



**Testimony of Andrea Senteno, Regional Counsel, MALDEF**

**Before the Subcommittee on Elections of the Committee on House Administration**

**Hearing on Voting In America: The Potential For Voter ID Laws, Proof-Of-Citizenship Laws, And Lack Of Multi-Lingual Support To Interfere With Free And Fair Access To The Ballot**

**May 24, 2021**

Good morning Chair Butterfield and members of the Subcommittee. Thank you for the opportunity to testify today. My name is Andrea Senteno and I am Regional Counsel for MALDEF (Mexican American Legal Defense and Educational Fund) in Washington, DC. For over 50 years, MALDEF has worked to promote the civil rights of all Latinos living in the United States. MALDEF is headquartered in Los Angeles, with regional offices in Chicago; San Antonio, where we were founded; and Washington, D.C.

Since its founding, one of MALDEF's top priorities has been securing equal voting rights for Latinos and promoting increased civic engagement and participation within the Latino community. MALDEF played a significant role in securing the full protection of the federal Voting Rights Act (VRA) for the Latino community through the 1975 congressional reauthorization of the 1965 VRA. MALDEF has, over the years, litigated numerous cases under section 2, section 5, and section 203 of the VRA challenging at-large systems, discriminatory redistricting, ballot access barriers, undue voter registration restrictions, and failure to provide bilingual ballot materials or language assistance. MALDEF has litigated significant cases challenging statewide redistricting in Arizona, California, Illinois, and Texas, and has engaged in advocacy and litigation related to ballot access and local violations, in those states, as well as states and localities across the country, including Colorado, Georgia, Nevada, and New Mexico. For almost two decades, Latinos have constituted the largest racial or ethnic minority group in the U.S. As the growth of the Latino population expands, states and localities have worked to slow the registration and participation of new voters, and thus MALDEF's work in voting rights continues to increase.

In the last two decades, the nation has witnessed an accelerating pattern of ballot-access restrictions enacted to address baseless myths of widespread voter fraud. Like Donald Trump's

post-election false accusations of millions of improper “non-citizen” votes – all extraordinarily for his opponent, who won the popular vote by a significant number – many of these propagated fallacies have implicitly or explicitly targeted the growing Latino vote. Increasingly restrictive voter identification requirements, proof-of-citizenship requirements for new voter registrants, and restrictions on how and when voter registration drives may occur are all state electoral changes seemingly implemented to stem the growing Latino vote in Texas, Arizona, and other states.

Historically, lawmakers who have desired to limit the influence of voters of color often imposed prerequisites to registering or voting that exceeded the legal minimum qualifications of adulthood and U.S. citizenship. But as federal protections for voting evolved to specifically prohibit discriminatory prerequisites to registration and voting, some states and localities responded by accelerating the adoption of alternative restrictions, such as strict documentary identification requirements to register or vote. In 2004, Arizona passed the nation’s first statewide proof of citizenship mandate for registering voters. The first statewide strict voter identification requirements appeared in 2005 in Indiana and Georgia, shortly after the Help America Vote Act of 2002’s codification of individual identification requirements for certain newly-registered voters. In the decades since, measures designed to restrict voter access have proliferated across the country, including in states with significant Latino electorates.

### **Proof of Citizenship Barriers**

From 2000 to 2010, Arizona’s Latino population increased by almost 600,000, reaching 30% of the state’s population.<sup>1</sup> In 2004, Arizona voters passed Proposition 200, a voter initiative changing the state’s voter registration rules to require all new voter registrants to provide documentary proof of U.S. citizenship. Proposition 200 negatively affected voter registrants across Arizona and from many different communities. After enactment, more than 30,000 individuals had their voter registration rejected by elections administrators in Arizona.<sup>2</sup> MALDEF, among others, challenged the law in federal court. There were many ways that the voter registration of a U.S. citizen could have been rejected under the measure. For example, Arizona residents with a driver’s license issued before October 1, 1996, without a current Arizona driver’s license (including students and new state residents), or who had a driver’s license issued to them prior to naturalization and thus were marked in the state database code as “Foreign,” often had their voter registration forms rejected after Proposition 200. In order to

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<sup>1</sup> Brief for NAACP Legal Defense and Educational Fund, Inc., et. al. as Amici Curiae Supporting Respondents at 4, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (No. 12-71).

<sup>2</sup> *Id.* at 4.

register to vote, these citizens were required to include in their registration a copy of their U.S. birth certificate, passport, or naturalization papers. Assuming the registrant had such a copy or could obtain one, a photocopy of the relevant document needed to be provided to the county recorder. If that was not possible, the registrant was required to travel to the county recorder's office to present the document in person. Proposition 200 created significant burdens for new registrants; of those with rejected registrations, less than one-third subsequently registered to vote.<sup>3</sup>

Under Proposition 200, naturalized citizens faced difficulty registering with their existing drivers licenses, meaning they had to choose between purchasing a new license or registering with the naturalization certificate, and naturalized citizens were more likely to face difficulties in registering to vote as compared to native born citizens.<sup>4</sup> The impediments naturalized citizens, Latinos, and others faced were foreseeable consequences of the law. As a result of Proposition 200's implementation, the percent share of Latino voter registration in the state fell.<sup>5</sup> Statistical evidence also showed that Latinos made up a disproportionate 20 percent of those who did not manage to register after initial rejection, and only 11 percent of Latinos who were rejected were successful in eventually registering to vote.<sup>6</sup> Latinos who were rejected were less likely to be successful in re-registering under Proposition 200.<sup>7</sup>

Arizona's Proposition 200 was enacted with the purpose of combatting undocumented immigration, and the provisions related to proof of citizenship were in part an effort to "combat voter fraud."<sup>8</sup> But the State failed to identify a single instance in which an undocumented immigrant registered or voted in Arizona.<sup>9</sup> Nationally, instances of non-citizens voting are exceedingly rare. A study by the Brennan Center for Justice found that following the 2016

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<sup>3</sup> Brief for Gonzalez Respondents at 18, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (No. 12-71).

<sup>4</sup> See Gonzalez Plaintiffs' Post-Trial Memorandum at 3-13, *Gonzalez v. Arizona*, No. 2:06-cv-01268-ROS (D. Ariz. Aug. 1, 2008), ECF No. 1037.

<sup>5</sup> Gonzalez Plaintiffs' Post-Trial Findings of Fact at ¶ 428, *Gonzalez v. Arizona*, No. 2:06-cv-01268-ROS (D. Ariz. July 29, 2008), ECF No. 1030.

<sup>6</sup> Gonzalez Plaintiffs' Post-Trial Findings of Fact at ¶ 393, *Gonzalez v. Arizona*, No. 2:06-cv-01268-ROS (D. Ariz. July 29, 2008), ECF No. 1030.

<sup>7</sup> *Id.* at ¶401.

<sup>8</sup> *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 6 (2013); see also Arizona 2004 Ballot Propositions: Proposition 200 at Sec. 2, <https://apps.azsos.gov/election/2004/info/PubPamphlet/english/prop200.pdf>.

<sup>9</sup> Brief for NAACP Legal Defense and Educational Fund, Inc., et. al. as Amici Curiae Supporting Respondents at 4, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (No. 12-71).

elections, in which Donald Trump alleged that millions of non-citizens cast ballots, “improper [non-citizen] votes accounted for 0.0001 percent of the 2016 votes”<sup>10</sup> in surveyed jurisdictions. Many non-U.S. citizens are hesitant to provide their personal information to the government, and are afraid of the potential negative criminal- and immigration-related consequences that may result from improper voter registration or voting.

Arizona’s Proposition 200, passed under the guise of preventing immigrants from registering to vote, was unsurprisingly enacted as Latinos were the fastest-growing citizen voting age population in the state. Proposition 200, which was ultimately struck down by the U.S. Supreme Court, impeded Latino and other citizens from exercising their constitutional rights and participating in elections. The anti-immigrant and anti-Latino narrative that is rampant in our political and societal discourse has lasting effects on political participation. For instance, in 2018, 74 percent of white non-Hispanic Arizonans were registered to vote, compared with 63 percent of Hispanic voters.<sup>11</sup> There is a growing body of evidence that shows that proof of citizenship requirements in fact prevent significant numbers of U.S. citizens from registering to vote, and that “[s]urveys show that millions of American citizens -- between five and seven percent -- don’t have the most common types of document used to prove citizenship: a passport or birth certificate.”<sup>12</sup> Proof-of-citizenship requirements have yet to prove effective in making our elections more secure or to be more effective than the safeguards against improper registration and voting that already exist. Meanwhile, such requirements have shown to significantly impede the political participation of voters of color.

### **Restrictive Voter Identification Requirements**

No proponent of strict ID requirements has ever produced credible evidence of widespread impersonation fraud in the registration or voting processes that identification checks would allegedly prevent. Individuals intending to falsely register or cast a ballot could alter the outcome of very few, if any, elections without extraordinary effort, and to date any such evidence of this occurrence has yet to be produced. Furthermore, protections currently exist to prevent

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<sup>10</sup> Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions*, Brennan Center for Justice 1 (2017), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_2017\\_NoncitizenVoting\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_2017_NoncitizenVoting_Final.pdf).

<sup>11</sup> Grant Smith and Júlia Ledur, *Tipping Scales*, Reuters (Nov. 1, 2019), <https://graphics.reuters.com/USA-ELECTION-DECIDERS-ARIZONA/0100B2M420S/index.html>.

<sup>12</sup> Ian Vandewalker, *Analysis: The Effects of Requiring Documentary Proof of Citizenship to Register to Vote*, Brennan Center for Justice (July 19, 2017), <https://www.brennancenter.org/our-work/research-reports/effects-requiring-documentary-proof-citizenship>.

unlawful voter registration and voting, including citizenship attestations, administrative checks of voter databases, and potential criminal prosecution and bars to naturalization for non-citizens.

Over time, more and more evidence demonstrates that racial, ethnic, and linguistic minorities are statistically least likely to be able to meet voter identification mandates, and statistically most likely to expect and to experience exclusion based on failure to provide an identification document. Identification prerequisites to vote are therefore widely understood to have likely discriminatory effects. For example, former Texas State Representative Todd Smith said of that state's provision, "If the question is are the people that do not have photo IDs more likely to be minority than those that are not, I think it's a matter of common sense that they would be."<sup>13</sup> In 2014, Texas State Senator Rodney Ellis "testified that all of the legislators knew that [Texas's] SB 14, through its intentional choices of which IDs to allow, was going to affect minorities the most."<sup>14</sup>

A 2006 Brennan Center for Justice report found that 25 percent of African Americans and 16 percent of Latinos did not have a current, valid government-issued photo identification, compared to 11 percent of all adult U.S. citizens surveyed.<sup>15</sup> A growing body of research continues to show that Latinos and African American voters disproportionately lack the identification documents required to register and vote, and that they are more likely to be excluded from voting because of a lack of required identification.<sup>16</sup> Racial, ethnic, and language-minority voters are also more likely than white voters to lack proof of their U.S. citizenship and other precursor documents they may need to obtain a voter ID or to register to vote. One study of the 2012 election that analyzed 18- to 29-year-old eligible voters found that more than 84 percent of potential white voters had access to their birth certificates and 47.5 percent had a U.S. passport, but only 73.3 percent of African Americans and 55.1 percent of Latinos had their birth certificates, and only 22 percent of African Americans and 37.1 percent of

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<sup>13</sup> *Veasey v. Perry*, 71 F. Supp.3d 627, 657 (S.D. Tex. 2014).

<sup>14</sup> *Id.*

<sup>15</sup> Brennan Center for Justice, *New York University School of Law, Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification* 3 (Nov. 2006), [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf).

<sup>16</sup> See Vanessa M. Perez, Ph.D., *Americans Without Photo ID: A Breakdown of Demographic Characteristics*, Project Vote (Feb. 2015), <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>; Expert Report of Matt A. Barreto and Gabriel R. Sanchez, *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. June 27, 2014), available at [https://latinodecisions.com/wp-content/uploads/2014/10/Texas-Voter-ID-Expert-Report\\_Barreto\\_Sanchez.pdf](https://latinodecisions.com/wp-content/uploads/2014/10/Texas-Voter-ID-Expert-Report_Barreto_Sanchez.pdf).

Latinos had current passports.<sup>17</sup> For Puerto Rican-born adults now living on the mainland, approximately 1,800,000 people, a 2009 change in birth certificate standards invalidated all Puerto Rico birth certificates issued before 2010.<sup>18</sup> As a result, all Puerto Rican-born voters that may be required to produce a birth certificate to register or obtain eligible voter identification must either have a U.S. passport, or go through additional procedures and pay fees to obtain a new birth certificate issued after July 2010. Naturalized citizens also face challenges obtaining required documentation, which usually involves great personal expense and considerable delays. These are just some examples of the many cases where voters face significant hurdles to be able to obtain the necessary identification to register and vote.

Meanwhile, voter participation rates in the U.S. have declined over time.<sup>19</sup> Our democracy suffers not because ineligible voters have cast ballots to undermine our elections, but because not enough citizens are voting. Voter identification, proof-of-citizenship requirements, and other barriers to voting continue to exclude eligible voters from the franchise, and more must be done to make voting more accessible to all citizens.

### **Restrictions to Language Assistance**

Despite the multitude of barriers that are erected to prevent voters of color from registering and casting their ballots, the country's population and electorate is increasingly diverse, and more states and local jurisdictions are likely to eventually meet the federal threshold requiring that they provide election materials in a language other than English.

There is a long history of denying the right to vote to those who are limited-English proficient, and the nativist and racist motives used to justify English literacy prerequisites in the early 1900s persist today. For instance, 1905 editorials in support of Arizona's English literacy requirement stated that, "There is a foreign element in our voting population which is both

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<sup>17</sup> Jon C. Rogowski and Cathy J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election*, Black Youth Project 7-8, [http://blackyouthproject.com/wp-content/uploads/2015/11/voter\\_id\\_effect\\_2012.pdf](http://blackyouthproject.com/wp-content/uploads/2015/11/voter_id_effect_2012.pdf).

<sup>18</sup> See U.S. Department of State, *New Requirements for Passport Applicants with Puerto Rican Birth Certificates*, (Oct. 29, 2010), <https://2009-2017.state.gov/r/pa/prs/ps/2010/10/150173.htm>; *Puerto Rican Birth Certificates Will Be Null and Void*, NPR (Mar. 18, 2010), <https://www.npr.org/templates/story/story.php?storyId=124827546>.

<sup>19</sup> Census Bureau, *Current Population Survey, Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2018 (Table A-1)*, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>.

illiterate and ignorant of our institutions,” and, several days later, that, “We are referring, of course, to the ignorant Mexican vote.”<sup>20</sup>

Today, election administrators exclude language-minority voters by eliminating and obstructing multilingual assistance and the channels through which it is provided. The impact of these actions are particularly concerning when we consider that lawmakers who restrict or have sought to prohibit language assistance in elections can easily see that many language-minority voters are also voters of color. Based on 2017 American Community Survey data, more than half of the adult U.S. citizens most likely to need linguistic assistance with voting were Latino and more than 85 percent of eligible voters who may not be able to vote in English are people of color.<sup>21</sup> Discriminatory barriers to language access continue to occur with great frequency. Since 1957, courts and lawmakers have taken remedial action to combat discriminatory effects or intent in at least 84 instances of obstruction, withdrawal, or severe neglect of language assistance services.<sup>22</sup> One example of a modern day restriction to language assistance is a pending case brought by MALDEF in Arkansas. The challenge is to a section of the state’s election code that limits--to six voters total--the number of voters an individual may assist with casting a ballot, effectively restricting the number of people who may be able to receive language assistance from the individual of their choice. This case is currently pending in federal district court, but restrictions such as these only serve to deter participation by language-minority voters.

Restricting language accessibility in voting also reinforces the dangerous perception that naturalized citizens, particularly voters of color, are “illegitimate” voters or “illegitimate” citizens. Given the increase in hate crimes against many immigrant communities of color, including Latinos and Asian Americans, it is critically important that our institutions make every effort to protect every voter and to broaden participation for all eligible citizens. Language assistance provisions and practices not only ensure that all voters are able to successfully participate in the political process, but effective language assistance also signals a philosophy of welcoming and including voters from all backgrounds. The failure to provide effective language assistance hampers the participation of language-minority communities in our democracy.

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<sup>20</sup> Antonia Noori Farzan, “Racist History 101: When Arizona Blocked Spanish Speakers From Voting,” PHOENIX NEW TIMES (March 19, 2018), <https://www.phoenixnewtimes.com/news/arizonas-racist-historyblocking-spanish-speakers-from-voting-10239647>.

<sup>21</sup> Asian-Americans Advancing Justice--AAJC, MALDEF, and NALEO Educational Fund, *Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities* 50 (Nov. 2019), <https://www.maldef.org/wp-content/uploads/2019/11/KPC-VRA-Report-Final-191104.pdf>.

<sup>22</sup> *Id.* at 4.

## **Conclusion**

The growing Latino population is often seen by the political establishment as a threat in many places. As a result, we are likely to see an increase in efforts to disenfranchise the Latino electorate, including many naturalized citizens, and to limit the influence of our votes. Congress must take action to adopt and strengthen policies and laws that protect and encourage the participation of each eligible voter.