS**

17 *A. Statutory and Regulatory Background*

18 The Secretary of State and his designees are authorized to “grant and issue
19 passports,” 22 U.S.C. § 211a, but there are many reasons a passport application might be
20 denied, such as serious tax debt. *See* 22 U.S.C. § 2714a(e); *see also, e.g.*, 22 C.F.R. § 51.60
21 (identifying several reasons). Particularly relevant here, Congress has provided expressly
22 that the Secretary is “authorized to deny such application” for a passport if the application
23 either “does not include the social security account number issued to that individual” or
24 “includes an incorrect or invalid social security number willfully, intentionally,
25 negligently, or recklessly provided by such individual,” 22 U.S.C. § 2714a(f); *see also* 22
26 C.F.R. § 51.60(f) (same). For applicants who do not have an SSN—such as U.S. citizens
27 born and living abroad who have never needed one—the State Department instructs them
28 to list their SSN as all zeroes; such applicants who genuinely do not have an SSN may still

1 be issued a passport. *See* Passport Application at 1 ¶ 5 (“If you do not have a Social
2 Security number, you must enter zeros in this field and submit a statement”).¹

3 *1. State Department Review of Passport Applications*

4 The declaration of Paul Peek, attached hereto, sets forth the process by which the
5 State Department reviews passport applications and the role the SSN information plays in
6 that process. *See* Decl. of Paul Peek (July 19, 2023) (Peek Decl.). As Mr. Peek, who
7 oversees the State Department’s passport adjudication system, explains, the State
8 Department has relationships with numerous federal, state, and local agencies that provide
9 information relevant to the issuance of a passport. Peek Decl. ¶ 4 When reviewing passport
10 applications, the Department cross-checks the information provided in the application
11 against other information in its systems, such as flags for tax delinquencies, child support
12 delinquencies, arrest warrants, or national security concerns. *Id.* In addition, State
13 Department personnel examine applications for indications of fraud or identity theft to
14 ensure proper issuance of passports. *Id.* ¶¶ 5–8. In these and other efforts, the applicant’s
15 SSN, if he or she provides one, serves as an important tool. Unlike other identifying
16 information, SSNs are unique, unchanging, and comparatively confidential. *Id.* ¶¶ 6–7.
17 Other identifying information, like names, for example, may be shared by multiple people,
18 may be changed, and are readily available in public records. *Id.* ¶ 5. The special
19 characteristics of SSNs make them particularly useful, therefore, in rooting out application
20 fraud or passport ineligibilities. For example, an application that contains the applicant’s
21 biographical information such as date and place of birth but omits an SSN may indicate
22 that the person submitting the application does not have access to the SSN—a potential
23 indication of identity theft. *Id.* ¶ 6.

24 *2. 2015 FAST Act Changes to Passport Applications*

25 In 2015, Congress authorized the State Department to require applicants to include
26 their assigned SSN as a condition for issuing a passport. Prior to 2015, federal law required
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28 ¹ Available at <https://eforms.state.gov/Forms/ds11.pdf>.

1 (and still does) that applicants provide their social security number, but until 2015 the law
2 did not authorize the State Department to deny a passport to applicants who did not
3 comply. Instead, compliance was enforced only by a \$500 fine assessed by the IRS. *See*
4 26 U.S.C. § 6039E. Governmental reports had noted that the State Department’s inability
5 to deny a passport application that omitted the applicant’s SSN specifically hindered tax
6 enforcement efforts. *See Potential for Using Passport Issuance to Increase Collection of*
7 *Unpaid Taxes* (Government Accountability Office Report), GAO-11-272 (March 2011).
8 In 2015, Congress passed, and the President signed, the Fixing America’s Surface
9 Transportation Act (FAST Act). Pub. L. 114-94, 129 Stat. 1312 (Dec. 4, 2015). As part of
10 that Act, Congress authorized the State Department to deny passport applications when
11 the applicant omits his or her assigned SSN or when the applicant willfully, knowingly,
12 recklessly, or negligently includes an incorrect SSN. FAST Act § 32101, 129 Stat. 1729,
13 *codified at* 22 U.S.C. § 2214a(f). Consistent with that law, the State Department has
14 generally denied applications that omit the applicant’s assigned SSN since 2016. *See*
15 *Passports*, 81 Fed. Reg. 60608-1 (Sep. 2, 2016); Peek Decl. ¶¶ 10–11.

16 *B. Factual Background²*

17 Petitioner Ryon Root applied for and received a passport in 2000/2001 and again in
18 2010. *See* Pet. 5–6. In each application he omitted his SSN, but the law then in place did
19 not authorize the State Department to deny an application for omitting an SSN. *Id.*; *see*
20 Peek Decl. ¶ 12. When Mr. Root applied again in 2020, the law had changed. In his 2020
21 application, Mr. Root wrote that his SSN was 000000000 (the application materials

22
23 ² Mr. Root styles his filing as a petition for a writ of mandate, which the government
24 construes as a complaint, *see* Pet. at 5–9, combined with a separate petition for a writ of
25 mandamus, *see* Pet. at 11–24. The government includes additional factual context here in
26 its response to the petition, but none of that factual background is material to the legal
27 issues raised by either portion Mr. Root’s filing. Accordingly, the Court need not resolve
28 disputed facts, if any, to deny the petition or to dismiss the complaint for failure to state a
claim. If the Court determines that consideration of extra-pleading material is necessary
to resolve the motion, the government respectfully asks that the Court convert this motion
to a motion for summary judgment under Rule 12(d).

1 instruct applicants without an SSN to use all zeroes). Peek Decl. ¶ 13. The State
2 Department checked the information in Mr. Root’s application against other records and
3 determined that the Social Security Administration had issued an SSN to someone
4 matching his biographical details. *Id.* Because the Department’s investigation indicated
5 that, contrary to his application materials, Mr. Root did in fact have an SSN, it wrote to
6 him requesting that he either provide his SSN or declare under penalty of perjury that he
7 had never been issued one; Mr. Root responded by declaring he had never been issued an
8 SSN. *See id.* Based on the State Department’s investigation, the Department concluded
9 that Mr. Root did have an SSN and that he had not complied with the statute or regulations;
10 the Department denied his application in early 2021. *See* Pet. at 6; Peek Decl. ¶ 13. Mr.
11 Root applied again for a renewed passport later in 2021, again omitting his SSN. *See* Pet.
12 at 6; Peek Decl. ¶ 14. The State Department again concluded—referencing data provided
13 by the Social Security Administration—that Mr. Root did have an SSN and again denied
14 his application for failing to include his issued SSN. Peek Decl. ¶ 14; *see* Pet. at 6.³

15 In 2023, Mr. Root then filed what he labeled as a “Petition for a Writ of Mandate,”
16 principally seeking a court order requiring the State Department to vacate its denial and
17 issue him a passport. *See* Pet. at 9.

18 **III. ARGUMENT**

19 The Court should dismiss Mr. Root’s pleading for failure to state a claim and deny
20 leave to amend as futile.⁴ A complaint should be dismissed for failure to state a claim

21 ³ Although Mr. Root’s submissions to the State Department indicated he had never been
22 assigned an SSN, *see* Peek Decl. ¶¶ 13–14, Mr. Root’s court filings make no such
23 allegation, and his claim to privacy regarding his SSN is inconsistent with his prior
24 assertion to the State Department that he does not have one. In any event, the Court need
25 not resolve whether Mr. Root does or does not have an SSN: he challenges the statute’s
26 requirement as unconstitutional, not the State Department’s determination that he had not
27 complied with it.

28 ⁴ Although courts have sometimes discussed the merits of a mandamus petition in terms
of “jurisdiction” to award mandamus relief, that analysis is best understood as a
determination that the petition fails on the merits, not that the court lacked jurisdiction to
(footnote cont’d on next page)

1 when, taking the facts alleged as true, the plaintiff would not be entitled to relief because
2 of “either a ‘lack of a cognizable legal theory’ or ‘the absence of sufficient facts alleged
3 under a cognizable legal theory.’” *Summit Tech., Inc. v. High-Line Med. Instruments*
4 *Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (citation omitted). “[A] Court does not
5 need to grant leave to amend in cases where a court determines that permitting a plaintiff
6 to amend would be an exercise in futility.” *All. for Const. Sex Offense L. Inc. v. Dep’t of*
7 *State*, No. CV 18-256-JFW(PLAX), 2018 WL 6011543, at *9 (C.D. Cal. July 12, 2018)
8 (citing *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987)).

9 Petitioner here fails to satisfy any of the three elements necessary to obtain
10 mandamus relief. Repleading his claims under the Administrative Procedure Act would
11 be futile because his legal contentions are mistaken—the FAST Act does not
12 unconstitutionally infringe either his right to privacy or his right to international travel.
13 Because no additional or different factual allegations would change this calculus, leave
14 to amend should be denied. *See, e.g., Primary Color Sys. Corp. v. Hiscox Ins. Co., Inc.*,
15 No. SACV2202029CJCJDEX, 2023 WL 2347386, at *5 (C.D. Cal. Feb. 1, 2023) (citing
16 *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017)).

17 *A. Petitioner is not entitled to a writ of mandamus.*

18 Mr. Root’s claim for mandamus should be denied. Mandamus is an “extraordinary”
19 remedy that will issue only when the petitioner can show that “(1) the plaintiff’s claim is
20 clear and certain; (2) the duty of the officer is ministerial and so plainly prescribed as to
21 be free from doubt; and (3) no other adequate remedy is available.” *Fallini v. Hodel*, 783
22 F.2d 1343, 1345 (9th Cir. 1986) (citations omitted); *see also Plaskett v. Wormuth*, 18 F.4th

23
24 _____
25 assess the merits. *Cf. Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 91 (1998)
26 (“Jurisdiction, it has been observed, is a word of many, too many, meanings . . .”).
27 Regardless, the only relevant consequence in this case to labeling the argument as
28 jurisdictional instead of as going to the merits is that a party cannot waive or forfeit
jurisdiction. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (discussing
significance of distinction). But because the government does actually raise the arguments
here, it is immaterial whether the issue is properly labeled “jurisdictional.”

1 1072, 1081 (9th Cir. 2021) (identifying same elements). Here, Mr. Root’s petition fails
2 each element.

3 *First*, Mr. Root’s claims are far from clear or certain. He contends variously that the
4 statute requiring him to provide his SSN in his passport application (1) unconstitutionally
5 infringes his right to privacy by requiring him to provide a government-issued
6 identification number to a government agency; (2) unconstitutionally infringes his limited
7 constitutional right to travel internationally by unjustifiably requiring him to provide
8 additional identifying information in his passport application; and (3) is unconstitutionally
9 overbroad because it assertedly would “require” *all* passport applicants “to obtain an SSN,
10 without first establishing a legitimate governmental interest to support such a
11 requirement.” *See* Pet. at 13–23.

12 As explained in more detail below, *see infra* Section III.B.2, all these claims lack
13 merit. But to the extent Mr. Root’s contentions are even plausible, they are neither clear
14 nor certain. *Cf. In re California Power Exch. Corp.*, 245 F.3d 1110, 1121 (9th Cir. 2001)
15 (claim not “clear and certain” when “[i]t is at the very least arguable” that the statute
16 authorized challenged agency action). Mr. Root identifies no case holding, or even
17 suggesting, that the constitutional rights to privacy or to international travel are unduly
18 infringed by the requirement to provide an SSN in a passport application. To the contrary,
19 those courts faced with constitutional challenges to the statute have rejected them. *See*
20 *Walker v. Tillerson*, No. 1:17-CV-732, 2018 WL 1187599, at *8 (M.D.N.C. Mar. 7, 2018),
21 *aff’d sub nom. Walker v. Pompeo*, 735 F. App’x 69 (Mem.) (4th Cir. 2018); *Whitfield v.*
22 *U.S. Sec’y of State*, 853 F. App’x 327, 330 (11th Cir. 2021) (rejecting procedural due
23 process challenge to statute). And as to his overbreadth argument, Mr. Root
24 misunderstands both the statute—it does not require applicants to obtain an SSN if they
25 do not have one, *see* 22 U.S.C. § 2714a(f)(1)(A)(i)—and the overbreadth doctrine—which
26 has no application outside the First Amendment context, *see United States v. Salerno*, 481
27 U.S. 739, 746 (1987). Mr. Root has failed to identify any authority to support a clear or
28 certain claim that would justify issuance of an extraordinary writ of mandamus—and

1 relevant authorities in fact undermine his claim.

2 *Second*, Mr. Root identifies no clearly circumscribed legal requirement that the
3 State Department issue him a passport. For one, the presumptively valid statute he
4 challenges expressly authorizes the State Department to deny a passport application in
5 these circumstances. *See, e.g., Walker*, 2018 WL 1187599 at *6 (denying mandamus
6 because statute authorizes Secretary to deny applications that omit the applicant’s SSN).
7 For another, even setting aside the statutory requirement to include his SSN, the statute
8 provides that the Secretary “*may* grant and issue passports,” indicating a degree of
9 discretion that Mr. Root has not rebutted. *See, e.g., Haig v. Agee*, 453 U.S. 280, 294 n.26
10 (1981) (recognizing that provision in the Passport Act which states that the Secretary of
11 State “*may*” issue passports “recognizes substantial discretion”). When agency action is
12 discretionary, rather than mandatory, mandamus is not available. *Barron v. Reich*, 13 F.3d
13 1370, 1375 (9th Cir. 1994) (denying mandamus when statute used “*may*” in contrast to
14 “*shall*”).

15 *Third*, Mr. Root has a readily available alternative legal remedy to challenge the
16 allegedly erroneous or unconstitutional denial his passport application: an ordinary civil
17 suit that challenges final agency action under the Administrative Procedure Act (APA).
18 *See* 5 U.S.C. § 706; *Jafarzadeh v. Duke*, 270 F. Supp. 3d 296, 311 (D.D.C. 2017)
19 (“[B]ecause plaintiffs are able to assert the same claim through the APA, they cannot
20 obtain relief under the Mandamus Act[.]”); *see also Hollywood Mobile Estates Ltd. v.*
21 *Seminole Tribe of Florida*, 641 F.3d 1259, 1268 (11th Cir. 2011) (“The availability of
22 relief under the Administrative Procedure Act also forecloses a grant of a writ of
23 mandamus.”); *Mt. Emmons Min. Co. v. Babbitt*, 117 F.3d 1167, 1170 (10th Cir. 1997)
24 (noting that the availability of a remedy under the APA “technically precludes” an
25 alternative request for mandamus); *Stehney v. Perry*, 101 F.3d 925, 934 (3d Cir. 1996)
26 (concluding that the availability of injunctive relief under the APA means that the “grant
27 of a writ of mandamus would be improper”). The APA allows Mr. Root to seek various
28 forms of relief—including an injunction or declaratory judgment, 5 U.S.C. § 703—if he

1 can demonstrate that approval of his application was “unlawfully withheld,” *id.* § 706(1),
2 or the denial of his application was (among other possibilities) “contrary to constitutional
3 right,” *id.* § 706(2)(B). Because this alternative relief is available, resort to the
4 extraordinary writ of mandamus is not. *See, e.g., Vaz v. Neal*, 33 F.4th 1131, 1125 (9th
5 Cir. 2022) (observing that relief under the APA typically displaces the need for mandamus
6 relief); *Plaskett*, 18 F.4th at 1082 & n.5 (9th Cir. 2021) (similar).

7 The Court should therefore deny Mr. Root’s petition for a writ of mandamus.

8 *B. The Court should deny leave to amend because amendment would be futile.*

9 Any amendment to Mr. Root’s pleadings would be futile, and the Court should
10 therefore deny leave to amend. Mr. Root cannot plead a valid claim under either of the
11 statutory provisions for review under the APA that preclude his mandamus action.

12 *1. Relief under § 706(1) is unavailable.*

13 Relief under 5 U.S.C. § 706(1) is unavailable to Mr. Root for the same reasons that
14 mandamus relief is unavailable. As the Ninth Circuit has recently reiterated, “the showing
15 required to support a request for an order under § 706(1) compelling an agency to take a
16 discrete action mirrors the showing that is required to obtain mandamus-type relief.”
17 *Plaskett*, 18 F.4th at 1082. Thus, a court can order relief under § 706(1) “only if there is a
18 specific, unequivocal command placed on the agency to take a discrete agency action,”
19 “the agency has failed to take that action,” and the action sought is “pursuant to a legal
20 obligation so clearly set forth that it could traditionally have been enforced through a writ
21 of mandamus.” *Vietnam Veterans of Am. v. Cent. Intel. Agency*, 811 F.3d 1068, 1075–76
22 (9th Cir. 2016) (citation omitted). As just illustrated, Mr. Root cannot demonstrate a clear
23 legal duty for the State Department to grant his passport application or that mandamus
24 relief would otherwise be available. Because allowing Mr. Root to cure his failure to plead
25 the APA’s statutory equivalent to mandamus relief would be futile and waste party and
26 judicial resources, the Court should not permit him to do so.

27 *2. Relief under § 706(2) is unavailable.*

28 Nor should Mr. Root be granted leave to amend his complaint to seek relief under

1 5 U.S.C. § 706(2). Although that provision provides the most natural route for the claims
2 he makes—that the State Department’s denial of his application violated his constitutional
3 rights for any of three reasons—such claims would fail as a matter of law and need not be
4 countenanced further.

5 *a. The statute does not unconstitutionally infringe Petitioner’s right to*
6 *privacy.*

7 Petitioner’s asserted constitutional right to informational privacy does not entitle
8 him to omit his SSN in his passport application.⁵ Here, the statute does not implicate
9 petitioner’s privacy interests at all because the information sought is neither private from
10 the government nor will it be publicly used or disclosed. And, in any event, the
11 government’s interests in using individuals’ SSNs to combat fraud and identify other
12 passport ineligibilities plainly outweigh Mr. Root’s interest in withholding his
13 government-issued SSN from the government.

14 The Ninth Circuit has recognized a limited constitutional “‘right to informational
15 privacy’ stemming from ‘the individual interest in avoiding disclosure of personal
16 matters.’” *Endy v. Cnty. of Los Angeles*, 975 F.3d 757, 768 (9th Cir. 2020) (quoting *In re*
17 *Crawford*, 194 F.3d 954, 958 (9th Cir. 1999)). This right is narrow and conditional; even
18 where it is implicated the government may still seek and use the information if the
19 government’s interests outweigh the individual’s interest in withholding the information.
20 *See id.*; *see also NASA v. Nelson*, 562 U.S. 134, 153 (2011) (rejecting argument that
21 government’s inquiries must be “necessary” or the “least restrictive means” as directly
22 contrary to Supreme Court precedent). And “[I]egitimate governmental interests combined
23 with protections against public dissemination can foreclose a constitutional violation.”
24 *Endy*, 975 F.3d at 768 (citing *NASA*, 562 U.S. at 138).

25
26 ⁵ Petitioner also points to authority arising in the context of the Freedom of Information
27 Act. *See* Pet. at 14 (citing *Painting Indus. of Hawaii v. Dept. of Air Force*, 26 F.3d 1479,
28 1482–83 (9th Cir.1994)). But the Ninth Circuit has clearly rejected the value of such
authority in the context of a constitutional claim. *See Doe v. Garland*, 17 F.4th 941, 947
(9th Cir. 2021).

1 *i. The Government-issued nature of the SSN, and tight controls on its*
2 *dissemination, preclude Mr. Root's privacy claim.*

3 The statute at issue here does not implicate or infringe Petitioner's privacy interests
4 at all. The Ninth Circuit has identified two ways for the government to violate the right to
5 informational privacy: by "disclosure to 'third' parties" or by "non-consensual retrieval of
6 previously unrevealed [personal] information." *Norman-Bloodsaw v. Lawrence Berkeley*
7 *Lab'y*, 135 F.3d 1260, 1269 (9th Cir. 1998). Neither is alleged here.

8 Requiring Mr. Root to include his SSN in his submissions *to the government* does
9 not implicate his privacy interests because it does not disclose information that is not
10 already known to the recipient. The government already knows his SSN—after all, the
11 government issued it to him. Rather, the SSN requirement serves to verify his identity and
12 to allow the State Department to check other systems efficiently and accurately for
13 passport ineligibilities. And as the Ninth Circuit noted in *In re Crawford*, an SSN—
14 although often and advisably kept private—is not "inherently sensitive or intimate
15 information, and its disclosure does not lead directly to injury, embarrassment or stigma."
16 194 F.3d at 960. Rather, the privacy interest in one's SSN relates only to the potential
17 downstream consequences of its misappropriation by bad actors, *id.*; the Ninth Circuit thus
18 stated only that "*public disclosure of SSNs . . . may implicate the constitutional right to*
19 *informational privacy.*" *Id.* at 958 (emphasis added). The Ninth Circuit accordingly
20 distinguished collecting information from making the information public. *See id.* at 960
21 (noting government interests that supported public disclosure differed from those
22 supporting collection); *see also id.* at 959 (describing issue as "whether the government
23 may properly disclose private information"). Because his SSN is not "previously
24 unrevealed" to the government, his privacy rights are not implicated.

25 And Petitioner does not allege—nor could he—that the State Department will
26 release or disclose his SSN to the public. *Cf. Endy*, 975 F.3d at 769 ("Endy's constitutional
27 privacy claim fails under both state and federal law because he provides no evidence that
28 his information has been publicly disseminated or disclosed."). The Supreme Court

1 rejected an informational privacy claim in *Whalen v. Roe* in part because the government
2 was statutorily prohibited from releasing the contested information outside a judicial
3 proceeding, and there had been no evidence that the law restricting further disclosure had
4 been violated. 429 U.S. 589, 600–02 (1977). As noted, the State Department already has
5 access to applicants’ SSNs (including Mr. Root’s), which is one way it verifies the
6 accuracy of applications and how it matches applications to other data in its systems. *See*
7 *generally* Peek Decl. ¶¶ 8, 13–14. But there is no evidence or allegation that those SSNs
8 are publicly disclosed: Just as in *Whalen*, existing law generally prohibits the State
9 Department from further disclosing the private information. *See* 5 U.S.C. § 552a(b)
10 (Privacy Act limitations on disclosure). And State Department passport application
11 systems are not accessible to the public; indeed, access is tightly controlled even within
12 the State Department. *See* 8 Foreign Affairs Manual 1203.1-1 (explaining general policy
13 prohibiting disclosure and limiting internal access to passport records).⁶ *Cf. Roe v. Sherry*,
14 91 F.3d 1270, 1274 (9th Cir. 1996) (no constitutional violation where “officers took steps
15 to protect the confidentiality” of medical information after collecting it).

16 *ii. The Government’s interests in collecting SSNs as part of its passport*
17 *application process outweigh Mr. Root’s objections to providing his.*

18 Regardless, whatever minimal interest Petitioner has in withholding his SSN from
19 the government is easily outweighed by the government’s competing interests in an
20 efficient and effective passport application system. *Cf. Doe v. Att’y Gen. of U.S.*, 941 F.2d
21 780, 796 (9th Cir. 1991) (indicating that necessary strength of government interest varies
22 with sensitivity of information at stake). As outlined above and discussed in the attached
23 declaration, the government relies on provided SSNs to reduce fraud, verify identity, check
24 applicants for passport ineligibilities, and enforce tax laws. *See* Decl. ¶¶ 6–9; *see also*
25 GAO Report. Given that an SSN is not “inherently sensitive or intimate information, and
26 its disclosure does not lead directly to injury, embarrassment or stigma,” the government’s
27

28 ⁶ Available at https://fam.state.gov/FAM/08FAM/08FAM120301.html#M1203_1_1.

1 interest in confirming identity, combatting fraud, and ensuring passports go only to
2 eligible applicants is more than sufficient to justify collection of SSNs, notwithstanding
3 any associated privacy interests. *See In re Crawford*, 194 F.3d at 960 (upholding collection
4 and publication of SSNs to combat fraud and enhance public confidence).

5 *b. The statute does not unconstitutionally infringe Petitioner’s right to*
6 *international travel.*

7 Petitioner’s asserted constitutional right to travel internationally is not
8 unconstitutionally infringed by the requirement that he include his SSN in his passport
9 application. *Walker*, 2018 WL 1187599, at *8 (rejecting identical claim). When assessing
10 a substantive due process claim, a court “must first consider whether the statute in question
11 abridges a fundamental right.” *United States v. Juvenile Male*, 670 F.3d 999, 1012 (9th
12 Cir. 2012). “When reviewing a challenge to a legislative act that does not infringe on a
13 fundamental right, rational basis review applies[.]” *Franceschi v. Yee*, 887 F.3d 927, 939
14 (9th Cir. 2018); *see also Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189,
15 1191 (9th Cir. 2013) (similar). The right to international travel is not a fundamental
16 constitutional right, but instead is “no more than an aspect of the ‘liberty’ protected by the
17 Due Process Clause of the Fifth Amendment” that therefore “can be regulated within the
18 bounds of due process.” *Haig*, 453 U.S. at 307 (quoting *Califano v. Aznavorian*, 439 U.S.
19 170, 176 (1978)); *see also Doe v. Kerry*, No. 16-CV-0654-PJH, 2016 WL 1446772, at *4
20 (N.D. Cal. Apr. 13, 2016) (“[W]hile there may be a fundamental right to domestic travel,
21 there is no such fundamental right to international travel.”). Requiring a passport applicant
22 to include his or her assigned SSN in the application is rationally related to a legitimate
23 government purpose—preventing fraud, screening for passport ineligibilities, and
24 collecting tax revenue—and Mr. Root’s contention therefore fails.

25 “Because international travel is not a fundamental right, limitations on it are
26 evaluated under a rational basis test.” *Jack v. Trans World Airlines, Inc.*, 854 F. Supp. 654,
27 662 (N.D. Cal. 1994). Courts routinely apply rational basis review when assessing
28 restrictions on international travel. *See, e.g., Franklin v. United States*, No. 3:20-CV-1303-

1 N, 2021 WL 4458377, at *10 (N.D. Tex. Sept. 29, 2021), *aff'd*, 49 F.4th 429 (5th Cir.
2 2022) (rejecting constitutional challenge to FAST Act’s passport rules); *Maehr v. U.S.*
3 *Dep’t of State*, 5 F.4th 1100, 1122 (2021)⁷; *Clancy v. Off. of Foreign Assets Control*, 559
4 F.3d 595, 604 (7th Cir. 2009); *Weinstein v. Albright*, 261 F.3d 127, 133 (2d Cir. 2001)
5 (adopting reasoning of district court applying rational basis, *see Weinstein v. Albright*, No.
6 00-cv-1193, 2000 WL 1154310, at *5–6 (S.D.N.Y. Aug. 14, 2000)). Courts in this
7 circuit—consistent with the lead opinion in *Eunique v. Powell*, 302 F.3d 971 (9th Cir.
8 2002)—similarly apply rational basis review.⁸ *Cf. Eunique*, 302 F.3d at 973 (opinion of
9 Fernandez, J.) (applying rational basis); *Freedom to Travel Campaign v. Newcomb*, 82
10 F.3d 1431, 1439 (9th Cir. 1996) (“Given the lesser importance of this freedom to travel
11 abroad, the Government need only advance a rational, or at most an important, reason for
12 imposing the ban.”).

13 *i. The FAST Act satisfies both rational basis and intermediate scrutiny.*

14 The SSN requirement is constitutional under either rational basis review or, as Mr.
15 Root prefers, intermediate scrutiny. There is no serious question that the SSN requirement
16 advances a legitimate and important government interest. Passports are a representation
17 by the United States government, to other governments, of the bearer’s identity. *See* 22
18 C.F.R. § 51.1 (defining “passport”); Peek Decl. ¶ 3. The government has an obvious
19 interest, with implications for foreign relations, in ensuring accurate representations to

20 _____
21 ⁷ Petitioner cites *Maehr* for the proposition that “intermediate scrutiny” applies. Pet at
22 18. But the portion cited by Mr. Root was not joined by any other judge on the panel;
23 rather, Judge Matheson’s separate opinion applying rational basis review is controlling on
24 this issue. 5 F.4th at 1104 (per curiam) (explaining that “Judge Matheson’s opinion, joined
25 by Judge Phillips, is the majority opinion on Mr. Maehr’s substantive due process
26 challenge”); *id.* at 1116 n.1 (opinion of Matheson, J.) (similar).

27 ⁸ *See, e.g., Van Hope-el v. U.S. Dep’t of State*, No. 1:18-CV-0441, 2019 WL 295774, at
28 *5 (E.D. Cal. Jan. 23, 2019); *Doe v. Kerry*, No. 16-cv-654, 2016 WL 1446772, at *4 (N.D.
Cal. Apr. 13, 2016); *Farley v. Santa Clara Cnty. Dep’t of Child Support Servs.*, No. 11-
cv-1994, 2011 WL 4802813, at *6 (N.D. Cal. Oct. 11, 2011); *Belazi v. Meisenheimer*, No.
03-cv-1746, 2004 WL 1535727, at *6 (D. Or. July 8, 2004); *United States v. Yip*, 248 F.
Supp. 2d 970, 973 (D. Haw. 2003).

1 foreign governments. Moreover, people use their passports as an official identification in
2 a range of circumstances, such as opening bank accounts or obtaining a driver’s license,
3 where accuracy is essential. *See* Peek Decl. ¶ 3. The SSN’s features—it “serves as a unique
4 identifier that cannot be changed and is not generally disclosed by individuals to the
5 public,” *In re Crawford*, 194 F.3d at 958—make it especially useful in combatting identity
6 fraud and in crosschecking other databases where biographical information (such as the
7 spelling of names) might not otherwise match an application. *See* Peek Decl. ¶ 5-7.
8 Because other common biographical information—like an applicant’s name or birthday—
9 may be widely available, the inclusion of the comparatively confidential SSN helps the
10 State Department confirm that an applicant is who he says he is. *See id.* ¶ 6. Similarly, the
11 inclusion of an SSN allows the Department to more effectively validate that the applicant
12 is not ineligible for a passport because, for example, of an outstanding warrant or unpaid
13 child support. *Id.* ¶¶ 4–9.

14 In addition, the requirement to include an SSN directly advances the government’s
15 interest collecting revenue by ensuring that applicants with large outstanding tax debts are
16 denied a passport. *See generally* GAO Report; Peek Decl. ¶ 9. The Department relies on
17 the Treasury Department’s certification, which includes the individual’s SSN. Peek Decl.
18 ¶ 9. Because the SSN is the data point most directly linked to an individual’s tax returns,
19 its inclusion in the passport application allows the State Department to efficiently and
20 accurately ensure that eligible applicants are not wrongly denied a passport and that
21 ineligible applicants are not issued passports in error. *Id.*

22 These important government interests are more than adequate to survive a
23 constitutional challenge. Indeed, numerous courts have already held so. In *Walker v.*
24 *Tillerson*, the district court rejected the plaintiff’s contention that the SSN requirement
25 unconstitutionally infringed his right to international travel. 2018 WL 1187599, at *8,
26 *aff’d*, 735 F. App’x 69 (Mem.). In *Whitfield v. Secretary of State*, the Eleventh Circuit
27 similarly rejected a constitutional challenge to the SSN requirement. 853 F. App’x at 329.
28 And in *Maehr v. Department of State*, the Tenth Circuit rejected a challenge to the FAST

1 Act, with the majority applying rational basis review and the concurring judge upholding
2 the law under intermediate scrutiny. Thus, under either rational basis review or
3 intermediate scrutiny, this Court should reject Mr. Root’s challenge to the eminently
4 reasonable requirement that he include his unique, government-issued identifier in his
5 passport application.

6 *c. The statute is not unconstitutional “as applied” to Mr. Root.*

7 Mr. Root’s “as-applied” challenge fails because, as explained above, *see supra*
8 Section III.B.2.b, the FAST Act’s SSN requirement is a lawful restriction on his limited
9 right to international travel. Mr. Root suggests that the government must show that the law
10 is adequately justified with respect to him individually. But he misunderstands the nature
11 of an as-applied challenge, which does not elevate the burden on the government to justify
12 its laws, but instead simply eliminates the plaintiff’s burden to show that the statute is
13 unconstitutional in *every* application. “Facial and as-applied challenges differ in *the extent*
14 *to which the invalidity of a statute need be demonstrated.” Isaacson v. Horne*, 716 F.3d
15 1213, 1230 (9th Cir. 2013) (quoting *Legal Aid Servs. of Or. v. Legal Servs. Corp.*, 608
16 F.3d 1084, 1096 (9th Cir. 2010)) (emphasis in original). In a facial challenge, a plaintiff
17 “must establish that no set of circumstances exists under which the Act would be valid.”
18 *Salerno*, 481 U.S. at 745. In an as-applied challenge, by contrast, a plaintiff “challenges
19 only one of the rules in a statute, a subset of the statute’s applications, or the application
20 of the statute to a specific factual circumstance.” *Issacson*, 716 F.3d at 1230 (quoting *Hoye*
21 *v. City of Oakland*, 653 F.3d 835, 857 (9th Cir. 2011)). Thus, as the Ninth Circuit has
22 explained, “[t]he precise characterization” of a challenge as either facial or as-applied “has
23 little bearing on the resolution of the legal question.” *Id.* Instead, the “substantive legal
24 tests used in facial and as-applied challenges are ‘invariant,’” and “the distinction matters
25 primarily as to the remedy appropriate if a constitutional violation is found.” *Id.* (quoting
26 *Hoye*, 653 F.3d at 857).

27 The government therefore need not demonstrate that the FAST Act is sufficiently
28 tailored to Mr. Root’s particular circumstances, and the Supreme Court has rejected such

1 an individualized assessment regime. The plaintiffs in *Clark v. Community for Creative*
2 *Non-Violence* challenged a blanket ban on camping on the National Mall. *See* 468 U.S.
3 288 (1984). The Supreme Court upheld the regulation and rejected the challengers’
4 contention that Park Service needed to justify application of the ban to their specific
5 planned protest: “[T]he validity of this regulation need not be judged solely by reference
6 to the demonstration at hand.” *Id.* at 296–97. And as a Ninth Circuit panel has further
7 explained, “for an as-applied challenge, the government need not show that the litigant
8 himself actually contributes to the problem that motivated the law he challenges.” *Nordyke*
9 *v. King*, 644 F.3d 776, 793 (9th Cir. 2011), *on reh’g en banc*, 681 F.3d 1041 (9th Cir.
10 2012). Instead, it is enough to show—as already demonstrated above—that the law
11 “generally ‘furthers an important or substantial governmental interest.’” *Id.* (citation
12 omitted); *see also One World One Family Now v. City & Cnty. of Honolulu*, 76 F.3d 1009,
13 1013 n.6 (9th Cir. 1996) (rejecting as-applied challenger’s argument that the government
14 needed to “offer any concrete evidence demonstrating that [the particular plaintiff’s
15 activities] actually” caused the harm the law generally sought to prevent).⁹

16 Because the FAST Act’s SSN requirement is sufficiently justified, it survives Mr.
17 Root’s as-applied challenge just as it survives his facial challenge.

18 *d. The statute is not unconstitutional by reason of overbreadth.*

19 Mr. Root’s contention that the statute is unconstitutionally overbroad fails at the
20 outset. The overbreadth doctrine does not apply outside the First Amendment context. *See*
21 *Salerno*, 481 U.S. at 746 (rejecting overbreadth challenge under the Eighth Amendment
22 and noting that “we have not recognized an ‘overbreadth’ doctrine outside the limited
23 context of the First Amendment”) (citation omitted); *see also United States v. Hansen*, 143
24 S. Ct. 1932, 1939 (2023) (describing limits of overbreadth doctrine). Nor is Mr. Root’s
25 underlying contention that the statute compels individuals to obtain an SSN correct. By its
26 terms, the statute requires only that applicants include “the social security account number

27 _____
28 ⁹ Petitioner also notes the possibility of, but does not advance, a challenge to
discriminatory enforcement of an otherwise constitutional law. *See* Pet. at 22.

1 *issued to that individual.*” 22 U.S.C. § 2714a(f)(1) (emphasis added). The State
2 Department does indeed issue passports to individuals who genuinely lack an SSN, such
3 as U.S. citizens born and living abroad who have never had any reason to obtain one or
4 those who do not obtain one for religious reasons—indeed, that is the reason the passport
5 application has instructions for applicants without an SSN. *See* Passport Application at 1
6 ¶ 5 (“If you do not have a Social Security number, you must enter zeros in this field and
7 submit a statement”).

8 **IV. CONCLUSION**

9 The Court should deny Mr. Root’s petition and dismiss his complaint without
10 leave to amend.

11
12 Dated: July 19, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant, certifies that this brief contains 6,017 words, exclusive of the caption, tables, signature blocks, and this certification, which complies with the word limit of L.R. 11-6.1.

Dated: July 19, 2023

/s/Michael F. Knapp
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