



April 15, 2024

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Dear Commission Berger and Commissioner Kosinski,

I am writing to you on behalf of the America First Policy Institute, a non-profit, non-partisan research institute dedicated to advancing policies that put the American people first, and election integrity is at the heart of this mission. As you know, pursuant to the National Voter Registration Act (“NVRA”), the states are obliged to ensure that only eligible citizens are registered to vote.¹ As the designated chief election officers for your state, it is your responsibility to ensure the NVRA’s mandate is effectuated in your state.²

Due to the failure of the Biden Administration to secure the border, it is now incumbent on officials like you to ensure that the 2024 election is not compromised by illegal aliens casting votes. Since 2021, no less than 11 million illegal aliens have entered the country³ This is a population greater than that of eleven states and the District of Columbia *combined*, which together account for 41 electoral votes in a presidential election.⁴

In addition to presiding over this inflow of illegal aliens, the Biden Administration has aggravated its impact on the upcoming elections through Executive Order 14019 (“EO”). An unprecedented effort to utilize federal agencies for voter registration efforts, the EO affects many agencies that interact with illegal aliens. For example, the Marshal’s Service has initiated a process to ensure those in its custody are offered the chance to register to vote.⁵ Similarly, the

¹ 52 U.S.C. §§ 20501(a)(1), (b)(1), (b)(3-4); 20507(a)(1).

² 52 U.S.C. § 20509.

³ U.S. Customs and Border Protection, *Nationwide Encounters* (April 4, 2024), available at <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (estimating more than 9.6 million encounters since 2021); U.S. House Comm. on Homeland Security, 118th Cong., *Border Crisis Startling Stats*, (Comm. Print 2023), <https://homeland.house.gov/wp-content/uploads/2023/10/September-Startling-Stats.pdf> (“Since President Biden took office . . . 1.7 million known gotaways [have] evaded U.S. Border Patrol.”).

⁴ The jurisdictions are Ark., Del., D.C., Haw., Me., Mont., N.D., N.H., R.I., S.D., Vt., and Wyo., each of which have either three or four electoral votes.

⁵ U.S. Dept. of Justice, U.S. Marshall Service, *United States Marshals Service FY 2022 Annual Report* (April 2023), available at <https://www.usmarshals.gov/sites/default/files/media/document/PUB-2-2022-Annual-Report.pdf>.

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Department of Health and Human Services is engaged in voter registration outreach⁶ as well as the Department of Agriculture through its child nutrition programs.⁷

The potential impact of illegal alien votes in your state is particularly pronounced. For example, New York’s population of just over 19,600,000 represents roughly 5.9% of the total population of the United States.⁸ If 5.9% of the 11 million illegal aliens who entered the country during the Biden Administration were to reside in New York, that would represent a total of 649,000; if, in turn, just 5.9% of those illegal aliens were to secure voter registrations, that would total 38,291 unlawful voters. Some sources place the current population of illegal aliens in New York at 835,000,⁹ which drastically increases the risk of non-citizens voting in the upcoming 2024 election.

Pursuant to the New York Law, only citizens of the United States are entitled to vote in the state’s elections.¹⁰ Diluting a citizen’s vote by the casting of ballots by illegal aliens would have far-reaching consequences on the public’s trust in your state’s elections. As noted by the Supreme Court, voters “who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.”¹¹ Furthermore, voting rights are equally undermined by the “dilution of the weight of a citizen’s vote,” as by the outright denial of the right to vote.¹²

As noted above, the NVRA obligates the states to ensure that only eligible voters cast ballots in elections. Specifically, the NVRA states that “the right of citizens”¹³ to vote is a fundamental right and that the very purpose of the NVRA is to “protect the integrity of the electoral process,”¹⁴ and, “ensure that accurate and current voter registration rolls are maintained.”¹⁵ These obligations—compliance with which is your responsibility as chief elections officers—extend to ensuring compliance with New York Law’s requirement that only citizens may cast ballots.

A recent federal court decision from Arizona clarified states’ ability to protect their citizens’ votes from dilution by illegal aliens.¹⁶ Specifically, states may cross-reference data from multiple sources to determine a voter’s citizenship status. In Arizona, the court upheld verifying registrations against records with the Department of Motor Vehicles, public health information

⁶ U.S. Health and Human Services, Health Resources and Services Administration, *Voter Registration and Health Centers* (March 2022), available at <https://bphc.hrsa.gov/compliance/scope-project/voter-requirements>.

⁷ Tina Namian, U.S. Dept. of Agric., *Promoting Access to Voting through the Child Nutrition Programs* (March 23, 2022), available at <https://fns-prod.azureedge.us/sites/default/files/resource-files/SP07-2022CACFP06-2022SFSP02-2022os.pdf>.

⁸ United States Census Bureau, *Population Estimates, July 1, 2023* (July 1, 2023), available at <https://www.census.gov/quickfacts/fact/table/US/PST045223>.

⁹ Migration Policy Center, *Profile of the Unauthorized Population: New York* (2019), available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY>.

¹⁰ N.Y. Elec. Law § 5-102(1) (“No person shall be qualified to register for and vote at any election unless he is a citizen of the United States[.]”).

¹¹ *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

¹² *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

¹³ 52 U.S.C. § 20501(a)(1).

¹⁴ 52 U.S.C. § 20501(b)(3).

¹⁵ 52 U.S.C. § 20501(b)(4).

¹⁶ Order at 79-83, *Mi Familia Vota, et al., v. Fontes*, No. 2:22-cv-509 (D. Ariz., February 29, 2024) ECF No. 707.

(“NAPHSIS”),¹⁷ and records accessed from the United States Citizenship and Immigration Service (“USCIS”) through its database portal (“SAVE”).¹⁸

The trial in this case revealed that only six states are using the SAVE program to verify new voter registrations,¹⁹ and only one state is using the program for voter roll maintenance purposes²⁰ even though the SAVE program is fully available to government offices for such purposes.²¹

In light of the mandates imposed by the New York Law and the NVRA to ensure that only eligible citizens are registered to vote, we hope you share our concern about ensuring the 2024 election is conducted without any dilution of lawfully cast votes.

To that end, please accept this letter as our request pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law §§ 84 *et seq.*, for the following public records (as defined in N.Y. Pub. Off. Law § 86(4)) related to New York’s efforts to:

1. ensure only citizens are registered to vote in New York;
2. verify the citizenship status of new voter registrations;
3. verify the citizenship status of voter registrations processed since January 20, 2021;
4. utilize any available resources, including electronic databases, to verify citizenship;
5. verify the citizenship status of a registered voter with correspondence from federal agencies, including but not limited to data received from USCIS in relation to Form N-400;
6. use the SAVE program to assist with citizenship verification;
7. use public health information, including but not limited to NAPHSIS, to verify citizenship; and
8. use New York state records, including but not limited to motor vehicle and public benefit records, to verify citizenship.

¹⁷ A non-profit organization that collects vital records such as birth certificates.

¹⁸ A federal system used to retrieve records regarding alien eligibility for state and federal benefits.

¹⁹ Dep. of USCIS at 929:24-25, 930:1-2, *Mi Familia Vota, et al.*, No. 2:22-cv-509, ECF 679-3.

²⁰ *Id.* at 930:3-7.

²¹ *Id.* at 863:3-13.

We appreciate your attention to this matter and anticipate your prompt response. Should you require any further clarification or information, please do not hesitate to contact us.

Thank you for your commitment to upholding the integrity of our electoral process.

Sincerely,

/s/ Pamela J. Bondi _____

Pamela Jo Bondi

Chairwoman

Center for Litigation

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