



August 28, 2024

Secretary Jane Nelson
Elections Division Director Christina Adkins
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711-2887

Via email and USPS

Re: Notice of Violation of National Voter Registration Act and Demand for Documents

Dear Secretary Nelson and Director Adkins:

The undersigned write to remind you that the systematic purging of naturalized citizens from Texas' voter rolls and the systematic purging of individuals from Texas' rolls within the 90-day period preceding a federal election violate the National Voter Registration Act ("NVRA"). Texas' continued implementation of its systematic voter list maintenance programs during the 90-day period preceding the 2024 general election violates the NVRA. This letter serves as notice that Texas' actions are unlawful, pursuant to 52 U.S.C. § 20510(b)(2), and requests documents concerning Texas' implementation of systematic voter list maintenance programs, as detailed below.

Texas is well aware of its obligations under the NVRA. In January 2019, one of your predecessors, Secretary of State David Whitley, directed county registrars to purge up to 95,000 individuals from the voter rolls, targeting naturalized citizens and

violating tens of thousands of Texans' voting rights. A federal judge quickly halted this flawed and discriminatory program, and a settlement agreement rescinded the original advisory announcing this purge effort and mandated new list-maintenance procedures.¹

We are concerned, however, that Texas may be engaging anew in unlawful purges under the guise of list maintenance. Federal law prohibits Texas from systematically purging registered voters from its rolls within the 90-day period before a federal election, the "quiet period." On August 12, 2024, your office issued a press release detailing that it uses data provided by the Department of Public Safety and Texas courts to "send[] . . . records to county voter registrars to investigate" voters' eligibility. The press release stated that "[c]ounty voter registrars are also required to review their records and send notices to any voter who the registrar reasonably believes is not eligible for registration, including due to noncitizenship."² On August 26, 2024, in a press release, Governor Greg Abbott stated that the systematic "removal process has been, and will continue to be, ongoing."³ The dates of both press releases fall within the quiet period before the 2024 general election.

Further, we are particularly concerned by Texas' removal of many voters from the rolls due to alleged failure to respond to notice after being identified as purported noncitizens. Records obtained through a public information request indicate thousands of voter registrations canceled between 2021 and 2023, for "failure to respond to notice," after your office identified Texas voters for further investigation as to citizenship status.⁴ Governor Abbott's recent press release further confirmed that Texas has canceled thousands of registrations on the basis of purported noncitizenship and for failure to respond to a notice of examination. Although the press release failed to explain that the purported noncitizenship category of voter removals includes all individuals who allegedly failed to respond to notice as to investigation of citizenship status, all evidence suggests that is the case.⁵ We seek

¹ Settlement Agreement, *Move v. Whitley*, NO. SA-19-CA-074-FB (W.D. Tex.), available at <https://campaignlegal.org/sites/default/files/2019-04/Agrmt%20all%20signatures.pdf>.

² Texas Sec'y of State, Press Release, *Texas Leads the Way Against Noncitizen Voting* (Aug. 12, 2024), <https://www.sos.texas.gov/about/newsreleases/2024/081224-2.shtml>.

³ Office of the Texas Governor, Press Release, *Gov. Abbott Announces Over 1 Million Ineligible Voters Removed From Voter Rolls* (Aug. 26, 2024), <https://gov.texas.gov/news/post/governor-abbott-announces-over-1-million-ineligible-voters-removed-from-voter-rolls>.

⁴ Email from Christina Adkins to Sarah Hartsfield, Re: information on noncitizens and voter registration rolls, Apr. 3, 2023 (Exh. 1).

⁵ Your office previously identified 379 cancellations due to "non-U.S. citizenship" and 5,440 for "failure to respond to notice of examination based on non-U.S. citizenship" from September 2021 to March 2023. Exh. 1. Your office provided those figures in April 2023, in

clarification on this important matter, particularly given the potential for erroneous disenfranchisement of many Texas voters in light of the documented rarity of noncitizen voting in the United States.⁶ We are alarmed by the large number of voters removed on this basis, indicating that eligible Texas voters have likely been erroneously identified as potential noncitizens and purged from the rolls.

We therefore remind you of your obligations under the NVRA; demand that Texas immediately cease all unlawful voter list maintenance, including removals in the 90-day quiet period before the 2024 general election; and request that Texas produce documents pursuant to its NVRA obligations, as detailed below.

I. Texas' List-Maintenance Activities May Violate the NVRA.

a. Texas Cannot Systematically Remove Voters from the Rolls within 90 Days of an Election.

Section 8(c) of the NVRA (the “90-Day Provision”) requires that states complete “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” “not later than 90 days prior to . . . [a] general election for Federal office.” 52 U.S.C. § 20507(c)(2)(A). Texas may not take

response to an information request from a state senator’s office. *Id.* On August 26, Governor Abbott’s office stated that “over 6,500 noncitizens [have been] removed from the voter rolls” since September 2021. Office of the Texas Governor, Press Release, *Gov. Abbott Announces Over 1 Million Ineligible Voters Removed From Voter Rolls*, <https://web.archive.org/web/20240826160300/https://gov.texas.gov/news/post/governor-abbott-announces-over-1-million-ineligible-voters-removed-from-voter-rolls> (retrieved from Internet Archive Wayback Machine, Aug. 26 16:03 GMT screen capture). The current version of the press release posted on the Office of the Texas Governor’s website states, with no acknowledgment of a change, that “over 6,500 *potential* noncitizens [have been] removed from the voter rolls” since September 2021.” Office of the Texas Governor, Press Release, *supra* note 3 (emphasis added) (version as of Aug. 28, 2024, 1:35 PM CDT). A chart in the current version of the press release continues to state, as it did originally, that removals since September 2021 include “[o]ver 6,500” “noncitizens.” *Id.* Thus, it appears obvious that the 6,500 removed “noncitizen” registrants figure in Governor Abbott’s press release includes all individuals removed for “failure to respond to notice of examination based on non-U.S. citizenship.”

⁶ See, e.g., Nicholas Riccardi, *Noncitizen Voting Isn’t an Issue in Federal Elections, Regardless of Conspiracy Theories. Here’s Why*, Associated Press (Apr. 12, 2024), <https://apnews.com/article/trump-immigrant-voting-noncitizens-elections-explained-cf4c73b336147b5f5d9c2a22b2564994> (collating findings, including a 2022 Georgia audit finding zero noncitizens registered to vote); Jonathan Diaz, *False Claims of Noncitizen Voting Harm Our Democracy*, Campaign Legal Center (May 20, 2024), <https://campaignlegal.org/update/false-claims-noncitizen-voting-harm-our-democracy>.

any steps to implement any program to systematically remove voters within this 90-day “quiet period.”

Naturalized citizenship, whether an individual has ever been issued an identification number as a noncitizen, and perceived citizenship status are not among the enumerated exceptions by which a state may use a systematic program to remove a voter from the rolls during the quiet period. *See* 52 U.S.C. § 20507(c)(2)(B); *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1345 (11th Cir. 2014) (“Congress expressly allowed for a number of exceptions to the 90 Day Provision, and an exception for removals of non-citizens is not one of them.”); *see also* *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enf’t*, No. 1:16-CV-1274, 2018 WL 3748172, at *9 (M.D.N.C. Aug. 7, 2018) (finding violation of NVRA where cancellation of “374 voters’ registrations” based on a single source of information “lacked the individualized inquiry necessary to survive the NVRA’s prohibition on systematic removals within 90 days of a federal general election”). Consequently, any such program violates the clear statutory language of 52 U.S.C. § 20507(c)(2)(A) that bars a state from using “any program” to “systematically remove the names of ineligible voters.”

Any program by your office to identify and systematically remove voters from Texas’ voter rolls within the 90-day quiet period is a clear violation of the NVRA. Your press release about systematic voter list maintenance and Governor Abbott’s press release stating that Texas’ systematic “removal process has been, and will continue to be, ongoing”—both issued within the quiet period—indicate that the Secretary of State’s Office and counties are engaging in prohibited systematic voter list maintenance within the quiet period prior to the 2024 general election. We demand that you immediately cease any and all such systematic voter list maintenance actions. As the Eleventh Circuit has explained, “[T]he 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time *except* for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest.” *Arcia*, 772 F.3d at 1346.

b. Texas’ List Maintenance Procedures Must Be Uniform and Nondiscriminatory and Must Ensure That Any Eligible Applicant Remains Registered to Vote.

We also write to remind you of NVRA Section 8(b)’s requirement that list maintenance programs be “uniform” and “nondiscriminatory.” 52 U.S.C. § 20507(b)(1). Federal courts have looked unfavorably on programs that disproportionately burden naturalized citizens. For example, in *United States v.*

Florida, 870 F. Supp. 2d 1346 (N.D. Fla. 2012), a district court explained that such a program likely violated Section 8(b). *Id.* at 1350. There, Florida’s Secretary of State compiled a list that included all registered voters who had disclosed that they were noncitizens at the time they applied for a driver’s license, had subsequently naturalized and registered to vote, and had not updated their citizenship status with the state agency responsible for driver’s licenses. *Id.* at 1347-48. The Florida Secretary of State ultimately abandoned this program—perhaps recognizing its fundamental unlawfulness—before the court issued a ruling. *Id.* at 1351. Nevertheless, the court explained that the program had likely violated Section 8(b) because its approach to identifying suspected noncitizens swept in many naturalized citizens. *Id.* at 1350. As the court explained, this “methodology made it likely that the properly registered citizens who would be required to respond and provide documentation [of their citizenship] would be primarily newly naturalized citizens.” *Id.* Accordingly, the “burdensome” program “was likely to have a discriminatory impact” on this group of eligible voters in violation of Section 8(b).

Employing similar logic, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509, 2024 WL 862406 (D. Ariz. Feb. 29, 2024), recently held that a state statutory provision that “requires county recorders to search” a federal database “only for naturalized voters who county recorders suspect are not U.S. citizens” was unlawful because it “subject[ed] *only* naturalized citizens to database checks.” *Id.* at *38. The court explained that using the database means that only “[n]aturalized citizens will always be at risk” of removal from this process, in violation of the requirement that state officials refrain from applying different practices in determining who is qualified to vote. *Id.*; *see also* 52 U.S.C. § 10101(a)(2)(A).

Thus, “[a] state cannot properly impose burdensome demands in a discriminatory manner” regarding voter registration, *Florida*, 870 F. Supp. 2d at 1350, including by imposing those demands disproportionately on naturalized voters. The same is true here. A program that affects only naturalized citizens and knowingly places burdens exclusively on those citizens is discriminatory and violates Section 8(b) regardless of whether there is a cure program. In the *Whitley* settlement agreement, your office recognized the importance of “minimizing the impact on naturalized citizens” of any list maintenance program.⁷ Further, Texas remains

⁷ Settlement Agreement, *supra* note 1, at 3 ¶ 2, 4 ¶ 6 (“The Parties agree that the goal of this process is to guide the Texas Secretary of State in performing a list-maintenance procedure by matching DPS data regarding potential non-U.S citizens to Texas’s voter registration database to assist counties in ensuring that only eligible voters are registered to vote while minimizing the impact on naturalized citizens.”).

obligated to “ensure that any eligible applicant is registered to vote in an election.” 52 U.S.C. § 20507(a)(1). *All* voter list maintenance programs implemented by Texas must comply with these requirements of the NVRA.

II. Demand for Documents.

The NVRA requires that Texas, upon request, produce “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). We therefore request that documents sufficient to show the following be produced promptly:

1. Individualized voter information⁸ for each of the following voters and voter registration applicants:
 - a) All registered voters your office identified as potential noncitizens from September 7, 2021 to the present;
 - b) All registered voters issued notice letters on the basis of alleged “non-U.S. citizenship”⁹ from September 7, 2021 to the present;
 - c) All voters canceled, purged, or otherwise removed from the list of eligible voters for alleged “non-U.S. citizenship”¹⁰ from September 7, 2021 to the present;
 - d) All voters canceled, purged, or otherwise removed from the list of eligible voters for alleged “failure to respond to notice of examination based on non-U.S. citizenship”¹¹ from September 7, 2021 to the present;
 - e) All voters canceled, purged, or otherwise removed from the list of eligible voters for any reason *other than* “non-U.S. citizenship” or “failure to

⁸ “Individualized voter information” as used in this request includes: first name; last name; middle name; suffix; address, including street number, apartment number, city, state, zip code, and county; mailing address, if different; phone number; precinct number; voter ID number assigned by an election official; date of birth; place of birth; date of voter registration; race; gender; reason purged from voter roll or denied registration; and date purged from voter roll or denied registration. For voters identified as potential noncitizens, please also provide documents sufficient to reveal the agency source of data identifying the individual as a noncitizen and the date of the alleged noncitizen’s interaction with the agency identifying the individual as a noncitizen.

⁹ Exh. 1.

¹⁰ See Exh. 1.

¹¹ See Exh. 1.

respond to notice of examination based on non-U.S. citizenship”¹² from September 7, 2021 to the present; and

- f) All voter registration applicants denied registration due to potential or actual status as a noncitizen from September 7, 2021 to the present;
2. A list of all registered voters your office has identified as potential noncitizens shared with county voter registrars and election administrators from September 7, 2021 to the present;
3. A list of all registered voters your office has identified as potential noncitizens shared with the Texas Attorney General from September 7, 2021 to the present;
4. Updated numbers for the period from September 7, 2021 to the present for the “number of cancellations for non-U.S. citizenship,” “number of cancellations for failure to respond to notice of examination based on non-U.S. citizenship,” “number of cancellations for other reasons,” and “total number of cancellations” provided by your office to the general counsel for Texas Senator Bryan Hughes on April 3, 2023;¹³
5. All documents relating to any notice provided to registered voters your office identified as potential non-citizens;
6. All documents relating to any and all methodologies used by your office and any other agency to identify individuals as alleged noncitizens;
7. All documents pertaining to any agreements with the Department of Public Safety and/or with Texas courts to provide information about alleged noncitizens;
8. All documents relating to any and all methodologies used by your office and any other agency to prevent the identification of naturalized citizens as alleged noncitizens;
9. All documents relating to guidance issued to counties where you have taken the “position that a voter’s presence on the list of matches provides a county with reason to believe that the identified voter is no longer eligible for

¹² See Exh. 1.

¹³ See Exh. 1.

registration if the county's independent investigation does not demonstrate that the individual is a U.S. citizen"¹⁴; and

10. All advisory or guidance documents, whether formal or informal, provided to county Boards of Registrars, Probate Judges, and/or other county election administrators regarding the implementation of any systematic voter list maintenance, including the programs described in your and Governor Abbott's press releases.

We expect that any charge for these records will be a "reasonable cost," as required under the NVRA's Public Disclosure Provision. 52 U.S.C. § 20507(i)(1). Please inform us of the expected cost prior to delivery if it exceeds \$100.

We would prefer to receive all records in electronic format via email (khuddleston@campaignlegalcenter.org) or other electronic method, if possible. If this is not possible, we are happy to confer about other ways in which we can meaningfully access these records. If any responsive documents or communications are in your possession or the possession of any employees of the Secretary of State on non-governmental computers, on electronic devices, or in paper copy, please include such documents and communications in your production.

Sincerely,

/s/ Kate Huddleston

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¹⁴ Settlement Agreement, *supra* note 1, at 9 ¶ 16.

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EXHIBIT 1

From: Sarah Hartsfield <Sarah.Hartsfield@senate.texas.gov>
Sent: Monday, April 3, 2023 4:43:24 PM
To: Christina Adkins <CAdkins@sos.texas.gov>
Cc: Adam Bitter <ABitter@sos.texas.gov>
Subject: RE: information on noncitizens and voter registration rolls

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Hi Christina,

Thank you for the follow up information. Would you and Adam be available for either in-person or phone meeting with Drew & I tomorrow at 9:30am in the Sam Houston building?

Thanks!

Regards,

Sarah

From: Christina Adkins <CAdkins@sos.texas.gov>
Sent: Monday, April 3, 2023 4:40 PM
To: Sarah Hartsfield <Sarah.Hartsfield@senate.texas.gov>
Cc: Adam Bitter <ABitter@sos.texas.gov>
Subject: RE: information on noncitizens and voter registration rolls

Sarah,

Thanks for your message.

As to your first question: Our office is unable to confirm how many records sent to county voter registrars as potential non-United States citizens in January 2019 pertained to voters who “actually proved to be non-citizens.” Within a month of the Secretary of State providing these voter records to county election officials, a federal court issued an order prohibiting counties from taking any list maintenance activity regarding the records. The parties to the litigation later entered into a settlement agreement in which the Secretary of State agreed to rescind its January 2019 guidance and advise county officials to take no further action on any files sent to them in connection with that guidance. Since then, we have not conducted any analyses regarding the original sets of potential non-citizen records sent to counties in January 2019.

As to the second question: The following chart reflects the number of voter records that have been cancelled—from September 9, 2021 to March 31, 2023—out of the records sent to voter registrars

through the revised process conducted pursuant to the *LULAC v. Whitley* settlement agreement. Please note that the TEAM voter registration system—from which the below figures were compiled—is a living database, constantly updated with information reported by county officials on a daily basis; it is not a historical record. As such, any information extracted for a request is current as of the date that our search is performed.

Number of Cancellations for Non-U.S. Citizenship	Number of Cancellations for Failure to Respond to Notice of Examination Based on Non-U.S. Citizenship	Number of Cancellations for Other Reasons	Total Number of Cancellations
379	5,440	311	6,130

Please let us know if you have any questions or need additional information regarding your inquiry.

Thank you,

Christina Adkins

From: Sarah Hartsfield <Sarah.Hartsfield@senate.texas.gov>
Sent: Friday, March 31, 2023, 10:40 AM
To: Christina Adkins <CAdkins@sos.texas.gov>
Subject: information on noncitizens and voter registration rolls

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Hi Christina,

I hope this email finds you well. Is it possible to get the following information by Tuesday or Wednesday next week?

1. When David Whitley sent over a list of potential noncitizens on the voter registration rolls, how many actually proved to be non-citizens? How much of the data has been checked since then?
2. Do you know how many individuals are actually turning up as non-citizens with the ongoing collection of non-citizen registration records under the settlement agreement signed with the SOS office after the Whitley lawsuit?

Let me know if you have any questions! Thank you in advance for your time and attention to the matter.

Kind regards,

Sarah Hartsfield

General Counsel

Sen. Bryan Hughes, Chair

Senate Committee on State Affairs

Phn: 512.463.0380