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LEGISLATIVE TESTIMONY

THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION AND THEIR IMPACT ON FEDERAL AND STATE ELECTIONS

**Testimony before the House of Representatives, Committee on
Oversight and Government Reform, Subcommittee on National
Security and the Subcommittee on Health Care, Benefits, and
Administrative Rules**

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My Background and Experience:

My name is Hans A. von Spakovsky.¹ I am a Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation and Manager of the

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Election Law Reform Initiative. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

I spent four years at the Justice Department as a career civil service lawyer, including three years as Counsel to the Assistant Attorney General for Civil Rights, where I helped coordinate the enforcement of federal voting laws. I spent two years as a commissioner at the Federal Election Commission. I served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections. I am the former vice chairman of the Fairfax County (Va.) Electoral Board and a former member of the Virginia Advisory Board to the U.S. Commission on Civil Rights.

I am the author of numerous studies and articles on voting, elections, and campaign issues, including as a contributor to the American Bar Association's book on elections, "America Votes! A Guide to Modern Election Law and Voting Rights" (ABA Section of State and Local Government 2012). I am the coauthor with John Fund of "Who's Counting? How Fraudsters and Bureaucrats Put Your Vote At Risk" (Encounter Books 2012).

Summary of Testimony

The U.S. already has a problem with noncitizens being able to easily register and vote in our elections – whether they do so intentionally or not – with little chance of detection or even prosecution when they are detected. There have been numerous such cases around the country, from Florida to Virginia to Ohio to California. Those ineligible voters could make the difference in a close election, and we have many close elections, particularly in local races.

On Nov. 20, President Obama announced his new immigration policy, which is being implemented through a series of directives issued by Jeh Johnson, the Secretary of the Department of Homeland Security. This executive action, which will not only provide "deferred action" for aliens illegally in the United States – no prosecution or enforcement of federal law requiring their removal – but will also provide them with social security numbers and employment authorization documents or work permits. Lawsuits are already ongoing to force states to provide all aliens granted deferred status with driver's licenses, and other states such as Georgia are already granting driver's licenses to such aliens.²

With an estimated five million illegal aliens being granted government identification documents and social security numbers, the problems associated with noncitizens and elections will increase exponentially. When combined with the history of the Department of Homeland Security's prior reluctance to fully cooperate with election officials' attempts to verify the citizenship status of registered voters, it will be extremely difficult for election officials to

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² See *Arizona Dream Act Coalition v. Brewer*, Case No. 12-02546 (D.AZ Jan. 22, 2015); Josh McKoon, *Unlike Mexico, Georgia is Issuing Drivers Licenses to Illegal Immigrants*, Townhall (Feb. 10, 2015); Roque Planas, *Connecticut To Issue Driver's Licenses To Undocumented Immigrants Who Qualify For DACA*, Huffington Post (Jan. 7, 2013).

prevent or detect those who intentionally or negligently affirm their eligibility to vote on voter registration forms and vote in local, state and federal elections.

The Current Problem

On Oct. 13, 2010, an immigration judge in Orlando, Florida, issued an order in a removal case involving Anailin Reyes.³ She is a Cuban citizen who entered the U.S. in Miami on April 26, 2004. Four months after she arrived she registered to vote and voted in the November 2004 election. Reyes's aunt, Jobitza Soto, a U.S. citizen, told the court that Soto, Reyes, and Reyes' mother (who was also a Cuban citizen) were approached by a woman outside the Duval County Courthouse who was part of a third party organization holding a registration drive. Soto claimed that she told the woman that her two companions were not U.S. citizens, but that the woman told her that "noncitizens could legally vote." So Soto filled out voter registration forms for all three of them.

The fact that Reyes and her mother were not U.S. citizens and therefore not entitled to vote was not detected by local Duval County election officials and Soto was unable to identify which third party organization prompted her, and presumably other noncitizens, to register and vote. This only came to light when Reyes applied for a change in her immigration status. During that process she initially lied to the Department of Homeland Security about registering and voting, but admitted it after "seeing evidence to the contrary" uncovered by DHS from a check of local voter registration records.

If she had not tried to change her immigration status, Reyes could have easily continued to vote illegally and without detection – as too many noncitizens (both legal and illegal) do in elections all over the country. Unfortunately for the interests of election integrity, the immigration judge in the proceeding, Rafael B. Ortiz-Segura, refused to do anything about Reyes's violation of federal and state law because he blamed election officials for mistakenly approving her registration in the first place.⁴

This is not an isolated case. Noncitizens are on voter registration lists all over the country. In 2005, the U.S. Government Accountability Office found that up to 3 percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not U.S. citizens.⁵ While that may not seem like many, just 3 percent of registered voters would have been more than enough to provide the winning presidential vote margin in Florida in 2000.

It is estimated that there are over a million illegal aliens in Florida. In 2012, a local NBC station found at least 100 individuals in just one Florida county who had been excused from jury duty because they were not U.S. citizens but who were registered to vote.⁶ One Coral Gables

³ *In the Matter of Anailin Reyes*, A 097-952-267, U.S. Dept. of Justice, Executive Office for Immigration Review, Immigration Court, Orlando, Florida.

⁴ *In the Matter of Anailin Reyes*.

⁵ Gov't Accountability Office, *Elections: Additional Data Could Help State and Local Election Officials Maintain Accurate Voter Registration Lists* 42 (2005).

⁶ Andy Pierrotti, *NBC Investigates: Voter Fraud* (Feb. 2, 2012), available at www.nbc-2/story/16662854/2012/02/02/nbc2-investigates-voter-fraud?clienttype=printable.

resident, Hinako Dennett, who is not a citizen, told the NBC reporter that she votes “every year.” A Naples resident, Yvonne Wigglesworth, who is also not a citizen, claimed she did not know how she had been registered but records showed she had voted in six different elections over the past eleven years.

In just one three-year period from October 2002 to September 2005, the U.S. Department of Justice prosecuted a dozen noncitizens for registering or voting in elections beginning in 1998 all over Florida, including in Broward, Miami-Dade, St. Lucie, Martin and Palm Beach Counties.⁷ The Justice Department even prosecuted a noncitizen, Rafael Velasquez, who had not only voted illegally, but also had been a candidate for the Florida legislature.⁸ These cases were discovered accidentally – not through any systematic review of election records.

The current Justice Department is not interested in prosecuting such cases and enforcing federal laws that make it a crime for noncitizens to register and vote.⁹ In 2011, when I was still on the Fairfax County Electoral Board in Virginia, we discovered 278 individuals who had registered to vote despite telling the Virginia Department of Motor Vehicles that they were not U.S. citizens. 117 of those noncitizens had “a history of voting in Virginia.”¹⁰ We provided that information to both the U.S. Attorney for the Eastern District of Virginia and the Public Integrity Section of the Justice Department. No action was taken to either investigate or prosecute these cases.

In fact, such violations of federal law by noncitizens are not even likely to prevent them from becoming citizens. This was demonstrated in 2010 in Tennessee when Putnam County election administrator Debbie Steidl revealed that she had been given a form letter sent by DHS to an immigrant seeking to become a citizen telling him to submit evidence that he had “been removed from the roll of registered voters.” The Obama administration seemed uninterested in the fact that the noncitizen had actually voted illegally in the 2004 election.¹¹

A study by several professors at Old Dominion University and George Mason University released in 2014 estimated that 6.4% of noncitizens voted in 2008 and 2.2% voted in 2010.¹² This estimate was based on the Cooperative Congressional Election Studies survey that surveyed 32,800 individuals in 2008 and 55,400 in 2010. There has been much dispute over the validity of these estimates, including claims by some that the sampling estimate was too small, something the authors dispute.¹³

⁷ Crim. Div., Pub. Integrity Section, U.S. Dep’t of Just., *Election Fraud Prosecutions & Convictions: October 2002-September 2005* (2006). DOJ also prosecuted noncitizens for registering and voting in Alaska, Colorado, and North Carolina.

⁸ U.S. v. Velsquez, Case No. 03-CR-20233 (So. D. Fla 2003).

⁹ See 18 U.S.C. §611, 18 U.S.C. §1015(f), and 18 U.S.C. §911.

¹⁰ Letter of August 19, 2011, from Edgardo Cortes, General Registrar, Fairfax County, Virginia, to Neil H. MacBride, U.S. Attorney for the Eastern District of Virginia, and to Jack Smith, Chief of the Public Integrity Section, U.S. Department of Justice.

¹¹ *Immigrant Who Voted Illegally on Road to Becoming a U.S. Citizen*, FOX News, August 26, 2010.

¹² Jesse T. Richman, Gulshan A. Chattha, and David C. Earnest, *Do noncitizens vote in U.S. elections?* Electoral Studies 36 (2014) 149-157.

¹³ Jesse Richman and David Earnest, *Do noncitizens vote in U.S. elections? A reply to our critics*, Washington Post (Nov. 2, 2014).

But whatever the extent of the problem, the evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections. Following a mayor's race in Compton, California, for example, aliens testified under oath in court that they voted in the election.¹⁴ In that case, a candidate who was elected to the city council was permanently disqualified from holding public office in California for soliciting noncitizens to register and vote.¹⁵ The fact that noncitizens registered and voted in the election would never have been discovered except that the incumbent mayor, who lost by less than 300 votes, contested the election.

Similarly, a 1996 congressional race in California was clearly affected by illegal noncitizen voting. Republican incumbent Bob Dornan was beaten by his Democratic challenger Loretta Sanchez. Congresswoman Sanchez won the election by just 979 votes, and Dornan contested the election in the U.S. House of Representatives. His challenge was dismissed after an investigation by this Committee discovered 624 invalid votes by noncitizens who were present in the U.S. Immigration and Naturalization Service (INS) database, as well as another 124 improper absentee ballots.¹⁶ The Committee found "circumstantial" evidence of another 196 noncitizens voting, but the Committee did not include the 196 in its tally of invalid votes.

Although the election was not overturned, this Committee found that hundreds of votes had been cast illegally by noncitizens in just *one* congressional race. And the investigation could not detect *illegal* aliens who were not in the INS records. To my knowledge, neither the Justice Department nor California prosecutors ever prosecuted a single one of the noncitizens who illegally voted in that close contest.

Some claim that illegal aliens do not register in order "to stay below the radar" and because "committing a felony for no personal gain is not a wise choice."¹⁷ But there are many noncitizens who don't seem to understand that they are not entitled to voter and for others the potential benefit of registering can outweigh the chances of being caught and prosecuted. That is unfortunately true since most states have no measures in place to verify citizenship and even when caught, many district attorneys will not prosecute what they see as a "victimless and non-violent" crime.¹⁸

On the benefit side of the equation, a voter registration card is an easily obtainable document, routinely issued without checking identification, that an illegal alien can use for many different purposes, including obtaining a driver's license, qualifying for a job, and even

¹⁴ Daren Briscoe, *Noncitizens Testify They Voted in Compton Elections*, L.A. Times (Jan. 23, 2002), at B5.

¹⁵ A judge's removal of the mayor from office was later overturned, but the removal of a councilwoman who participated in noncitizen voter fraud was upheld. See *Bradley v. Perrodin*, 106 Cal. App. 4th 1153 (2003), review denied, 2003 Cal. LEXIS 3586 (Cal. 2003); Robert Greene, *Court of Appeal Upholds Perrodin Victory Over Bradley in Compton*, Metro News-Enter., March 11, 2003; Daren Briscoe, Bob Pool & Nancy Wride, *Judge Voids Compton Vote, Reinstalls Defeated Mayor*, L.A. Times, Feb. 9, 2002.

¹⁶ See H.R. Doc. No. 105-416 (1998).

¹⁷ Jessica Rocha, *Voter Rolls Risky for Aliens: Noncitizens' Registering Is a Crime; 4 Cases Turn up in N.C.*, News & Observer (Dec. 7, 2006).

¹⁸ Gov't Accountability Office, *Elections: Additional Data Could Help State and Local Election Officials Maintain Accurate Voter Registration Lists* 60.

voting.¹⁹ The Immigration Reform and Control Act of 1986, for example, requires employers to verify that all newly-hired employees present documentation verifying their identity and legal authorization to work in the United States.²⁰ The federal I-9 form that employers must complete for all new employees provides a list of documentation that can be used to establish identity – including a voter registration card.

How aliens view the importance of this benefit was illustrated by the work of a federal grand jury in 1984 that found large numbers of aliens registered to vote in Chicago. As the grand jury reported, many aliens "register to vote so that they can obtain documents identifying them as U.S. citizens" and have "used their voters' cards to obtain a myriad of benefits, from social security to jobs with the Defense Department."²¹

The grand jury's report resulted in a limited cleanup of the voter registration rolls in Chicago, but just one year later, INS District Director A. D. Moyer testified before a state legislative task force that 25,000 illegal and 40,000 legal aliens remained on the voter rolls in Chicago. Moyer told the Illinois Senate that noncitizens registered so they could get a voter registration card for identification, adding that the card was "a quick ticket into the unemployment compensation system."²² An alien from Belize, for example, testified that he and his two sisters were able to register easily because they were not asked for any identification or proof of citizenship and lied about where they were born. After securing registration, he voted in Chicago.

Once aliens are registered, of course, they receive the same encouragement to vote from campaigns' and parties' get-out-the-vote programs and advertisements that all other registered voters receive. Political actors have no way to distinguish between individuals who are properly registered and noncitizens who are illegally registered.

Some dismiss reported cases of noncitizen voting as unimportant because, they claim, there are no cases in which noncitizens "intentionally" registered to vote or voted "while knowing that they were ineligible."²³ Even if this latter claim were true – which it is not – every vote cast by a noncitizen, whether an illegal alien or a resident alien legally in the country, dilutes or cancels the vote of a citizen, effectively disenfranchising that citizen. To dismiss such nullified votes because the noncitizens supposedly did not know they were acting illegally debases one of the most important rights of citizens.

Obtaining an accurate assessment of the size of this problem is difficult. There is no systematic review of voter registration rolls by most states to find noncitizens, and the relevant federal agencies – in direct violation of federal law – have either refused to cooperate with those few state election officials who seek to verify the citizenship status of registered voters or put up burdensome red tape to make such verification difficult. Federal immigration law requires these

¹⁹ In a typical example, voter registration cards are listed as an acceptable secondary source document to prove Maryland residency when obtaining a driver's license in Maryland. See Maryland Motor Vehicle Administration, Sources of Proof, <http://www.marylandmva.com/DriverServ/Apply/proof.htm>.

²⁰ 8 U.S.C. § 1324a (2008).

²¹ See In Re Report of the Special January 1982 Grand Jury 1, No. 82 GJ 1909 (N.D. Ill. Dec. 14, 1984), at 8-9.

²² Desiree F. Hicks, *Foreigners Landing on Voter Rolls*, Chi. Trib. (Oct. 2, 1985).

²³ Justin Levitt, Brennan Ctr. for Justice, *The Truth About Voter Fraud* 18 (2007).

agencies to "respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or Immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information," regardless of any other provision of federal law, such as the Privacy Act.²⁴

Examples of the Department of Homeland Security's intransigence include the following:

- Florida was forced to sue DHS in 2012 because the department refused to provide citizenship verification information for registered voters as required by federal law.²⁵
- In declining to cooperate with a request by Maryland in 2004 to check the citizenship status of individuals registered to vote there, a spokesman for the U.S. Citizenship and Immigration Service (CIS) mistakenly declared that the agency could not release that information because "it is important to safeguard the confidentiality of each legal immigrant, especially in light of the federal Privacy Act and the Immigration and Nationality Act."²⁶
- In 2005, Washington's Secretary of State Sam Reed asked the CIS to check the immigration status of registered voters in Washington; the agency refused to cooperate.²⁷
- In 1997, the FBI and the U.S. Attorney's office in Dallas were investigating voting by noncitizens. The investigation was started when a random check by local INS agents found 10 noncitizens who had voted in just one 400-person precinct, but the criminal investigation was turned over to local prosecutors. They sent a computerized tape of the names of individuals who had voted to the INS requesting a check against INS records, but the INS refused to cooperate with the criminal investigation.²⁸ An INS official was quoted as saying that the INS bureaucracy did not "want to open a Pandora's Box.... If word got out that this is a substantial problem, it could tie up all sorts of manpower. There might be a few thousand [illegal voters] in Dallas, for example, but there could be tens of thousands in places like New York, Chicago or Miami."²⁹

These incidents show that the CIS and U.S. Immigration and Customs Enforcement (ICE) (the successor agencies to the INS within the Department of Homeland Security), were either

²⁴ 8 U.S.C. §1373.

²⁵ See *Florida Department of State v. U.S. Department of Homeland Security*, Case No. 1:12-00960 (D. D.C. June 11, 2012).

²⁶ Robert Redding, *Purging Illegal Aliens from Voter Rolls Not Easy; Maryland Thwarted in Tries So Far*, Wash. Times, Aug. 23, 2004.

²⁷ See Letter of March 22, 2005, from Sam Reed to Robert S. Coleman, Director, Seattle District Office, USCIS (Mar. 22, 2005).

²⁸ *INS Hampers Probe of Voting by Foreigners, Prosecutor Says*, Houston Chron. (Sept. 20, 1997). See Frank Trejo, *Internal Strife Embroils Dallas INS Office-Local Agents' Whistle-Blowing Leads to Far-Flung Controversy*, Dallas Morning News (March 8, 1998); Dena Bunis, *Dallas INS' Probe of Electorate Echoes Here: Fallout from the Dornan-Sanchez Inquiry Sparks an Internal INS Debate Over a Texas Computer-Match Investigation*, Orange County Reg. (June 5, 1997).

²⁹ Ruth Larson, *Voter-Fraud Probe in Dallas Runs into INS Roadblock: Agency Denies It Should Have Further Aided U.S. Attorney*, Wash. Times (Sept. 25, 1997).

ignorant of federal legal requirements or deliberately ignoring them. An inquiry by a state or local election official regarding voter eligibility based on citizenship falls squarely within their statutory authority. It is only since Florida filed its successful lawsuit against DHS that the department has finally started working with state officials³⁰ to give them limited access to the Systematic Alien Verification for Entitlements (SAVE)³¹ database for citizenship verification. But this system is apparently slow and cumbersome and DHS needs to work with the states to develop a more accessible process or system to verify the citizenship of registrants.

To be sure, CIS and ICE databases are not comprehensive; they contain information only about legal immigrants who have applied for the documentation necessary to be in the United States and illegal immigrants who have been detained. With President Obama's executive action on immigration, however, they will now also contain information on the millions of illegal aliens who apply for deferred status. Access to that information will be crucial for election officials in their attempts to clean up registration lists and find aliens who are illegally registered and voting in elections. However, there is not yet any indication that the Obama administration will provide state election officials access to information on those aliens granted deferred status.

The past obstinacy of federal agencies over complying with the law compelled local election officials to rely almost entirely on the "honor system" to keep noncitizens from the polls. As Maryland's state election administrator has complained, "There is no way of checking.... We have no access to any information about who is in the United States legally or otherwise."³² Most discoveries of noncitizens on the registration rolls are therefore accidental.

But it continues to happen. The former Colorado Secretary of State testified before Congress in 2011 that a check of the voter registration rolls against state DMV records found many noncitizens had registered and voted.³³ New Mexico Secretary of State Dianna Duran reported that a preliminary check of voter registration rolls had already found 37 noncitizens who had voted in New Mexico elections.³⁴

In 2006, Paul Bettencourt, the former Voter Registrar for Harris County, Texas, testified before the U.S. Committee on House Administration that the extent of illegal voting by foreign citizens in Harris County was impossible to determine but "that it has and will continue to occur." Twenty-two percent of county residents, he explained, were born outside of the United States, and more than 500,000 were noncitizens. Bettencourt noted that he cancelled the registration of a Brazilian citizen in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. Despite that cancellation, however, "[s]he then reapplied in 1997, again

³⁰ Tom Curry, *Election official could be pivotal in battleground Colorado*, NBC News (Jul. 27, 2012).

³¹ See <http://www.uscis.gov/about-us/about-save-program>.

³² Christina Bellantoni, *Little to Stop Illegal Aliens from Voting*, Wash. Times (Sept. 24, 2004), at A1.

³³ The 2010 Election: A Look Back at What Went Right and Wrong Before the Comm. On House Administration, 112th Cong. (2011) (Statement of Colorado Secretary of State Scott Gessler).

³⁴ Milan Simonich, *Secretary of State Says Voter Fraud Probably Uncovered*, Alamogordo Daily News (March 15, 2011).

claiming to be a U.S. citizen, and was again given a voter card, which was again cancelled. Records show she was able to vote at least four times in general and primary elections."³⁵

In 2005, Bettencourt's office turned up at least 35 cases in which foreign nationals applied for or received voter cards, and he pointed out that Harris County regularly had "elections decided by one, two, or just a handful of votes." In fact, a Norwegian citizen was discovered to have voted in a state legislative race in Harris County that was decided by only 33 votes.³⁶

As the story by the local NBC station in Florida demonstrated, some noncitizen registrations can be detected through the jury process. The vast majority of state and federal courts draw their jury pools from voter registration lists, and the jury questionnaires used by court clerks ask potential jurors whether they are U.S. citizens. In most states, however, and throughout the federal court system, court clerks rarely notify local election officials that potential jurors have sworn under oath that they are not U.S. citizens.

In jurisdictions that share that information, election officials routinely discover noncitizens on the voter rolls. For example, the former district attorney in Maricopa County, Arizona, testified that after receiving a list of potential jurors who admitted they were not citizens, he indicted 10 who had registered to vote. (All had sworn on their registration forms that they were U.S. citizens.) Four had actually voted in elections.³⁷

The county recorder in Maricopa County also received inquiries from aliens seeking verification, for their citizenship applications, that they had not registered or voted. Thirty-seven of those aliens had registered to vote, and 15 of them had actually voted. As the county's district attorney explained, these numbers come "from a relatively small universe of individuals - legal immigrants who seek to become citizens.... These numbers do not tell us how many illegal immigrants have registered and voted." Even these small numbers, though, could have been enough to sway an election. A 2004 Arizona primary election, explained the district attorney, was determined by just 13 votes. Clearly, noncitizens who illegally registered and voted in Maricopa County could have determined the outcome of the election.

These numbers become more alarming when one considers that only a very small percentage of registered voters are called for jury duty in most jurisdictions. The California Secretary of State reported in 1998 that 2,000 to 3,000 of the individuals summoned for jury duty in Orange County each month claimed an exemption from jury service because they were not U.S. citizens, and 85 percent to 90 percent of those individuals were summoned from the voter registration list, rather than Department of Motor Vehicles (DMV) records.³⁸ While some of

³⁵ *Noncitizen Voting and ID Requirements in U.S. Elections: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Paul Bettencourt, Harris County Tax Assessor-Collector and Voter Registrar).

³⁶ Joe Stinebaker, *Loophole Lets Foreigners Illegally Vote; 'Honor System' in Applying Means the County Can't Easily Track Fraud*, Houston Chron. (Jan. 16, 2005).

³⁷ *Securing the Vote: Arizona: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Andrew P. Thomas, Maricopa County District Attorney); see also Transcript of Southwest Conference on Illegal Immigration, Border Security and Crime (May 16, 2006).

³⁸ Press Release, California Sec'y of State, Official Status Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

those individuals may have simply committed perjury to avoid jury service, this represents a significant number of potentially illegal voters: 24,000 to 36,000 noncitizens summoned from the voter registration list over a one-year period.

Utah, which issues driver's licenses to illegal aliens (as do a number of other states), switched to a two-tiered system that issues a visibly different "driving privilege" card to illegal aliens after a limited 2005 audit by the state's Legislative Auditor General. The audit found that hundreds of illegal aliens had registered to vote when they obtained their Utah driver's licenses and at least 14 of them had voted.³⁹ The audit used a small sample; Utah State Senator Mark Madsen said that an extrapolation of the audit numbers suggested that 5,000 to 7,000 aliens were registered to vote.⁴⁰

President Obama's Executive Action on Immigration

On Nov. 20, President Obama announced his new immigration policy, which is being implemented through 10 directives issued by Jeh Johnson, the Secretary of the Department of Homeland Security. This executive action will provide "deferred action" for certain aliens illegally in the United States, which Johnson defines as deferring "the removal of an undocumented immigrant for a period of time."⁴¹ This means no prosecution or enforcement of federal law requiring the removal and deportation of illegal aliens. The Social Security Administration and DHS will also provide them with social security numbers and employment authorization documents or work permits for three years, which can be renewed. Lawsuits are already ongoing to force states to provide all aliens granted deferred status with driver's licenses, while a number of states have already voluntarily implemented such a policy.⁴²

It is estimated that up to five million aliens who are here illegally may be granted deferred status,⁴³ along with government identification documents and social security numbers. This will greatly exacerbate the problems associated with noncitizens and elections just given the sheer numbers of new individuals who will be given a quasi-legal status to be present – and working – in the United States.

Additionally, these aliens will also be given social security numbers and will eventually be able to obtain driver's licenses as states change their policies voluntarily or are forced to through litigation. Thus, it will be easier for these aliens to register to vote illegally since they

³⁹ Off. of the Legis. Auditor Gen., State of Utah, ILR 2005-B (Feb. 8, 2005); Deborah Bulkeley, *State Says 14 Illegals May Have Cast Ballots*, Deseret Morning News (Aug. 8, 2005). At least 20 of the registered voters were under deportation orders.

⁴⁰ *Bill Would Change Voter Registration Rolls*, Associated Press (Feb. 7, 2006).

⁴¹ Memorandum from Jeh Johnson, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents," U.S. Department of Homeland Security (Nov. 20, 2014).

⁴² See *Arizona Dream Act Coalition v. Brewer*, Case No. 12-02546 (D.AZ Jan. 22, 2015).

⁴³ *Obama's Immigration Plan Could Affect Millions*, New York Times (Nov. 15, 2014), at http://www.nytimes.com/interactive/2014/11/15/us/politics/obama-immigration-plan-could-affect-millions.html?_r=0.

will be able to meet the Help America Vote Act of 2002 requirement⁴⁴ that mail voter registration applicants provide the last four digits of their social security number or their current driver's license number.

As a result, it may be extremely difficult for election officials to prevent or detect those noncitizens who intentionally or negligently affirm their eligibility to vote on voter registration forms and vote in local, state and federal elections using their newly-obtained identification documents.

Recommendations

There are several changes that states and the federal government can and should make to prevent noncitizens from registering and voting illegally in state and federal elections:

- Congress and state legislatures should require all federal and state courts to notify local election officials when individuals summoned for jury duty from voter registration rolls are excused because they are not United States citizens. United States Attorneys are already under a similar obligation for felons: Under the NVRA, they must send information on felony convictions to local election officials so that the felons can be removed from voter registration rolls.⁴⁵
- All states should require anyone who registers to vote to provide proof of U.S. citizenship and Congress should make it clear that federal law does not prohibit such a requirement.
- All social security numbers issued to aliens should have the letter "N" (to designate a noncitizen) at the end of the number so they can easily be identified by government officials as noncitizens.
- Although the Department of Homeland Security has finally started complying with federal law and is working with some states to verify the citizenship status of registered voters through the use of the SAVE system, it is apparently a slow and cumbersome process. DHS should work with the states to develop a more accessible process or system to verify the citizenship of registrants.
- Congress should investigate why the Justice Department is not prosecuting registration and voting by noncitizens, which are serious offenses against the basic principles of our democratic system.
- Congress should investigate whether DHS is granting citizenship or deferred status to aliens who have illegally registered or voted in past elections. Such aliens should not be eligible for citizenship or deferred status. They should be referred to the Justice Department for

⁴⁴ 42 U.S.C. §15483.

⁴⁵ 42 U.S.C. § 1973gg-6(g).

prosecution and removal, as well as to the relevant state election officials so that they can be struck from the registration rolls.

- A voter registration card should not be accepted as a valid identifying document to obtain a driver's license or for identification under federal employment rules unless states have implemented proof-of-citizenship requirements for voter registration.

Conclusion

America has always been a nation of immigrants, and we remain today the most welcoming nation in the world. Newly-minted citizens assimilate and become part of the American culture very quickly. Requiring that our laws – *all* of our laws – be complied with requires no more of an alien than it does of a citizen. It is a violation of both state and federal law for immigrants who are not citizens to vote in state and federal elections. These violations effectively disenfranchise legitimate voters whose votes are diluted, and they must be curtailed and punished.

Election officials have an obligation not only to enforce the law, but also to implement registration and election procedures that do not allow those laws to be bypassed or ignored. The federal government has an obligation to assist election officials in maintaining the security of our election process, and that requires giving states immediate and complete access to all DHS records on noncitizens.

Anything less encourages contempt for the law and our election process. Lax enforcement of election laws permits individuals who have not entered the American social compact or made a commitment to the U.S. Constitution, U.S. laws, and the U.S. cultural and political heritage to participate in elections and potentially change the outcome of closely contested races that affect how all Americans are governed.