



**Testimony of Thomas A. Saenz
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**Before the Subcommittee on Elections
of the Committee on House Administration**

**Hearing on
Voting in America: A National Perspective on the Right to Vote, Methods of Election,
Jurisdictional Boundaries, and Redistricting.**

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Good morning. My name is Thomas A. Saenz, and I am president and general counsel of MALDEF (Mexican American Legal Defense and Educational Fund), which has, for 53 years now, 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. I appear before you remotely today from the city of Los Angeles.

MALDEF focuses its work in four subject-matter areas: education, employment, immigrant rights, and voting rights. Since its founding, MALDEF has worked diligently on securing equal voting rights for Latinos, and promoting increased civic engagement and participation within the Latino community, as among its top priorities. 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. We have litigated

significant cases challenging statewide redistricting in Arizona, California, Illinois, and Texas, and we have engaged in pre-litigation advocacy efforts, as well as litigation related to ballot access and local violations, in those states, as well as in Colorado, Georgia, Nevada, and New Mexico. As the growth of the Latino population expands, our work in voting rights increases as well.

There is little question that the growth nationally of the Latino community and its potential voting impact is seen by some as a threat to their political power. The Latino community has comprised the nation's largest racial/ethnic minority community since 2003, according to the Census Bureau – almost 20 years. The 2020 Census should – absent some overwhelming, disparate undercount – confirm the continued significant growth of the Latino population. Although we will not have decennial Census data by subpopulation until August, the Census Bureau's American Community Survey (ACS) estimates show that Latinos accounted for just over half of the entire nation's population growth between 2010 and 2019. And, with respect to potential voting power, ACS data estimates that Latinos made up over 44 percent of the entire nation's growth in citizen, voting-age population (CVAP), a suitable proxy for eligible voters, between 2009 and 2019.

This substantial and ongoing increase in Latino voter population has unfortunately resulted in Latinos becoming central to numerous false assertions of “voter fraud.” This has frequently taken the specific form of suggestions, without any proof ever having been surfaced, that Latino immigrants who are not yet citizens are voting in substantial numbers. It is almost as though some political forces cannot and will not accept growth in the Latino electorate as the result of anything other than significant non-citizen voting. Historically, the false notion of non-citizen voting has resulted in the enactment of new and more onerous voter identification

requirements, new requirements to provide documentary proof of citizenship in order to register to vote, limitations on voter assistance in Spanish and other languages, attempts to proliferate in Spanish false information about voting in certain communities, discriminatory targeting of in-person and absentee voters for challenge based on Latino surname, and even in attempts to intimidate less experienced voters through the stationing of uniformed guards at polling places.

For example, MALDEF is currently challenging an Arkansas law that arbitrarily limits the number of voters that an individual may assist in casting a ballot, in plain contravention of the federal VRA. Recently, MALDEF and others also had to challenge an attempt to purge thousands of naturalized voters in Texas, who were targeted through Motor Vehicles data that the state knew were outdated and would not reflect recent naturalizations. In the past, we have challenged numerous other restrictions on access to the ballot that plainly targeted the growing Latino voting community.

In addition to ballot access restrictions, attempts to limit the growth of Latino voting power have also taken the form of perverted structures of governance – the perpetuation or re-introduction of at-large voting or the failure to acknowledge and incorporate the growth of the Latino community in the decennial redistricting process.

As a rapidly growing population, Latinos are regularly and increasingly seen as a threat to those, of whatever political party, currently holding substantial political power. As a result of this perceived threat to incumbents, the Latino community regularly faces violations of the VRA in redistricting. Those in power, whether at federal, state or local level, think about the perceived threat from the growing Latino voter pool in racial terms, even if that perspective is not explicitly acknowledged, and the violations of the VRA take conspicuously racialized forms even if

justified in other terms – of seniority protection for incumbent legislators, of competitiveness, or of continuity of representation, for example.

Last decade, the state of Texas gained four congressional seats as a result of its comparatively rapid population growth over the course of the aughts. Nearly two-thirds of that Texas population growth came in the Latino community. Still, in adopting a new congressional district map, the Texas legislature drew none of the four new districts within the Latino community, instead engaging in splitting the increased concentrations of Latino population among multiple districts in order to prevent Latino voters from electing candidates of choice. It took nearly a full decade of litigation under the VRA, waged by MALDEF and others, to ensure that an interim map, more respectful of the growing Latino community, would remain in place to protect Latino voters.

In one of the very first lawsuits to challenge a change made after the protections of VRA pre-clearance were removed by the Supreme Court in 2013 in *Shelby County v. Holder*, MALDEF challenged the conversion of the Pasadena, Texas city council from a configuration of eight districted seats to six districted seats and two at-large seats. This change was plainly undertaken to prevent the growing Latino voting population from electing a majority of the city council; participation differentials virtually ensured that the white population would elect its choices for the at-large seats in elections characterized by a racially-polarized vote. The case went to trial, following which the district court judge held that not only would the change have the effect of unlawfully diluting the Latino vote, but it was made intentionally to accomplish that aim. This resulted in the first contested "bail in" order, requiring Pasadena to pre-clear future electoral changes. However, again, that favorable outcome followed lengthy and costly trial preparation and trial.

Unfortunately, Texas is not a particular outlier when it comes to incumbents misusing the redistricting process to prevent the Latino community from exercising the political power that its population growth would warrant. Also ten years ago, MALDEF identified eight counties in the state of California that should have drawn an additional Latino-majority district on their five-member county board of supervisors, but failed to do so. This was almost entirely because creating a new Latino-majority district would threaten the continuity in office of one or more incumbent members of the board of supervisors. Even with unlimited resources, challenging eight jurisdictions through litigation under section 2 of the VRA -- with its arduous “totality of the circumstances” test, would be daunting -- if not impossible. After attempting unsuccessfully to secure state legislation to streamline the possible challenges, MALDEF was left with the ability to sue only one of the eight counties. While we successfully challenged Kern County in the first section 2 litigation to go to trial in California in well over a decade, seven other counties were able to leave their VRA-violative district maps in place throughout the decade.

With even more growth in the Latino population – and dozens of local jurisdictions in California converted from at-large elections to districted elections through the California Voting Rights Act (CVRA) going through their first redistricting ever – MALDEF expects the redistricting process to be even more challenging this year than a decade ago. There is simply no way that non-profit voting rights litigators, even supplemented by the work of a reinvigorated Department of Justice Civil Rights Division, could possibly prevent the implementation of all of the undue ballot-access restrictions and redistricting violations that are likely to arise in the next two years.

As the Latino community emerges from several years of being targeted in an unprecedented politicization of the decennial Census – with at least three different attempts by

the Trump administration to eliminate millions of Latinos from the useable Census count – we need the Congress to act to expand the protection of voting rights nationwide. The attempt at statistical genocide undertaken through the Census will embolden even more challenges to the rights of Latinos to participate in the electoral process, because Trump and others through that attempt have clearly signaled to their most extreme supporters that Latinos are a political threat.

These voting rights challenges, if unaddressed by legislation or litigation, are not just a danger to the participation of the Latino voting community, but a challenge to our democracy. This is not a time to shrink from our efforts to encourage even broader participation of all eligible citizens in voting. Congressional action to preserve voting rights is essential as we commence redistricting and as we face the continued false evocation of phantom threats used to justify the targeting of all voters of color. Congressional action – or inaction – today will have a critical impact on the enduring condition of our democracy five years from now.