



**Testimony of Andrea E. Senteno
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**Before the Subcommittee on the Constitution and Limited Government of the
U.S. House of Representatives Judiciary Committee**

**Hearing entitled
The Biden-Harris Border Crisis: Noncitizen Voting**

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Good afternoon Chair Roy, Ranking Member Scanlon, and members of the Subcommittee. My name is Andrea Senteno, and I am the Regional Counsel of the DC office of MALDEF (Mexican American Legal Defense and Educational Fund). For 56 years, MALDEF has worked to promote the civil rights of all Latinos living in the United States. MALDEF is headquartered in Los Angeles, with regional offices in Chicago; San Antonio, where we were founded; and in Washington, D.C. I thank you for this invitation to appear before you today.

MALDEF focuses its work in five subject-matter areas: education, employment, immigrant rights, voting rights, and freedom from open bias. Since its founding, one of MALDEF's top priorities has been to secure equal voting rights for Latinos, and to promote increased civic engagement and participation within the Latino community. In the past, MALDEF played a leading 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. Furthermore, MALDEF has litigated numerous cases in court, brought claims under the Fourteenth and Fifteenth Amendments, and under Section 2, Section 5, and Section 203 of the VRA to challenge at-large systems, discriminatory redistricting, ballot access barriers, undue voter registration requirements, voter assistance restrictions, and failure to provide bilingual ballot materials.

The Latino population in the U.S. has grown steadily over several decades, and Latinos have been the largest racial or ethnic minority group in the U.S. for more than two decades. According to the U.S. Census Bureau, the Latino population is 19 percent of the total population.¹ Latinos accounted for 51 percent of the nation's population growth between 2010 and 2020.² Similarly, the Latino population is responsible for significant growth in the U.S.

¹ U.S. Census Bureau, Hispanic Heritage Month: 2023 (Aug. 17, 2023), <https://www.census.gov/newsroom/facts-for-features/2023/hispanic-heritage-month.html>.

² Rachel Treisman, Key Facts about the U.S. Latino Population to Kick Off Hispanic Heritage Month, NPR (Sep. 15, 2021), <https://www.npr.org/2021/09/15/1037358346/us-latino-population-demographic-figures-pew-center-hispanic-heritag>

electorate: Latinos represent an estimated 50 percent of the total growth of eligible voters from 2020 to this year's presidential general election.³ Latino citizens were the largest racial or ethnic minority group of voting age in the 2020 election. Today, Latinos are expected to make up 17.5 percent of the total voting population in the upcoming 2024 presidential general election, and an estimated 1.8 million Latinos become eligible to vote each year.

Despite the fact that U.S. overall and electoral growth is in substantial part attributed to the growth of the Latino population, the Latino community also continues to be perceived by many as overwhelmingly composed of immigrants. However, the majority of the Latino community's population were born in the United States, and 81 percent of all Latinos in the U.S. are citizens. Nevertheless, these national demographic changes are perceived as threatening to the long-term privilege of those currently in power who have failed to seek and to garner support among the growing number of voters of color, including Latino voters.

The perceived threat of the growing Latino population and the population of other communities of color continues to result in persistent and increasing efforts to suppress the vote of those communities. This includes disinformation about the security of our elections. In the past several years, we have seen troubling and unsupported allegations of widespread voter fraud, often attributed to non-citizen, immigrant Latinos. Overwhelming evidence has shown that non-citizens are not voting in U.S. elections en masse. Unfortunately, this disinformation has resulted in the disenfranchisement of Latino citizen voters and other voters of color, who are confronting numerous barriers to register and cast a ballot.

This voter-fraud disinformation irresponsibly exploits the demographic fear in our politics today, and it affects the rights of too many citizen voters. Rather than entertaining this baseless fear to justify deterring and preventing voter participation through draconian and discriminatory new laws, Congress should encourage greater civic participation by all eligible voters.

Allegations of Widespread Non-Citizen Voting Are Unsupported By the Facts

Allegations of widespread non-citizen voting lack any basis in fact. There is no evidence of plans, or previous efforts, to "import" non-citizens across the Southern border for the purpose of registering new migrants to vote.⁴

Non-citizens are barred from voting in federal elections, and it is a federal felony to vote in a federal election or to register to vote unlawfully.⁵ Every state in the nation currently prohibits non-citizens from voting in state elections. Voters in every state are required to affirm

[e-month#:~:text=The%20U.S.%20Hispanic%20population%20has.population%20growth%20during%20that%20period.](#)

³ Jens Manuel Krogstad, Jeffery S. Passel, Abby Budiman, and Anusha Natarajan, Key Facts About Hispanic Eligible Voters in 2024, Pew Research Center (January 10, 2024),

<https://www.pewresearch.org/short-reads/2024/01/10/key-facts-about-hispanic-eligible-voters-in-2024/>.

⁴ Ali Swenson, Trump suggests unauthorized migrants will vote. The idea stirs his base, but ignores reality, Associated Press (January 9, 2024),

<https://apnews.com/article/trump-migrants-border-voter-fraud-campaign-40bbf5748615a3b1f6087ff920f59278>.

⁵ 18 U.S.C. § 611; 18 U.S.C. § 1015(f).

or verify their citizenship in order to register to vote, and state election officials are required to verify individual voter eligibility.

Instances of alleged non-citizen voting or non-citizens who appear on voter rolls are extremely rare. The Brennan Center conducted a study during the 2016 general election, researching instances of alleged non-citizen voting in 42 jurisdictions. They found that out of 23.5 million votes cast, election officials only referred approximately 30 incidents of alleged non-citizen voting to officials for investigation or prosecution, or just .0001 percent of votes cast represented suspected noncitizen voting.⁶ These findings are supported by the Cato Institute's study that found that "[n]oncitizens don't illegally vote in detectable numbers," and that "there is no good evidence that noncitizens voted illegally in large enough numbers to actually shift the outcome of elections or even change the number of electoral votes."⁷ Multiple other efforts to produce evidence of significant non-citizen voting have failed.

In addition to the criminal penalty for voting unlawfully, non-citizens also face steep immigration consequences if they try to illegally vote in an election, including deportation. Non-citizens also risk any future opportunity to naturalize if they unlawfully register to vote or vote in an election. The stakes for non-citizens are incredibly high, and the potential penalties of unlawful voting effectively prevent any significant unlawful voting by non-citizens. In the very rare instances where non-citizens cast ballots unlawfully, it is usually the result of mistake.

Rhetoric about the legitimacy of our elections, which evidence shows are indeed secure, is instead used to justify voter suppression measures in too many states across our country.

Impact on Citizen Voters

An unprecedented number of voters participated in the 2020 presidential general election, with rates of eligible participation unseen in a century. However, instead of hailing the election as a milestone of progress toward greater participation in our electoral democracy and the most secure election in our nation's history,⁸ bad-faith actors have used the election to justify increased efforts to reduce minority voter participation in future elections.

While instances of non-citizens on voter registration rolls or having cast a ballot are almost nonexistent, the disinformation surrounding voter fraud has had an undeniable chilling effect on eligible citizen voters, preventing them from exercising their rights as citizens to make their voices heard. Disinformation and voter suppression, couched as "election integrity," predictably target Latinos and other voters of color. These voter suppression tactics take the

⁶ Christopher Famighetti, Douglas Keith, and Myrna Pérez, Noncitizen Voting: the Missing Millions, Brennan Center for Justice, May 5, 2017,

<https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-missing-millions>.

⁷ Alex Nowrasteh, "Noncitizens Don't Illegally Vote in Detectable Numbers," Cato Institute, November 25, 2020, <https://www.cato.org/blog/noncitizens-dont-illegally-vote-detectable-numbers>.

⁸ "Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees," Cybersecurity and Infrastructure Security Agency, Department of Homeland Security, November 12, 2020, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

form of unlawful voter purges, restrictions on language assistance at the polls, or restrictions on mail ballots or forms of registering and voting used disproportionately by voters of color in a jurisdiction, among others.

For example, list maintenance is an important aspect of any election administration system, because it helps ensure accurate and current voter registration rolls. Federal law requires election officials to undertake regular list maintenance and remove ineligible voters from their voter rolls.⁹ The actions of a number of states in recent years, however, go beyond routine list maintenance and instead have resulted in efforts to purge voters from the voter rolls in a manner that violates federal law and the Constitution.¹⁰

In 2019, MALDEF successfully sued Texas Secretary of State David Whitley, other state officials, and 13 counties challenging an advisory to county registrars to single out naturalized U.S. citizens for investigation and possible removal from the voter rolls based solely on the fact that they were born outside the U.S.¹¹ The directive alleged that more than 95,000 non-U.S. citizens might be registered to vote and that thousands had allegedly voted in previous elections, but the next day Secretary Whitley informed counties that the list of suspect voters was based on erroneous information, including outdated driver's license or state identification information. Secretary Whitley, however, failed to withdraw the list of voters or the advisory. Furthermore, the Secretary of State's office admitted shortly thereafter that at least 25,000 voters on the erroneous purge list were in fact U.S. citizens. The case settled with an agreement that required state officials to change the way they identified voters for investigation of U.S. citizenship, so as not to run afoul of federal law or the U.S. Constitution. State tactics such as these undermine the public's trust in our elections and erode voters' confidence in their ability to participate in our elections fairly and freely.

Some states have also used this pretextual lie of voter fraud committed by non-citizens to advance redundant prohibitions on non-citizen voting at the state level, either through their legislatures or through referenda. Currently, every state in the nation prohibits non-citizens from voting in state elections. Redundant rhetorical efforts to curb non-citizen voting do not change the law substantively: they simply exist as purported solutions to problems without a credible basis, timed to further the broader dissemination of election disinformation.

Election disinformation also creates confusion among eligible citizen voters and places a target on Latino voters who may be incorrectly perceived as non-citizens. The electorate is becoming more diverse and includes voters who may have limited-English language proficiency. Rhetoric that, explicitly or implicitly, purports to claim that certain voters may not "look" like eligible citizen voters creates a credible risk of harassment and intimidation of U.S. citizens seeking to exercise one of their most fundamental rights. Policymakers must take care to ensure that citizens can participate fully in our democracy without fear, suppression, or intimidation.

⁹ 52 U.S.C. § 20507.

¹⁰ See e.g., *La Unión del Pueblo Eterno v. Abbott*, 705 F.Supp.3d 725 (W.D. Tex. 2023); *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406 (D. Ariz. Feb. 29, 2024).

¹¹ Press Release, Federal Court Halts Texas Counties From Purging Voters From Rolls, MALDEF (Feb. 27, 2019), <https://www.maldef.org/2019/02/federal-court-halts-texas-counties-from-purging-voters-from-rolls/>.

Enacting discriminatory and suppressive voting laws and practices in the name of combating fictitious widespread non-citizen voting aims to and results in a disproportionate impact on voters' of color ability to exercise the full power of their voting potentials. Voter turnout data shows that there are persistent disparities in voter participation among racial and ethnic groups, including the Latino community.

Ultimately, spreading disinformation that discourages or prevents the participation of all eligible voters in our election only breeds distrust in our election systems. Democracy requires participation. Widespread disinformation that leads to voter suppression presents a clear constitutional crisis. Congress must commit itself to rooting out election disinformation and to ensuring that U.S. elections are fair, free, and accessible to every qualified voter.

Need Federal Protections to Ensure All Voters Can Exercise Their Sacred Right to Vote

Since the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), in which the Court majority struck down the preclearance coverage formula, MALDEF has filed numerous lawsuits to protect every voter's ability to cast a ballot free from discriminatory barriers and vote dilution. Today, the VRA's effectiveness is incomplete, and thus MALDEF's work is more challenging. More importantly, without the uninhibited safeguards of the VRA, voters experiencing discrimination may lack assurance that they can exercise fully the franchise.

Unfortunately, H.R. 8281, the SAVE Act, fails to meet the needs of many voters in the U.S. who need Congress to lead the way in safeguarding the right to vote against voter discrimination and voter suppression. The SAVE Act raises significant logistical and legal concerns and continues a troubling pattern of legislating to burden millions of voters, disproportionately voters of color without evidence that justifies such a burden on the right to vote.

For example, the provisions of the SAVE Act would require most voters to provide a document of citizenship in order to register to vote. These documents are costly and difficult to obtain, and many individuals do not possess them. The Brennan Center found that proof of citizenship requirements in Kansas and Arizona resulted in the disenfranchisement of tens of thousands of eligible U.S. citizen voters.¹² Furthermore, the likelihood of U.S. citizens to have documents of citizenship, like a U.S. passport, is not equal across demographics and income levels, and individuals who have changed their names, like married women, also may not have such documents that match their current names. Obtaining these documents is not free, and for many it can be cost prohibitive or too time-consuming to obtain. When approximately 30 percent of the U.S. citizen, voting-age population is unregistered to vote,¹³ federal and state legislators alike must provide resources and enact protections to encourage voter registration of eligible voters, not hinder it.

¹² Ian Vandewalker, *The Effects of Requiring Documentary Proof of Citizenship*, Brennan Center for Justice, July 19, 2017,

<https://www.brennancenter.org/our-work/research-reports/effects-requiring-documentary-proof-citizenship>.

¹³U.S. Census Bureau, *2022 Voting and Registration Data Now Available* (May 2, 2023),

<https://www.census.gov/newsroom/press-releases/2023/2022-voting-registration.html>.

Congress's failure to pass H.R. 14, the John R. Lewis Voting Rights Advancement Act has also harmed Latino community voting rights over the last decade. Discriminatory election laws and systems must be challenged and struck down by a court. Stopping voter discrimination has become more difficult and more costly without the use of preclearance review to ensure voting changes do not have a retrogressive effect for minority voters in a jurisdiction. The John R. Lewis Voting Rights Advancement Act will provide the voters, including those from the Latino community, with necessary and effective tools to push back and prevent voter discrimination where it occurs and to ensure that every citizen's voice and vote matters. Safeguarding each eligible citizen's voting rights should not be a partisan issue.

Our changing nation faces significant challenges in the future with the growing presence of minority voters, specifically in light of the unprecedented growth of the Latino voting population. However, these significant changes present an opportunity to ensure that our democracy thrives based on real, core values of fairness and non-discrimination.

MALDEF urges Congress to use its power to address the longstanding and new barriers voters of color face when trying to participate in our democracy. The American public deserves a thriving democracy, one that allows every eligible citizen to cast their ballot effectively in our elections. Congress must exercise its constitutional power to create a solid floor for a shared voting experience across our United States, both through regulation of elections and through a reinvigorated preclearance process in the John R. Lewis Voting Rights Advancement Act.