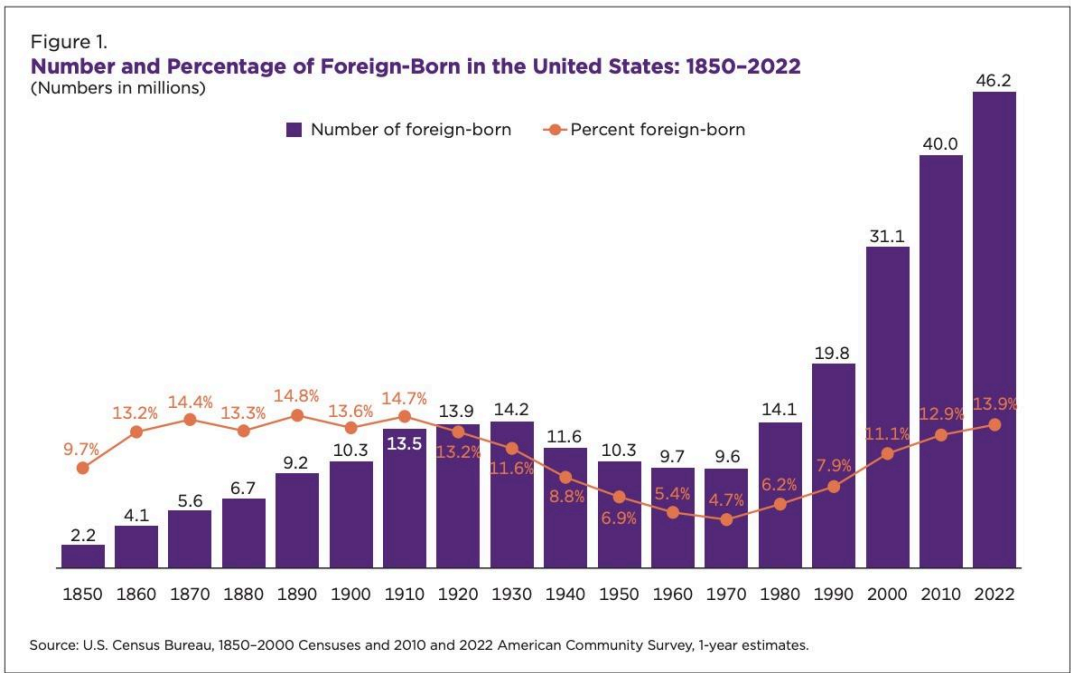# Written Testimony of Rosemary Jenks,
Cofounder and Policy Director, Immigration Accountability Project,
before the Subcommittee on the Constitution and Limited Government
of the Judiciary Committee of the House of Representatives
September 10, 2024
"The Biden-Harris Border Crisis: Noncitizen Voting"

Chairman Roy, Ranking Member Scanlon, and Members of the Subcommittee, thank you for holding this important hearing.
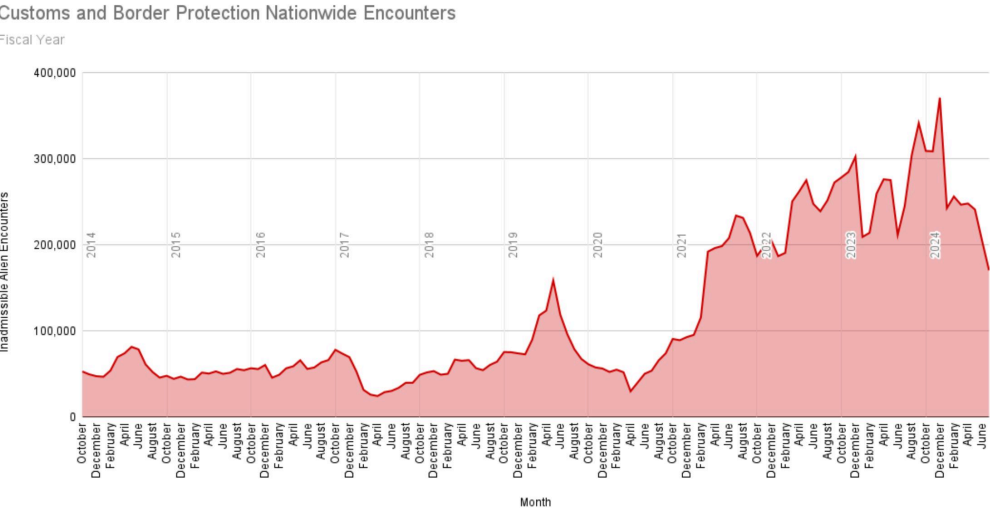
I am the Cofounder and Policy Director of the Immigration Accountability Project (IAP). As the name of the organization implies, we focus exclusively on immigration policy and how it impacts America, whether that is jobs and wages, education, health care and welfare, or, as is the case today, elections. IAP is also a founding member of the Only Citizens Vote Coalition.

As you know, 8 U.S.C. 1182(a)(10)(D) makes an alien who illegally votes inadmissible to the United States, while 8 U.S.C. 1227(a)(6) makes such an alien deportable. Additionally, 8 U.S.C. 1182(a)(6)(C)(ii) makes an alien who falsely claims US citizenship–for example by registering to vote–inadmissible, while 8 U.S.C. 1227(a)(3)(D) makes such an alien deportable. Finally, 18 U.S.C. 611 makes it a federal crime for a noncitizen to vote in a federal election.

According to [Census Bureau numbers,](#) the foreign-born population in the United States reached a record 46.2 million in 2022. Just over half (53.1 percent) were naturalized U.S. citizens, and therefore fully eligible to register and vote in U.S. elections. That left almost 22 million noncitizens in 2022.
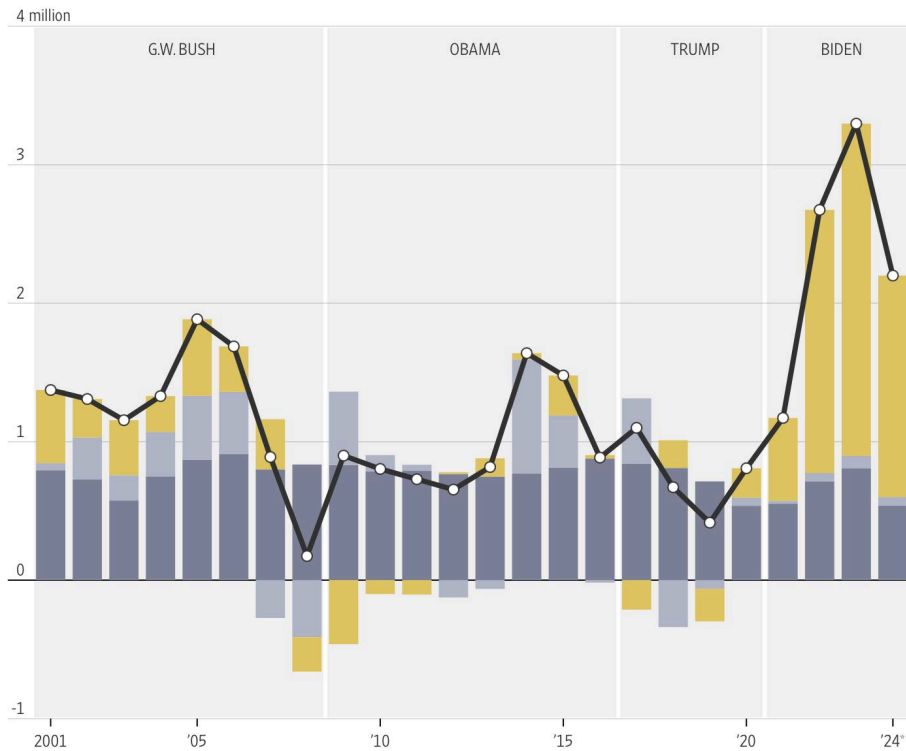
Figure 1.
Number and Percentage of Foreign-Born in the United States: 1850–2022
(Numbers in millions)

■ Number of foreign-born   —●— Percent foreign-born

Year	Number	Percent
1850	2.2	9.7%
1860	4.1	13.2%
1870	5.6	14.4%
1880	6.7	13.3%
1890	9.2	14.8%
1900	10.3	13.6%
1910	13.5	14.7%
1920	13.9	13.2%
1930	14.2	11.6%
1940	11.6	8.8%
1950	10.3	6.9%
1960	9.7	5.4%
1970	9.6	4.7%
1980	14.1	6.2%
1990	19.8	7.9%
2000	31.1	11.1%
2010	40.0	12.9%
2022	46.2	13.9%

Source: U.S. Census Bureau, 1850–2000 Censuses and 2010 and 2022 American Community Survey, 1-year estimates.

That number likely includes few of the 5.6 million illegal aliens released into the United States under the Biden-Harris Administration, or the 1.9 million known "gotaways" who have evaded the Border Patrol under this administration. It also doesn't include the lawful permanent residents, refugees, and guest workers who have been admitted to the United States since the Census data was collected. Finally, it doesn't include the illegal aliens who overstayed temporary visas over the past couple of years. When all these numbers are factored in, we estimate that there are currently around 30 million noncitizens residing in the United States. That means noncitizens represent almost nine percent of the total U.S. population of 337 million.

Customs and Border Protection Nationwide Encounters
Fiscal Year

Net immigration to the U.S.

4 million

G.W. BUSH   OBAMA   TRUMP   BIDEN

3

2

1

0

-1

2001   '05   '10   '15   '20   '24*

*Figures for 2024 are an estimate of flows from January through August, based on the CBO's projection.
Source: Congressional Budget Office

The colored bars show the components of net immigration, which the CBO categorizes into three main groups:
lawful permanent residents , nonimmigrants and
other foreign nationals .

Obviously, this massive population of noncitizens would have no impact whatsoever on our elections if they were securely prevented from voting. Unfortunately, that will not be the case unless Congress passes the SAVE Act.

The potential for the noncitizen population to register to vote, and then to vote, stems largely from the 1993 National Voter Registration Act, or "Motor Voter Law." The NVRA essentially integrates the driver's license application process with the voter registration process in covered states (all states and the District of Columbia, except Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming). When combined with the requirement that these states accept the federal voter registration form, which simply requires applicants to check a box indicating their U.S. citizenship and then sign their name under penalty of perjury, this integration makes it virtually impossible to prevent noncitizens from registering to vote–either accidentally or intentionally.

The Help America Vote Act (HAVA) of 2002 didn't help the situation. By requiring states to verify only identity and residency before adding new voters to their state voter rolls, it completely ignores the citizenship question. HAVA requires states to collect the applicant's driver's license number or, if the applicant doesn't have a license, the last four digits of the applicant's Social Security number (SSN).

The problem is that neither a driver's license nor an SSN provides proof of U.S. citizenship. All 50 states and the District of Columbia issue driver's licenses, including REAL IDs, to lawfully present (or quasi-lawful, in the case of asylum applicants and parolees) noncitizens, while 19 states also issue driver's licenses to illegal aliens. Moreover, every alien who is authorized to work in the United States is eligible for an SSN, including green card holders, nonimmigrants, asylees, and parolees, among others. The Biden-Harris Administration has been handing out work authorization documents like candy to inadmissible aliens over the past nearly four years, with SSN issuances following close behind.

All of this means that, in 2024, we have federal voter laws that do not require proof of citizenship to register to vote–and a Supreme Court decision in *Arizona v. Inter Tribal Council of Arizona, Inc.* that actually prohibits states from asking for additional proof of citizenship from applicants using the federal form–combined with a massive population of noncitizens with valid driver's licenses and SSNs. That combination alone is a recipe for fraud. But it gets significantly worse.

President Biden's unprecedented Executive Order 14019 orders all federal agencies to engage in voter registration activities, and there are indications that noncitizens are being provided voter registration forms as a result. On top of that, a huge network of NGOs is receiving federal, state, and local funding to provide services to the millions of illegal aliens being released into the United States by the Biden-Harris Administration. The federal government alone has provided almost $1.5 Billion just in FY2023 and FY2024 through the Department of Homeland Security's Shelters and Services and Emergency Food and Shelters Programs to localities to handle this influx. In some instances, there are strong indications that the NGOs are providing the aliens with voter registration forms. For example, the contract New York City signed with an NGO called Homes for the Homeless to provide "migrant housing" includes a requirement that the NGO "provide and distribute voter registration forms to all persons…" (see the image of the relevant part of the contract below).

Section 13.06 Voter Registration

A.   *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B.   *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1.   The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2.   The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of

supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3.   The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4.   The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5.   The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

The [Department of Social Services responded](#) to criticisms of this provision in the contract by saying that the City Charter requires this voter registration provision in all shelter contracts, but denied that noncitizens are being registered to vote. This begs the question, though: Are NGOs with shelter contracts for "migrant housing" violating a legally binding contract by not handing out voter registration forms to "all persons;" or are they complying with the contract and potentially registering noncitizens?

Any government agency or NGO that registers a noncitizen to vote or facilitates registration by noncitizens is not only undermining confidence in our elections, but is also victimizing that noncitizen. Remember, it is a criminal, deportable offense for a noncitizen to register to vote.

Imagine being a new immigrant to the United States with limited English proficiency. If a government official, whether at the DMV or some other agency, hands you a form and says, "Just check this box and sign your name," you are probably going to comply. And as soon as you do, you are now guilty of a deportable, criminal offense. Even if you don't subsequently vote illegally, you will still face serious complications when you eventually apply for naturalization.

Now imagine you have fled your country for a better life in the United States. You cross the border illegally and are apprehended by the Border Patrol, who process you and turn you over to an NGO to transport you to your destination. You end up at a migrant shelter in New York City, where, under the terms of their contract with the city, they hand you a voter registration form. Again, you don't speak or read much English, so you check the box and sign your name. You are now guilty of a deportable, criminal offense.

In both cases, the noncitizen may be completely innocent of any mal intent, but was essentially entrapped into a criminal act by a government agency or NGO, acting either with indifference or with nefarious purpose.

Do we at IAP believe that millions of noncitizens are going to show up at polling locations to vote in November? No, though there will be some who do. The problem is that once a noncitizen's name is on the voter roll, that name can be attached to a ballot and voted. In states that automatically mail ballots to registered voters, a ballot will be mailed to whatever address the noncitizen provided, whether it's the address of a "migrant shelter," a hotel, a homeless shelter, or a residence. What will happen to that ballot, and others like it? Will it be harvested, filled out, and placed in a drop box?

Whenever the mainstream media reports on noncitizen voting, the story always begins with some version of "it is already illegal for noncitizens to vote." Since reporters know that noncitizens do, in fact, vote, they use qualifiers to make it sound like it almost never happens. For example, noncitizen voting is "[rare](#)," there is "[no evidence of widespread voter fraud](#)," there is "[scattered evidence of noncitizens voting](#)," and so on.

This raises two major questions. First: How do they know how rare or scattered noncitizen voting really is? Each state that has audited its voter rolls recently (and even not so recently) has found noncitizens registered to vote. Virginia has found and removed 6,303 noncitizens from its voter rolls since 2022. Texas has purged some 6,500 noncitizens–around 2,000 of whom voted in past elections–from its voter rolls since the 2020 election. Alabama has identified 3,251 registered voters who were issued Alien Numbers by the Department of Homeland Security and is working to determine whether any have naturalized. Ohio has identified 597 "apparent noncitizens"–138 of whom voted in prior elections–during a routine audit this year. Louisiana has removed 48 noncitizens from its voter rolls during the past three years. How many noncitizens are registered to vote in the other 45 states and the District of Columbia?

This leads to the second, and more important, question: Why is it okay if even one American citizen's vote is canceled by an illegal vote? The obvious answer is that it is not okay. Every American has the right to have his or her vote count. That is why it is imperative that Congress passes the SAVE Act to require proof of citizenship to register to vote. Haphazard efforts to remove noncitizens from voter rolls on the back end are ineffective and inadequate. Once an election is decided, it's too late. Only by preventing noncitizens from registering on the front end can we restore confidence in our election system.