



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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**Statement of the
Asian American Legal Defense and Education Fund
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**Before the
U.S. House of Representatives Committee on the Judiciary, Subcommittee on
the Constitution, Civil Rights, and Civil Liberties**

**Hearing
“Enforcement of the Voting Rights Act in the State of Texas”**

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The Asian American Legal Defense and Education Fund (AALDEF), is a 45-year-old national civil rights organization based in New York City that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy, and community education. AALDEF has monitored elections through annual multilingual exit poll surveys since 1988, and has conducted exit polls for every major election in Texas since 2008. Consequently, AALDEF has collected valuable data that documents both the use of, and the continued need for, protection under the federal Voting Rights Act (VRA), particularly in the State of Texas. In 2018, AALDEF dispatched over 600 attorneys, law students, and community volunteers to 81 poll sites in 54 cities in 14 states to document voter problems on Election Day. The survey polled 8,058 Asian American voters.

AALDEF has previously submitted testimony to Congress,¹ testified at hearings, submitted amicus briefs to the Supreme Court of the United States, and released detailed reports regarding Asian American voting experiences and the continued need for the full protections of the VRA, including Section 5 preclearance. AALDEF incorporates by reference the previously submitted documents and the attached documents:

- Third Amended Complaint in *LULAC v. Whitley*, No. 5:19-CV-00074 (W.D. Tex., Mar. 6, 2019)
- Settlement Agreement in *LULAC v. Whitley*, No. 5:19-CV-00074 (W.D. Tex., Apr. 26, 2019)
- Letter submitted to Harris County RE: Section 208 Interpreters at Poll Sites (Oct. 31, 2018)
- Complaint in *OCA-Greater Houston v. Texas*, No. 1:15-CV-00679 (W.D. Tex., Aug. 6, 2015)
- District Court decision in *OCA-Greater Houston v. Texas*, No. 1:15-CV-00679 (W.D. Tex., Aug. 12, 2016)
- Fifth Circuit Court of Appeals decision in *OCA-Greater Houston v. Texas*, No. 16-51126 (5th Cir., Aug. 16, 2017)
- Injunction in *OCA-Greater Houston v. Texas*, No. 1:15-CV-00679 (W.D. Tex., May 15, 2018)
- *Amicus* brief submitted to the Supreme Court in *Perry v. Perez*, 11-715 (Dec. 22, 2011)
- Letter submitted to Harris County RE: Section 5 Preclearance for Change in Policy of Sending Harris County Voter Registrar Representative to Naturalization Ceremonies (June 22, 2011)
- Harris County Post-2004 General Election Language Assistance Program Assessment Report (including Memorandum of Understanding with Department of Justice)
- Election Day Observation Letters:
 - 2018 Election – Collin County, Fort Bend County, Harris County, Travis County
 - 2016 Election – Dallas County, Fort Bend County, Harris County, Travis County, Williamson County
 - 2014 Election – Fort Bend County, Harris County
 - 2012 Election – Fort Bend County, Harris County
 - 2010 Election – Fort Bend County, Harris County

¹ See Joint Statement of the Asian American Legal Defense and Education Fund and Asian Americans Advancing Justice before the Committee on the Judiciary, United States Senate Hearing “From Selma to *Shelby County*: Working Together to Restore the Protections of the Voting Rights Act,” submitted July 17, 2013.

AALDEF submits this testimony to describe the history and current landscape of enforcement of the Voting Rights Act in the State of Texas, and its impact on Asian American² voting rights in particular. AALDEF respectfully asks that this testimony be entered into the record. Thank you.

Discrimination Against Asian Americans Creates a Barrier to Voting

Since Asian immigrants arrived in the United States more than a century ago, they have faced ongoing discrimination and the denial of basic rights. This shameful history of discrimination against the Asian American community in the United States is well known. Until 1943, federal policy barred immigrants of Asian descent from even becoming United States citizens, and it was not until 1952 that racial criteria for naturalization were removed altogether.³ Indeed, history is replete with examples of anti-immigrant sentiment directed towards Asian Americans, manifesting in legislative efforts to prevent Asian immigrants from entering the United States and becoming citizens.⁴ In the not-so-distant past, Asian immigrants were legally identified as aliens “ineligible for citizenship,” and were prohibited from voting and owning land.⁵

Both immigrant and native-born Asian Americans have experienced pervasive discrimination in everyday life.⁶ Perhaps the most egregious example of discrimination was the incarceration of 120,000 Americans of Japanese ancestry during World War II without due process.⁷ White immigrant groups whose home countries were also at war with the United States were not similarly detained; only Japanese Americans were forced to endure this extraordinary level of unfounded fear and accusation regarding their loyalty, trustworthiness, and character.⁸

² The notion of “Asian American” encompasses a broad diversity of ethnicities, many of which have historically suffered their own unique forms of discrimination. Discrimination against Asian Americans as discussed here addresses both discrimination aimed at specific ethnic groups and discrimination directed at Asian Americans generally.

³ See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (prohibiting immigration of Chinese laborers; repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98, and Immigration Act of 1924, ch. 190, 43 Stat. 153 (banning immigration from almost all countries in the Asia-Pacific region; repealed 1952); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. Rev. 405, 415 (2005).

⁴ See, e.g., Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (imposing annual quota of fifty Filipino immigrants; amended 1946); Immigration Act of 1924, ch. 190, 43 Stat. 153 (denying entry to virtually all Asians; repealed 1952); Scott Act of 1888, ch. 1064, 1, 25 Stat. 504, 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans; repealed 1795).

⁵ See *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see also, e.g., Cal. Const. art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

⁶ See, e.g., *Gong Lum v. Rice*, 275 U.S. 78 (1927) (upholding segregation of Asian schoolchildren); *People v. Brady*, 40 Cal. 198, 207 (1870) (upholding law providing that “No Indian. . . or Mongolian or Chinese, shall be permitted to give evidence in favor of, or against, any white man” against Fourteenth Amendment challenge).

⁷ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing Japanese incarceration); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the incarceration under strict scrutiny review).

⁸ See *Korematsu*, 323 U.S. at 233, 240-42 (Murphy, J., dissenting) (noting that similarly situated American citizens of German and Italian ancestry were not subjected to the “ugly abyss of racism” of forced detention based on racist assumptions that they were disloyal, “subversive,” and of “an enemy race,” as Japanese Americans were); Natsu Taylor Saito, *Internments, Then and Now: Constitutional Accountability in Post-9/11 America*, 72 Duke F. for L. &

Racist sentiment towards Asian Americans is not merely a matter of historical injustice but a continuing reality, fueled in more recent years by reactionary post-9/11 prejudice and a growing backlash against immigrants.⁹ Numerous hate crimes throughout the country have been directed against Asian Americans, either because of their minority group status or because they are perceived as unwanted immigrants.¹⁰ As the Asian American population grows, these incidents are likely to increase.

Asian Americans have become the fastest growing racial group in the United States. While the total population in the United States rose by 10 percent between 2000 and 2010, the Asian American population increased by 46 percent during that same time span.¹¹ The Asian American population has grown most rapidly in the South, increasing by 69 percent from 2000 to 2010.¹² The growth of the Asian American community has been especially notable in the State of Texas. From 2000 to 2010, the Asian American population in Texas grew by 72 percent, and Texas was the state that experienced the second largest numeric growth of its Asian American community (behind only California), increasing from a population of 644,000 in 2000 to 1.1 million in 2010.¹³

When groups of minorities move into or outpace general population growth in an area, reactions to the influx of outsiders can result in racial tension.¹⁴ Thus, as Asian American populations continue to increase rapidly, particularly in Texas, levels of racial tension and discrimination against this community can also be expected to increase. In fact, many hate crimes and other racist incidents have been reported in Texas in recent years.¹⁵

Soc. Change 71, 75 (2009) (noting “the presumption made by the military and sanctioned by the Supreme Court that Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin”).

⁹ See, e.g., U.S. Dep’t of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, at 4 (Oct. 19, 2011) (noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001), available at

https://www.justice.gov/sites/default/files/crt/legacy/2012/04/16/post911summit_report_2012-04.pdf.

¹⁰ See, e.g., *id.* at 7-9 (discussing numerous incidents of post-9/11 hate crimes prosecuted by the DOJ).

¹¹ U.S. Census Bureau, *The Asian Population: 2010*, at 1, 3 (2012), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>. These figures include people who reported themselves as belonging to only one Asian group, as well as members of the Asian American community’s rapidly growing multiracial population; this population is collectively referred to as “Asian alone or in combination.” From 2000 to 2010, the “Asian alone” population increased by only a slightly lower rate of 43 percent.

¹² *Id.* at 6.

¹³ *Id.* at 8.

¹⁴ See, e.g., Gillian Gaynair, *Demographic shifts helped fuel anti-immigration policy in Va.*, The Capital (Feb. 26, 2009), available at <http://www.hometownnapolis.com/news/gov/2009/02/26-10/Demographic-shifts-helped-fuel-anti-immigration-policy-in-Va.html> (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, N.Y. Times, Feb. 22, 2009 (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing), available at http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1; Ramona E. Romero and Cristóbal Joshua Alex, *Immigrants becoming targets of attacks*, The Philadelphia Inquirer, Jan. 25, 2009 (describing the rise in anti-Latino violence where the immigration debate is heated in New York, Pennsylvania, Texas, and Virginia); Sara Lin, *An Ethnic Shift is in Store*, L.A. Times, Apr. 12, 2007, at B1 (describing protest of Chino Hill residents to Asian market opening in their community where 39% of residents were Asian), available at <http://articles.latimes.com/2007/apr/12/local/me-chinohills12>.

¹⁵ See, e.g., Margaret Kadifa, *Houston man charged with hate crime after attacking Lyft driver*, HOUSTON CHRONICLE (Sept. 21, 2017), <https://www.houstonchronicle.com/neighborhood/champions-klein/news/article/Man-charged-with-hate-crime-after-attacking-Lyft-12217494.php> (verbal and physical assault of Lyft driver due to

Even a Texas lawmaker, Betty Brown, publicly commented that Asian American voters should change their names to accommodate poll workers. At a hearing regarding voter identification, Brown stated: “Rather than everyone here having to learn Chinese—I understand it’s a rather difficult language—do you think that it would behoove *you and your citizens* to adopt a name that *we* could deal with more readily here? . . . Can’t you see that this is something that would make it a lot easier for you and the people who are poll workers if you could adopt a name just for identification purposes that’s easier for *Americans* to deal with?”¹⁶ Beyond the indignity of this request and the implications that Chinese Americans are not really *Americans*, this statement also demonstrates ignorance of an obvious and significant problem faced by many Asian American voters: by sometimes using their legal names and sometimes using names that are “easier for Americans to deal with,” the names listed on these voters’ various forms of identification may not match with their names on the voter rolls, and this inconsistency may prevent them from voting.

Such discrimination creates an environment of suspicion and resentment towards Asian Americans, who are often still perceived as perpetual “outsiders,” “aliens,” or “foreigners,”¹⁷

Pakistani background); Alex Zielinski, *Fake Cards Appear in San Antonio, Offering \$100 to Anyone Who Reports Undocumented Immigrants to ICE*, SAN ANTONIO CURRENT (Aug. 10, 2017), <https://www.sacurrent.com/the-daily/archives/2017/08/10/fake-cards-appear-in-sanantonio-offering-100-to-anyone-who-reports-undocumented-immigrants-to-ice?media=AMP+HTML> (distribution of unofficial business cards in San Antonio offering \$100 reward for reporting an “undocumented alien” to ICE who would then be arrested and deported); Lindsay Ellis, *Posters at UT latest display of campus post-election racism*, HOUSTON CHRONICLE (Feb. 14, 2017), <https://www.chron.com/local/education/campus-chronicles/article/Racist-posters-at-UT-latest-post-election-10931366.php> (anti-immigrant fliers posted at University of Texas-Austin campus stating: “A notice to all citizens of the United States of America, it is your civic duty to report any and all illegal aliens to U.S. Immigration and Customs Enforcement[.] They have broken the law”); Sanya Mansoor, *Students at Plano East allege racial slurs after Trump victory*, DALLAS NEWS (Nov. 2016), <http://www.dallasnews.com/news/education/2016/11/10/students-plano-east-allege-racial-slurs-trump-victory> (Texas high school teacher’s remarks to Asian American student that “Trump [will] build a wall and deport him”); Lindsay Wise, *Family says attack on Muslim man in Tomball should be hate crime*, HOUSTON CHRONICLE (Dec. 18, 2011), <https://www.chron.com/news/houston-texas/article/Islamic-group-family-say-attack-on-Muslim-may-be-2407967.php> (Pakistani man assaulted after being asked about the origin of his name and where he was from, resulting in partially bitten ear and ten broken ribs); *Marl Stroman Executed: Texas Man Received Death Penalty for Killing Store Clerk*, HUFFINGTON POST (Sept. 19, 2011), https://archive.fo/20130125231423/http://www.huffingtonpost.com/2011/07/20/mark-stroman-executed_n_905292.html?icid=maing-grid7 (execution of Texas inmate who killed two South Asian men and injured third South Asian man in “retaliation for the Sept. 11 terrorist attacks”); Jasmine K. Singh, *Everything I’m Not Made Me Everything I Am: The Racialization of Sikhs in the United States*, 14 ASIAN PAC. AM. L.J. 54, 85 (2008) (describing police violence against Sikh family in Houston, where police officers questioned family member about kirpan, ordered her to “shut up,” aimed taser at her head, forced her to the ground with a “knee . . . put to her back,” handcuffed her and her other family members, and asked if family members had “heard about the bombings in Bombay”).

¹⁶ R.G. Ratcliffe, *Texas lawmaker suggests Asians adopt easier names*, HOUSTON CHRONICLE (Apr. 8, 2009), <https://www.chron.com/news/houston-texas/article/Texas-lawmaker-suggests-Asians-adopt-easier-names-1550512.php>. (emphasis added)

¹⁷ See, e.g., Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 Pol. & Soc’y 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). In 2001, a comprehensive survey revealed that 71% of adult respondents held either decisively negative or partially negative attitudes toward Asian Americans. Committee of 100, *American Attitudes Toward Chinese Americans and Asians* 56 (2001), available at <http://www.committee100.org/publications/survey/C100survey.pdf>. Racial representations and stereotyping of Asian Americans, particularly in well-publicized instances where public figures or the mass media express such attitudes, reflect and reinforce an image of Asian Americans as “different,” “foreign,” and the “enemy,” thus stigmatizing Asian Americans, heightening racial tension, and instigating discrimination. Cynthia Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with*

based on their physical and cultural attributes. This perception, coupled with the growing sentiment that foreigners are destroying the country, could threaten Asian Americans' ability to exercise their right to vote free of harassment and discrimination.

Asian American voting rights are in even greater jeopardy since the Supreme Court gutted the Voting Rights Act in *Shelby County v. Holder*¹⁸ in 2013, by effectively eviscerating the Section 5 preclearance requirement for proposed changes in certain states' election practices or procedures. In the past, the federal preclearance process worked extremely well to prevent states from enacting discriminatory voting laws and procedures, and also allowed covered jurisdictions to "bail-out" from preclearance coverage if they could show that they no longer discriminated. For Texas alone, the Department of Justice has issued dozens of objection letters regarding proposed election practices and procedures under Section 5 of the Voting Rights Act.¹⁹ Unfortunately, without any current Section 5 coverage for Texas (or any other state), Asian Americans are susceptible to extensive discrimination in voting. Voters in Texas are particularly vulnerable because under the current administration, AALDEF is unaware of *any* VRA actions brought by the Department of Justice to protect voters.²⁰

AALDEF supports both the bipartisan Voting Rights Amendment Act and the Voting Rights Advancement Act, which would update the coverage formula and make Section 5 preclearance operational again. Neither coverage formula is ideal, and would not adequately cover jurisdictions that should be subject to preclearance, but would be an improvement from what we currently have – no coverage. In the years since *Shelby County*, multiple federal circuit and district courts have found intentional racial discrimination in state legislation in formerly covered jurisdictions, including Texas. This is precisely why these jurisdictions could not "bail-out" of coverage pre-*Shelby*, and illustrates why Congress must enact a new coverage formula now to prevent continued and pervasive voting discrimination.

Additionally, limited English proficient (LEP) voters, including many Asian American voters, face additional barriers at the polls. Section 203 of the Voting Rights Act requires some jurisdictions to provide translated ballots and voting materials as well as oral language assistance for LEP voters. Two counties in Texas are currently covered for Asian language assistance under Section 203: Harris County is covered for Chinese and Vietnamese language assistance, and Tarrant County is covered for Vietnamese language assistance.

¹⁸ O.J., 6 Hastings Women's L.J. 165, 181 (1995); Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 UCLA Asian Pac. Am. L.J. 72, 74-75 (2001); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 Asian L.J. 69, 72, 74-75 (2000); Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926, 1930-32 (1993); Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 J. Personality & Soc. Psychol. 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not "American").

¹⁹ 570 U.S. 529 (2013).

²⁰ See Section 5 Objection Letters, Dep't of Justice, available at http://www.justice.gov/crt/records/vot/obj_letters/index.php.

²⁰ See U.S. Dep't of Justice, *Voting Section Litigation, Cases Raising Claims Under Section 2 of the Voting Rights Act*, <https://www.justice.gov/crt/voting-section-litigation> (last updated Sept. 27, 2018) ("Voting Section Litigation"). The DOJ's last listed complaint under Section 2 of the VRA was filed on January 10, 2017, before former Attorney General Jeff Sessions was sworn into office. As far as Amici are aware, the only VRA-related action taken by the current DOJ administration was the voluntary withdrawal of a key argument in a Section 2 discriminatory purpose claim in an existing case involving Texas voter identification laws. The court granted the DOJ's motion, but specifically rejected the basis of DOJ's given reasoning for withdrawing the claim. See *Veasey v. Abbott*, 248 F. Supp. 3d 833 (S.D. Tex. 2017).

AALDEF's Voting Rights Work in the State of Texas

For more than a decade, AALDEF has worked to promote voting rights in Texas, and can testify about the vital need for full enforcement of the Voting Rights Act in this state.

LULAC v. Whitley

Most recently, AALDEF worked with the Mexican American Legal Defense and Educational Fund (MALDEF) and Asian Americans Advancing Justice | AAJC to represent the Asian American and Latinx communities in challenging a recent statewide voter purge initiated by acting Texas Secretary of State David Whitley. On January 25, 2019, the Texas Secretary of State's office issued Election Advisory 2019-02, announcing that it would send county voter registrars "actionable information" about a list of over 95,000 alleged potential non-citizens who had registered to vote. Whitley directed the county registrars to send letters to these voters threatening to purge them for non-U.S. citizenship. This list was comprised of registered voters who had *at some point* provided documentation showing that they were not citizens, without accounting for the many voters who may have first reported their non-citizen status while obtaining a driver's license or other form of identification, then subsequently registered to vote *after* becoming naturalized citizens. Texas Attorney General Ken Paxton also rushed to herald this announcement with a "VOTER FRAUD ALERT" tweet and a press release declaring that the Secretary of State had discovered that "Nearly 95,000 People Identified by DPS as Non-U.S. Citizens are Registered to Vote in Texas."

The compilation of this list by the Texas Secretary of State was particularly egregious given that other states had already used similarly flawed methodology to identify non-citizen voters, leading to wildly inaccurate results. Indeed, the errors in the Texas Secretary of State's list were almost immediately apparent: within days of the release, reports already surfaced that tens of thousands of naturalized U.S. citizens had been improperly included on this list, but Whitley did not withdraw the list or advisory. Indeed, Texas admitted on numerous occasions that it knew that its purge list included thousands of naturalized citizens.²¹ The vast majority of affected naturalized citizens were Latinx or Asian American.²²

Plaintiffs challenged this Texas voter purge as a violation of Section 2 of the Voting Rights Act, as well as the Constitution and other federal laws. On April 26, 2019, plaintiffs reached a settlement with the State of Texas to address the flawed methodology and other errors associated with this voter purge effort, to help ensure that no naturalized citizens—including many Latinx

²¹ See <https://www.maldef.org/wp-content/uploads/2019/04/SOS-admissions-re-citizenship-4-26-2019.pdf>, "*Admissions by Texas That its Purge List Included US Citizens*". Texas knew that its voter purge would target thousands of naturalized U.S. citizens before commencing the purge. Exhibits from Garibay Plaintiffs' preliminary injunction motion and transcripts of court and Texas legislative hearings show when Texas officials admitted that they were endangering the voting rights of legally registered U.S. citizens.

²² According to data from the United States Census Bureau, among Texas naturalized U.S. citizens, 51.7% are Latino and 28.8% are Asian American. Only 11.6% of Texas naturalized citizens are non-Latino White. See American Community Survey FactFinder, Selected Characteristics of the Native and Foreign-Born Populations (Texas), United States Census Bureau (2017 5-year ACS data), available at <https://factfinder.census.gov/bknik/table/I.O/en/ACS/I 75YR1S050 1 104000001JS48> (accessed January 31, 2019).

and Asian American naturalized citizens—would be disenfranchised through improper removal from the voter rolls. The Amended Complaint and the Settlement Agreement in this case have been submitted for the record.

Section 208 Interpreters at Poll Sites In Harris County

About one week before the 2018 Midterm Election, AALDEF received reports that Harris County officials had just announced that volunteer Korean interpreters would no longer be allowed to offer their assistance to limited English proficient voters within Harris County poll sites. Instead, these Korean interpreters would now have to stay beyond the 100-foot zone outside of poll sites, where they would not be able to assist nearly as many LEP voters.

While Harris County is required under Section 203 of the Voting Rights Act to offer language assistance to Chinese and Vietnamese voters, this federal requirement does not extend to Korean language assistance, despite the significant Korean American population in Harris County. Thus, these volunteer Korean interpreters were filling a void by offering much-needed language assistance to members of their community who would otherwise struggle to vote without language assistance.

On October 31, 2018, AALDEF sent a letter to the Harris County Clerk to oppose these efforts to restrict Section 208 language assistance for Korean American voters. With support from twenty-three other national and community organizations, AALDEF urged Harris County to allow these volunteer Korean interpreters from established local Korean American community groups to offer crucial language assistance to voters within Harris County poll sites. AALDEF’s letter to the Harris County Clerk has been submitted for the record.

OCA-Greater Houston v. Texas

On August 6, 2015—the 50th anniversary of the signing of the Voting Rights Act—AALDEF sued the State of Texas, the Williamson County Elections Department, and the City of Round Rock, Texas for denying an Indian American voter the right to assistance by a person of her choice, in violation of Section 208 of the Voting Rights Act. This voter was limited English proficient and required language assistance in order to vote, so she brought her son to assist as a Section 208 interpreter. Section 208 provides voters with broad discretion to be assisted in voting by any person of their choice, except by the voter’s employer or a representative of the voter’s employer or union. However, the Texas Election Code limited interpreters to only those individuals who were registered to vote in the same county as the voter, thus preventing this Indian American voter from being assisted by her son, who was registered to vote in a neighboring county.

As AALDEF has observed through years of election monitoring throughout the country, many LEP Asian American voters have utilized Section 208 to choose their own trusted interpreters to assist them at the poll site, and most often, these LEP voters choose to be assisted by their minor child. By restricting interpreters to only registered voters—which categorically prevented anyone under the age of eighteen from assisting LEP voters—the Texas legislature not only impermissibly narrowed the plain language of the Voting Rights Act, but also demonstrated, at best, a complete lack of understanding of how most LEP voters exercise their rights under the Voting Rights Act. The impact of this Texas law disproportionately impacted Asian American

voters because in places like Texas, they must rely on Section 208 interpreters for language assistance, because there is little to no coverage under Section 203. At the time of the lawsuit, only one county in Texas was covered under Section 203 to provide federally required Asian language assistance (Harris County for Chinese and Vietnamese).

In this case, the federal district court ruled in our favor, holding that this Texas election law violated Section 208 of the Voting Rights Act, and the court issued an injunction to block the Texas law. The Fifth Circuit Court of Appeals later affirmed on the merits, noting that “[i]t should go without saying that a state cannot restrict this federally guaranteed right by enacting a statute tracking its language, then defining terms more restrictively than as federally defined.” The Fifth Circuit also remanded the case to the district court to enter a new and more narrowly tailored injunction. These court rulings and the revised injunction have been submitted for the record.

Perry v. Perez

Before the Supreme Court effectively eviscerated the preclearance requirement of Section 5 of the Voting Rights Act in its *Shelby County* decision, the Court considered the discriminatory intent and effect of a proposed Texas redistricting plan in *Perry v. Perez*. AALDEF submitted an *amicus* brief urging the Supreme Court to affirm the Texas district court’s interim redistricting plan after the Department of Justice contended that the Texas state legislature’s plan diluted the voting power of Asian Americans and other people of color.

At the time of this case, Texas State House District 149 had a combined minority citizen voting-age population of around 62 percent.²³ Since 2004, the Asian American community in District 149 has voted as a bloc with Hispanic and African American voters to elect Hubert Vo, a Vietnamese American, as their state representative. Vo’s election was particularly significant for the Asian American community because he was the first Vietnamese American state representative in Texas history.²⁴

In 2011, the Texas Legislature sought to eliminate Vo’s State House seat and redistribute the coalition of minority voters to the surrounding three districts. Plan H283, if implemented, would have redistributed the Asian American population in certain State House voting districts, including District 149 (Vo’s district), to districts with larger non-minority populations.²⁵ Plan H283 would have thus hindered the Asian American community’s right to vote in Texas by diluting the large Asian American populations across the state.

Following a trial in January of 2012, the three-judge district court in Washington, D.C. denied Section 5 preclearance on August 28, 2012, in a comprehensive and mostly unanimous opinion. The court found that the congressional and state redistricting plan had both a retrogressive effect

²³ See United States and Defendant-Intervenors Identification of Issues 6, *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 29, 2011, Dkt. No. 53.

²⁴ See Test. of Ed Martin, Trial Tr. at 350:15-23, *Perez v. Perry*, 835 F. Supp. 2d 209 (W.D. Tex. 2011) (hereinafter “Martin Test.”); Test. of Rogene Calvert, Trial Tr. at 420:2-421:13, *Perez*, 835 F. Supp. 2d 209; Test. of Sarah Winkler, Trial Tr. at 425:18-426:10, *Perez*, 835 F. Supp. 2d at 209.

²⁵ See Martin Test. at 350:25-352:25. District 149 would have been relocated to a county on the other side of the State, where there are few minority voters. See Plan H283, available at <http://gis1.tlc.state.tx.us/download/House/PLANH283.pdf>.

and a racially discriminatory purpose (though this decision later had to be vacated and remanded in light of the Supreme Court’s decision in *Shelby County* and its implications for all Section 5 preclearance claims). Since Section 5 of the Voting Rights Act no longer applies to the State of Texas, disruptive changes to redistricting plans, polling sites, and voting systems can now occur unfettered, wreaking havoc on Asian American voters’ ability to cast an effective ballot. As mentioned above, the DOJ under this administration has not brought a single VRA case, so it will fall on AALDEF and other such groups to continue to identify and litigate each individual discriminatory act or action to protect naturalized citizen voters, LEP voters and other targeted groups.

AALDEF’s *amicus* brief has been submitted for the record.

Harris County Section 5 Preclearance for Changes in Voter Registration Procedures

For years, the Harris County Voter Registrar’s office routinely sent a representative to naturalization ceremonies to pick up voter registration forms following the swearing in of new citizens. Because this Voter Registrar representative was present at the ceremony, the Texas Secretary of State waived a requirement whereby volunteers working to register voters would have had to issue receipts to each person registering to vote. In December of 2010, the newly elected Harris County Voter Registrar planned to withdraw support for this practice, which would have subjected all volunteer voter registrars to the receipt requirement. In light of the large crowds of newly eligible voters to assist at naturalization ceremonies, this receipt requirement would have significantly slowed down the voter registration process and reduced the number of people who could have successfully registered to vote at these ceremonies. Since this change in voting procedures would only affect naturalized (as opposed to native-born) United States citizens, it could have disproportionately impacted minority group voters.

On June 22, 2011, AALDEF sent a letter to the Harris County Voter Registrar, urging him to continue sending a representative to naturalization ceremonies. At this time, Section 5 of the Voting Rights Act was still operative, so AALDEF advised the Voter Registrar that changing this practice would require Section 5 preclearance. The Harris County Voter Registrar did not seek preclearance, and continued to send representatives to naturalization ceremonies, thus allowing the continued waiver of the receipt requirement. AALDEF’s letter to the Harris County Voter Registrar has been submitted for the record.

Harris County Memorandum of Understanding with the Department of Justice Regarding Section 203 Vietnamese Language Assistance

AALDEF has worked with community based organizations in Texas, such as OCA-Greater Houston for several decades and has reached out to local county registrars or clerks to offer our assistance and expertise concerning full compliance and best practices for Section 203 of the VRA. We have reached out to Harris County in the past to assist with Section 203 compliance for both Chinese and Vietnamese language assistance. Harris County struggled to fully comply with Section 203 for both Chinese and Vietnamese language assistance, and ultimately entered into a Memorandum of Understanding with the DOJ regarding Section 203 compliance for Vietnamese language assistance. The Harris County Language Assistance Program Assessment Report, Post-2004 General Election (which includes the MOU with the DOJ for Vietnamese language assistance) has been submitted for the record.

AALDEF Election Day Observation Letters

As AALDEF has documented through years of exit poll surveys, Asian American voters in Texas have faced and continue to face significant barriers to voting, often due to the lack or shortage of language assistance at their poll sites. After each major election, AALDEF follows up with each jurisdiction in which we conducted exit polls by submitting detailed observation letters describing specific voter incidents and the need for Asian language assistance in these jurisdictions. AALDEF's observation letters to election officials in Texas have been submitted for the record.

Conclusion

American citizens of Asian ancestry have long been targeted as “foreigners” and unwanted immigrants, and racism and discrimination against this community persists to this day. These negative perceptions have real consequences for the ability of Asian Americans to fully participate in the electoral and political process. The Voting Rights Act has offered crucial protections for minority group voters, including many Asian American voters. AALDEF has witnessed firsthand the immense value of federal protection of voting rights under Sections 2, 203, and 208 of the Voting Rights Act. Section 5 of the Voting Rights Act was also a particularly effective tool in protecting Asian American voters against a host of actions that threaten to curtail their voting rights. However, the Supreme Court’s *Shelby County* decision dismantling the coverage formula has left a large gap in protections for Asian American voters that requires Congressional action and renewed DOJ enforcement of remaining VRA provisions. We look to Congress to work in a bipartisan fashion to respond to the Court’s ruling and strengthen the Voting Rights Act as it did during the 2006 reauthorizations and each previous reauthorization. AALDEF respectfully offers its assistance in such a process.