October 24, 2016

Ms. Vanita Gupta
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Dear Ms. Gupta:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, I write to express our acute concern about public figures encouraging Americans to intimidate, harass, and commit violence against voters on and in the weeks immediately prior to Election Day 2016. The NALEO Educational Fund is the nation’s leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency encompasses the more than 6,100 Latino officials serving at all levels of government, and includes Republicans, Democrats, and Independents.

We are particularly troubled because if individuals act upon calls to perpetrate vigilantism, we expect that Latino and other historically underrepresented groups of Americans will become the primary targets of improper behavior which could unfairly interfere with their participation in our electoral process. We encourage you to assign federal monitors to areas of greatest concern, to respond to illegal actions with appropriate remedial intervention, and to make full use of the Department of Justice’s public platform to emphasize that election-related intimidation and violence are unacceptable and illegal.
Widespread Public Calls to Prevent People from Voting in the Final Months of the Presidential Campaign

As Election Day 2016 has drawn closer, allegations continue to emerge in the media and the public dialogue that people not eligible to vote might attempt to cast ballots in large numbers. Those who make the allegations often accompany them with calls for private citizens to respond proactively by inhibiting other voters. Attendees at campaign rallies have, in recent months, been urged to, “watch other communities,” because “a lot of bad things happen, and we don’t want to lose for that reason.”\(^1\) Exhortations have at times taken on explicitly violent tones, as when Milwaukee County, WI Sheriff David Clarke tweeted on October 15, “It’s incredible that our institutions of gov…are corrupt…Pitchforks and torches time,” accompanied by a photo of a visibly angry, armed mob of people.

While the presence of party-affiliated poll monitors who, in the words of one former volunteer, “keep[] track of who has voted [and] relay[] the names to campaign headquarters”\(^2\), is a regular and long-standing feature of American elections, audiences have interpreted recent inflammatory rhetoric as calling for something different: namely, the singling out of voters based on protected characteristics, and intimidating actions that clearly violate federal and many state laws.

For example, this month the Boston Globe quoted Steve Webb of Fairfield, Ohio, who told the newspaper that he had heard calls to watch polling places, and that he planned to go out on Election Day and “look for . . . well, it’s called racial profiling. Mexicans. Syrians. People who can’t speak American. I’m going to go right up behind them…I’m going to make them a little bit nervous.”\(^3\) Another voter interviewed about calls to vigilante poll watching, Mark Bowman of Shermans Dale, Pennsylvania, told Reuters he believed the disproven claim that, “Voter fraud is rampant, especially in the cities,” and that he foresaw citizen poll watchers seeking to stop fraud “end[ing] up in a confrontation with someone. You’re going to end up in a bad situation.”\(^4\) According to a third voter, Gerald Miller of Colorado Springs, Colorado, allegations of fraud and requests for voters to watch for and prevent supposed unauthorized voting “could be the spark” that sets off “a civil war, a racial war” that he believes will soon occur.\(^5\)

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2 Attacks on Minority Voters, supra note 1.


5 Dana Milbank, Trump supporters are talking about civil war. Could a loss provide the spark?, WASHINGTON POST, Oct. 18, 2016, online at https://www.washingtonpost.com/opinions/trump-supporters-are-talking-about-civil-war-could-a-loss-provide-the-spark/2016/10/18/f5ce081a-9573-11e6-bb29-bf2701de0a3_story.html?tid=a_inl&utm_term=.5e1910445d1a.
The Historical and Legal Context Surrounding Current Inciting Rhetoric Heighten Concerns

Historically, as is likely in 2016, aggressive polling place monitors who undertake efforts in response to unfounded allegations of fraud have targeted underrepresented voters, particularly immigrants or communities of color. Laws allowing for private citizens to challenge other voters’ credentials were, in many or most instances, originally inspired by openly discriminatory sentiments and social movements dating back to the Reconstruction era of the 19th century. Their misuse, and other incidents of aggressive targeting of underrepresented voters seeking to exercise the franchise, were a motivating reason for enactment of the Voting Rights Act (VRA). However, intimidation of voters of color did not end with the Act’s full implementation. In the past 15 years, private poll watching efforts have repeatedly provoked complaints and findings of illegal race-, ethnic-, and national origin-based discrimination. Examples abound, and include poll watchers’ targeted challenges of Asian American voters during the 2004 municipal election in Bayou Le Batre, Alabama in which the town’s first-ever Asian American City Council member was a candidate; the actions of a Washington State resident who challenged hundreds of voter registrations in 2005 on the sole basis of whether voters’ names “clearly sounded American-born, like John Smith, or Powell”; and charges that private poll watchers hovered over, blocked, and disrupted voters in majority Latino and African American precincts in Harris County, Texas in 2010.

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7 One such well-known incident occurred in Arizona in the early 1960s: known as Operation Eagle Eye, the campaign recruited lawyers and other poll watchers to selectively identify voters who appeared to speak broken English or to be of foreign origin. Volunteers would systematically press targeted voters to prove their eligibility to vote by answering questions about their lives in the United States and about interpretation of the Constitution, as well as by undergoing English literacy tests. E.g., Dennis Roddy, Just our Bill, PITTSBURGH POST-GAZETTE, Dec. 2, 2000, online at http://old.post-gazette.com/columnists/20001202rodyy.asp.
8 For instance, uniformed security guards appeared outside polling places in Orange County, California in 1988, and observers saw them demand proof of citizenship from Latino voters and write down license plate numbers of individuals they deemed suspicious. State officials removed the guards, finding their presence to constitute unlawful intimidation. Lanie Jones and Steven R. Churm, ELECTIONS ’88: State Assails GOP’s Posting of Poll Guards, L.A. TIMES, Nov. 9, 1988, online at http://articles.latimes.com/1988-11-09/local/me-28_1_polling-place.
Moreover, the unprecedented restrictions currently in effect upon the Department of Justice’s authority to deploy federal election observers will enhance the opportunity for individuals who embrace discriminatory motives or methods to influence the conduct of elections, and increase the likelihood that they will do so. In 2012 and during prior Presidential elections, federal observers trained by the Department enjoyed broad authority to access and monitor election-related sites in numerous states and localities ranging from New York City to Maricopa County, Arizona; this authority has been nearly eliminated as a consequence of the Supreme Court’s opinion in *Shelby County v. Holder*, 133 S.Ct. 2612 (2013). The Department generally deployed these observers in voting places with the most persistent and severe records of discrimination in elections; we are concerned that the reduced presence and authority accorded to these observers in Election 2016 will encourage or allow illegal activity that would prevent or make it harder for Latinos and other underrepresented voters to participate.

**Intimidation and Threats May Occur in Rural Communities Experiencing Rapid Demographic Change, as well as Urban Majority-Minority Neighborhoods**

A number of the public figures who have alleged that widespread unauthorized voting might occur have named the locations of greatest concern to them, which prominently include the centers of cities with significant African American and Latino populations such as Philadelphia, Pennsylvania; Cleveland, Ohio; and Chicago, Illinois. While underrepresented residents of these and other major cities are at risk of becoming the targets of harassment or violence as they go to the polls, we are even more acutely concerned about the likelihood of illegal intimidating behavior occurring in some less-populated areas of the country that have experienced rapid demographic change. These areas include regions with significant increases in the shares of their electorates that are naturalized citizens or relatively recent migrants from Puerto Rico to the mainland United States.

For example, migration from Puerto Rico has steadily increased since 2012 as the island has experienced a severe economic crisis. At the same time, increasing numbers of legal permanent residents have become U.S. citizens: in 2004, for example, a total of 537,151 individuals naturalized; by 2015, total naturalizations were up to 735,104. New Americans and newly-arriving Puerto Ricans have settled in increasing numbers in states which are not traditionally home to these populations, like Georgia, Oklahoma, and Washington.

In the most recent 15 years, we have repeatedly observed hostile attitudes and actions manifesting in communities across the country that are home to foreign- and Puerto Rican-born Americans, and this is particularly so in jurisdictions whose smaller populations have historically consisted of mostly non-Hispanic native-born Americans. In such localities, demographic change is especially noticeable, surprising, and potentially troubling to individuals who harbor racial, ethnic, and national origin-based animus.
Most recently, for example, the nation learned that several residents had plotted to firebomb an apartment building in Garden City, Kansas, on the day after Election Day, in an attempt to target and kill immigrants from Somalia. Garden City is located in Finney County, a jurisdiction whose small population of less than 50,000 was nearly 70% non-Hispanic white as recently as the 1990 Census but attained majority-minority status by 2008. Inhabitants of several other communities around the country have exhibited similar antipathy as their populations have rapidly become more ethnically and racially diverse, including:

- Reading, Berks County, Pennsylvania, where, during election cycles immediately preceding the 2003 filing of a VRA lawsuit, monitors and voter advocates repeatedly observed poll workers making statements like, “This is the U.S.A. – Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name.” The poll workers also selectively demanded identification and proof of residence only from Latino voters. Reading’s Latino population has grown very dramatically over the past 25 years: in 1990, just under 15,000 Latino residents constituted 18.5% of the town, but by 2000, Reading’s Latino population had doubled and accounted for more than 37% of its inhabitants. As of the 2010 decennial Census, a Latino community of more than 50,000 individuals made up the majority – about 58.2% - of Reading’s population.

- Greenville, Greenville County, South Carolina, where a rash of xenophobic graffiti appeared around town in 2011 targeting, among other locations, a church, and warning, “remove at your own peril or you will be killed.” Greenville County was about 1% Latino as of the 1990 Census, and 8.8% Latino by 2015;

- Murrieta, Riverside County, California, where in 2015 a crowd of protesters chanting slogans such as “Go back home” prevented buses filled with recently-arrived immigrants from getting to their intended destination, a Border Patrol facility. Murrieta was incorporated in 1991 and was just under 56% non-Hispanic white by 2010. That represents a significant decline in the non-Hispanic white share of the population from 1990, when the populations of two precursor Census-designated places, Murrieta CDP and Murrieta Hot Springs CDP, were more than 85% non-Hispanic white combined.
Vulnerable Communities Depend upon the Department of Justice to Ensure Order and Protect Equal Rights

We have confidence that the Department of Justice will exercise the same degree of serious-minded vigilance against harassment and violence at the polls that we and others who work to ensure full civil participation will embrace between today and the successful conclusion of Election 2016. As you determine where you will place monitors and deploy other resources, we urge you to once again make jurisdictions with smaller populations a top priority, as well as populous urban centers. We also urge you to focus particularly on regions undergoing rapid demographic changes that include an increase in foreign- and Puerto Rican-born populations. Should the Department or other credible sources discover intimidation, threatening, or coercion of voters, particularly on account of voters’ protected characteristics, we hope Voting Section and Criminal Division staff and U.S. Attorneys will consider and pursue appropriate remedial action.

Perhaps most importantly, we ask that you, the leaders of the Department of Justice and Voting Section, continue to make a strong public statement about the unacceptability of and strong prohibitions in law against intimidation of voters. We appreciate the Attorney General’s October 19th announcement that the Department will monitor and protect against unlawful intimidation of voters, and we urge you to feature this message even more prominently in communications with the public. You can heighten your impact by encouraging the local and state election authorities with whom you work closely to amplify expressions of intolerance for harassment. By adding your voices and strong positions of influence to the chorus of those calling for orderly, fair, and peaceful elections, you combat inflammatory rhetoric and assuage concerns about voters’ safety and the integrity of our electoral process. In doing so, you are helping to ensure in a meaningful way that Election 2016 is carried out in accordance with our highest democratic ideals.

If we may be of assistance with these or other efforts, please contact Rosalind Gold, Senior Director of Policy, Research, and Advocacy at rgold@naleo.org or 213-747-7606, or Erin Hustings, Legislative Counsel at ehustings@naleo.org or 202-546-2536. Thank you for your partnership in safeguarding fair elections and equal treatment of all voters.

Sincerely,

Arturo Vargas
Executive Director

cc: Congressional Hispanic Caucus
    Congressional Hispanic Conference
    Mr. Christian Herren Jr., Chief, Civil Rights Division, Voting Section, Department of Justice
    Mr. Justin Levitt, Deputy Assistant Attorney, Civil Rights Division, Voting Section, Department of Justice