

BRENNAN

CENTER

FOR JUSTICE

TWENTY
YEARS

NONCITIZEN VOTING:
THE MISSING MILLIONS

Christopher Famighetti, Douglas Keith and Myrna Pérez

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all. The Center's work ranges from voting rights to campaign finance reform, from ending mass incarceration to preserving Constitutional protection in the fight against terrorism. Part think tank, part advocacy group, part cutting-edge communications hub, we start with rigorous research. We craft innovative policies. And we fight for them — in Congress and the states, the courts, and in the court of public opinion.

ABOUT THE BRENNAN CENTER'S DEMOCRACY PROGRAM

The Brennan Center's Democracy Program works to repair the broken systems of American democracy. We encourage broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

ABOUT THE BRENNAN CENTER'S PUBLICATIONS

Red cover | Research reports offer in-depth empirical findings.

Blue cover | Policy proposals offer innovative, concrete reform solutions.

White cover | White papers offer a compelling analysis of a pressing legal or policy issue.

ABOUT THE AUTHORS

Christopher Famighetti is a Policy and Research Analyst for the Democracy Program at the Brennan Center for Justice, researching the impact of laws and policies on access to the polls, with a particular focus on demographic disparities, long lines and voting technology. He also contributes research on campaign fundraising and spending for the Center's Money in Politics program. Prior to joining the Brennan Center, Mr. Famighetti worked to support labor, community, and political campaigns as a strategic researcher and organizer. He has a B.A. from Bard College in Languages and Literature, has a M.S. in Urban Policy from the New School, and has served as Adjunct Sociology Faculty at Montclair State University.

Douglas Keith is the Katz Fellow in the Brennan Center's Democracy Program. He co-authored the Brennan Center's reports *Secret Spending in the States* (2016), and *Five to Four* (2016) as well as pieces in *The Atlantic*, and *TIME*. Prior to joining the Brennan Center, he worked on voting rights litigation as a Ford Foundation Public Interest Law Fellow at Advancement Project, trained poll workers for the New York City Board of Elections, and organized election reform advocates in New York. He has also observed and analyzed democratic systems in North and West Africa, Central Asia and Eastern Europe. He received his J.D. from New York University School of Law.

Myrna Pérez is Deputy Director of the Democracy Program at the Brennan Center for Justice, where she leads the Voting Rights and Elections project. She has authored several nationally recognized reports and articles related to voting rights, including *Election Integrity: A Pro-Voter Agenda* (January 2016), *Election Day Long Lines: Resource Allocation* (September 2014), and *If Section 5 Fails: New Voting Implications* (June 2013). Her work has been featured in media outlets across the country, including the *New York Times*, *Wall Street Journal*, MSNBC, Christian Science Monitor, and HuffPost. Prior to joining the Center, Ms. Pérez was the Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington, D.C. Ms. Pérez graduated from Columbia Law School in 2003, where she was a Lowenstein Public Interest Fellow. Following law school, Ms. Pérez clerked for the Honorable Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania and for the Honorable Julio M. Fuentes of the United States Court of Appeals for the Third Circuit. Ms. Pérez earned her undergraduate degree in Political Science from Yale University in 1996. She obtained a master's degree in public policy from Harvard University's Kennedy School of Government in 1998, where she was the recipient of the Robert F. Kennedy Award for Excellence in Public Service. Prior to law school, she was a Presidential Management Fellow, serving as a policy analyst for the United States Government Accounting Office where she covered a range of issues including housing and health care. She is an adjunct professor at Columbia Law School.

ACKNOWLEDGEMENTS

The Brennan Center gratefully acknowledges The Bauman Foundation, Bohemian Foundation, Change Happens Foundation, Hannah LF Cooper, craigslist Charitable Fund, Democracy Alliance Partners, FJC - A Foundation of Philanthropic Funds, Ford Foundation, Peggy and Richard Greenfield, The Charles Evans Hughes Memorial Foundation, Audrey and Sydney Irmas Foundation, the Joyce Foundation, The JPB Foundation, The Karsten Family Foundation, Susheel Kirpalani, The Kohlberg Foundation, the John D. and Catherine T. MacArthur Foundation, The Mai Family Foundation, The Mertz Gilmore Foundation, Nancy Meyer and Marc Weiss, The John and Wendy Neu Foundation, Open Society Foundations, The Schmale Family, The Schooner Foundation, Solidarity Giving, the Bernard and Anne Spitzer Charitable Trust, David and Liz Ehrenfest Steinglass, Barbra Streisand, Vital Projects Fund, Wachtell, Lipton, Rosen & Katz, Wallace Global Fund, and Wendy C. Wolf for their generous support of our voting work.

The authors would like to thank the many Brennan Center colleagues who made this report possible. Brennan Center President Michael Waldman and Wendy Weiser, Director of the Brennan Center's Democracy Program, were indispensable sources of guidance, strategic thinking, and editorial advice. Brennan Center Vice President Vivien Watts contributed outreach support at key moments. Research and Program Associates Phoenix Rice-Johnson and Michael Pelle helped research and code for the report. Phoenix Rice-Johnson, Nathaniel Sobel, Dana Brandes-Simon, and Suprita Datta assisted in interviewing election officials. Beatriz Aldereguia assisted with outreach and Aaron Mundy provided research assistance. Jim Lyons, Raffe Jefferson, and Rebecca Autrey provided helpful editorial assistance. Ryan Witcombe's creativity and design skills brought this report to the finish line.

The authors would also like to thank the many local election administrators (and their schedulers) who took time away from their busy job of running elections to be interviewed for this report. Finally, the authors would like to thank the League of Women Voters of Florida and Miami-Dade County, as well as Chad Dunn, who provided assistance in connecting us to election officials.

TABLE OF CONTENTS

I.	INTRODUCTION AND FINDINGS	1
II.	METHODOLOGY	3
III.	HOW ELECTION ADMINISTRATORS DETECT AND PREVENT FRAUD	6
IV.	OVERBLOWN AND EXAGGERATED CLAIMS OF FRAUD UNDERMINE ELECTION ADMINISTRATION	8
	Conclusion	9
	Endotes	11
	Appendix	15

I. INTRODUCTION AND FINDINGS

In 2016, for the first time, presidential politics was roiled by claims of widespread illegal voting. In the weeks after the election, the claims continued. President-elect Trump insisted, “In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.”¹ On that same day, four hours later, he added, “Serious voter fraud in Virginia, New Hampshire and California — so why isn’t the media reporting on this? Serious bias — big problem!”² After his inauguration, the claims escalated. “I will be asking for a major investigation into VOTER FRAUD,” he declared.³

As time passed, Trump’s claim grew more specific and more exaggerated. On Feb. 9th, he told a group of 10 senators that ineligible persons had voted in droves, and that they had been driven in buses by the thousands from Massachusetts to New Hampshire.⁴ White House Press Secretary Sean Spicer defended and reiterated the claims of voting by noncitizens.⁵ Senior policy advisor Stephen Miller toured the Sunday morning news interview shows to defend the claim.⁶ The White House asserted that these claims required an investigation, to be led by Vice President Mike Pence.⁷ In a March 22nd interview with TIME, the president said that he believes he will be proven right and that he is moving forward with the investigative committee.⁸ In late April, Spicer told CNN that he expects news on the voter fraud investigation in the “next week or two,” and that Pence will still be “very involved.”⁹

Are the president’s claims plausible? The Brennan Center reached out systematically to those who would know best: the local officials who actually ran the election in 2016. These officials are in the best position to detect improper voting — by noncitizens or any other kind. To make sure we were speaking to the right individuals, this study relies on interviews with officials who ran the elections in jurisdictions (towns, cities, or counties) nationwide with the highest share of noncitizen residents, and those in states identified by Trump as the locus of supposed misconduct. We interviewed a total of 44 administrators representing 42 jurisdictions in 12 states, including officials in eight of the 10 jurisdictions with the largest populations of noncitizens nationally.¹⁰

Our nationwide study of noncitizen or fraudulent voting in 2016 from the perspective of local election officials found:

- In the jurisdictions we studied, very few noncitizens voted in the 2016 election. Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions.
- Forty of the jurisdictions — all but two of the 42 we studied — reported no known incidents of noncitizen voting in 2016. All of the officials we spoke with said that the incidence of noncitizen voting in prior years was not significantly greater than in 2016.

- In the 10 counties with the largest populations of noncitizens in 2016, only one reported any instances of noncitizen voting, consisting of fewer than 10 votes, and New York City, home to two of the counties, declined to provide any information.
- In California, Virginia and New Hampshire — the states where Trump claimed the problem of noncitizen voting was especially acute — no official we spoke with identified an incident of noncitizen voting in 2016.

The absence of fraud reinforces a wide consensus among scholars, journalists and election administrators: voter fraud of any kind, including noncitizen voting, is rare.

Two features of this study stand out.

It is the first analysis to look at voting from the perspective of local officials in 2016 — the year that Trump claimed was marred by widespread illegal voting.

Why speak with local officials? In the United States, elections are administered within local jurisdictions — counties, cities, and townships. These bodies and their officials run elections, process registration applications, and directly deal with voters. To be sure, local elections officials may not be aware of every incident of ineligible voting, and the tools at their disposal are imperfect, but they remain well-positioned to account for what is happening in the area they oversee.

Second, this study casts a wider net than studies focusing on prosecutions or convictions. It identifies both those who voted improperly by mistake, and those who did so with malicious intent. We asked administrators both the number of incidents of noncitizen voting they referred for prosecution or further investigation, and the number of suspected incidents they encountered but did not refer in 2016. In all but two of 42 possible jurisdictions, the answers to both questions were zero. Some who claim widespread misconduct insist that, because prosecution is hard, there is likely a much wider pool of people who were caught voting improperly, but who simply were not prosecuted. This study finds that both the number of people referred for prosecution and the number of people merely suspected of improper voting are very small.

II. METHODOLOGY

Three Brennan Center researchers spoke to election officials in 42 jurisdictions. The researchers sought to quantify every credible instance of noncitizen voting seen by those officials, even if those instances did not result in a conviction. In addition, the researchers sought to assess whether fraud, more generally, was widespread. We spoke to local election officials as opposed to state-level administrators or prosecutors because in the United States, elections are run within counties, cities, and townships.

Interview Protocols

The Brennan Center conducted in-depth interviews with more than 40 election officials. We interviewed all but two of the jurisdictions by phone; the remaining two jurisdictions provided answers via e-mail. We standardized the interview process by asking the primary questions in the same wording and order. During each interview, we queried election officials on a standard set of questions regarding the scope of their professional experience in election administration, prevalence of noncitizen voting, and prevalence of fraud generally. We asked the officials to quantify three scenarios involving noncitizen voting: (1) the number of cases of noncitizen voting referred for prosecution or further investigation in 2016; (2) the number of cases of noncitizen voting referred for prosecution or further investigation over their careers; (3) the number of cases of noncitizen voting officials encountered in 2016, but did not refer. In addition, we asked for any explanations the administrator had for why noncitizen voting occurred at whatever rate described. During the interview, where appropriate, we asked follow up questions, to focus responses and gather contextual data. After all the interviews were conducted, we sought confirmation in writing from the administrators that the information captured from the interviews was accurate, and to promote standardization of the responses collected.

In addition to questions about noncitizen voting, we asked about voter fraud more generally. The responses to these questions were not specific enough to warrant additional findings, though officials were nearly unanimous in reporting that there was no widespread voter fraud in their jurisdictions. One official, however, reported that as many as 700 persons may have improperly voted in both political parties' primaries in early 2016. We do not have enough information to substantiate those numbers. No official reported significant numbers of persons voting twice in the same election, or voting under another person's name.

Selection of Jurisdictions

We selected the jurisdictions included in this analysis according to two criteria. For the first criterion, we selected a nationwide set of jurisdictions with large adult noncitizen populations.¹¹ We started with a list of the 44 counties with more than 100,000 adult noncitizens. We reached out to these counties via phone and email to schedule interviews. Based on this outreach, we were able to conduct interviews with election officials from 27 of the 44 counties, including eight of the 10 counties with the largest populations of noncitizens in the country.¹² The New York City Board of Elections, home to the two remaining counties with the 10 largest noncitizen populations, declined to participate in this research.

For the second criterion, we focused on the three states — California, New Hampshire and Virginia¹³ — that Trump expressly singled out as having widespread noncitizens voting in 2016. For these states, we selected a geographically and demographically diverse set of five jurisdictions: (1) at least two jurisdictions with large numbers of adult noncitizens, (2) at least two other jurisdictions with a high percentage of adult noncitizens and (3) at least one rural¹⁴ or sparsely populated jurisdiction with a comparatively high percentage of adult noncitizens.¹⁵ The jurisdictions interviewed can be found in the appendix.

Accounting for Limitations

This study faced two potential methodological concerns: (1) the problem of selection bias, in other words, the concern that the jurisdictions willing to be interviewed differed too much from jurisdictions that refused to participate, and (2) the problem of response bias, in other words, that the numerical responses given to us by the officials were inaccurate.

We made efforts to detect any evidence of either of these problems. Regarding selection bias, we examined any known partisan affiliation of the responders, and discovered that few, if any, ran for their position under a partisan banner. Forty of our 44 interviewees were either appointed to their positions or won their seats in non-partisan contests. Most have longstanding careers in election administration. We also reviewed the literature of noncitizen voting and fraud to see if any credible reports of recent systemic fraud would be captured if we had more responses from jurisdictions that have more than 100,000 noncitizens. We acknowledge that the refusal of the New York City Board of Elections to provide the requested information is noteworthy, but we nevertheless believe there are enough jurisdictions involved to be comfortable that the results we obtained are consistent with prior studies finding noncitizen voting to be rare.

Relatedly, we attempted to detect response bias by comparing our findings to those of other recent studies that use a variety of other methodologies. We reviewed comprehensive analyses of referrals, investigations, and prosecutions for election-related offenses covering each of the states in which we spoke with administrators.¹⁶ We were prepared to ask the election officials to explain any discrepancies if other sources were meaningfully out of sync with their estimates, but as it happens, in all but one instance, there was no cause to do so.

For example, three Secretaries of State have recently made very public allegations of noncitizens voting, albeit on a much smaller scale than what Trump has said. On Feb. 27th, Ohio Secretary of State Jon Husted (R) claimed to have identified 82 noncitizens that had voted in at least one past election, but he did not indicate how many elections he examined or specify that any of that fraud happened in 2016.¹⁷ On April 19th, Nevada's Secretary of State Barbara Cegavske (R) reported that a statewide audit found that three noncitizens had voted in the 2016 election.¹⁸ On April 21st, the North Carolina State Board of Elections, comprised of three Republicans and two Democrats, reported 41 noncitizens cast ballots in November.¹⁹ Even if true,²⁰ those numbers reaffirm that noncitizen voting is extraordinarily rare because the incidents of noncitizen voting alleged in Ohio, Nevada, and North Carolina amount to,

at most, .0015, .0003, and .0009 percent of ballots in those states respectively in 2016.²¹ The Brennan Center did note that the Nevada Secretary of State's analysis identified three more possible instances of noncitizen voting in Clark County than Clark County Registrar of Voters, Joe Gloria, reported during our initial interview.²² Gloria determined that until his office receives more information from the Secretary of State about this investigation, he did not believe he had enough information to warrant revision of his original responses.

III. HOW ELECTION ADMINISTRATORS DETECT AND PREVENT FRAUD

How would local election officials actually know if improper voting were taking place? Practices vary, but all but two interviewees reported to us that they rely on certain common safeguards against fraud to help detect and deter fraud.²³ Often these measures detect misconduct as well as prevent it. For example, election administrators reported that:

- They operate hotlines, or have a process for members of the public to challenge the eligibility of voters, or otherwise have a mechanism for poll workers or other citizens to report concerns of noncitizens voting.
- Some are notified when persons registered decline to serve on juries because they are noncitizens.
- Some register persons at naturalization ceremonies and then run a check to see if the newly-naturalized citizens are already registered.²⁴
- A few have to do research to prepare documentations for United States Citizenship and Immigration Services (USCIS) or an individual certifying that a person seeking naturalization has not registered or voted before.

While no administrator reported that noncitizen voting was common, four of the 44 administrators raised concerns that the safeguards described were insufficient for preventing or identifying the registration of ineligible people. One expressed that the tools he had likely understated how many noncitizens were on the rolls. But many also noted that while noncitizens might be registered, it is often accidental, and ineligible people who end up on the rolls likely do not vote.

How is it possible for a noncitizen to register or vote by mistake? A noncitizen might get on the rolls when lawfully applying for a driver's license. This may happen as a result of an applicant not understanding the forms they are completing, or, as one official noted, because applicants presume that a DMV employee would not ask them to register if the applicant were not entitled to do so. But all who raised this particular issue noted that often it was the result of a mistake, not the intention to influence an election outcome. Lynn Ledford, Voter Registration and Elections Director in Gwinnett County, Georgia, articulated a sentiment shared by others:

“Sometimes a voter won't understand that they're completing a voter registration application,” she said. “They will come and self-report and explain their accident. Then we give them a confirmation in writing that they have been removed and take them off the rolls.”

One election administrator noted that a noncitizen may get registered because someone else, for example a person paid to sign up people to register to vote, misinformed the noncitizen as to the rules. While a crime may have been committed in this kind of circumstance, the noncitizen did not intend to improperly influence an election outcome.

There are numerous deterrents for fraudulent participation in elections, including:

- **Severe Penalties:** Federal law, and the law of every state in the country, imposes penalties for fraudulent voting.²⁵ For example, under federal law, a noncitizen who votes illegally can receive a prison term of up to five years if citizenship status was intentionally misrepresented, and fined up to \$250,000.²⁶ There are also immigration-related consequences: an ineligible noncitizen can be deported for casting a single vote. In fact, being registered to vote can be the basis for denying citizenship.²⁷
- **High Risk of Detection:** Because there are records of who votes, detection is very easy. Voting records can be and are reviewed or compared to lists of ineligible voters to identify anyone ineligible by election administrators,²⁸ political parties,²⁹ and activists.³⁰ As noted by Tammy Patrick, Fellow at the Bipartisan Policy Center and former Federal Compliance Officer at the Maricopa County Elections Department in Arizona: “Voter apathy is an issue for citizens in this country. To think that someone who is here trying to stay under the radar would put their name on an official list and get out to vote in elections and expose themselves, with so much at risk, doesn’t make sense.” Detection threats do not just come from people interested in elections. USCIS can require naturalization applicants to produce proof that they have never registered or voted, including a “voting record from the relevant board of elections commission.”³¹ Indeed, several election administrators we interviewed reported being called upon to produce this documentation for noncitizens going through the naturalization process.
- **Low Reward:** A noncitizen who votes illegally will add one vote to the mix. Given the facts that there is a record of the vote, and the noncitizen would have had to provide a signature at some point, adding a single illegal vote to the mix is a very inefficient and illogical way to steal an election.³²

Some officials noted that there are reasons apart from election fraud that account for the claims of improper voting. In some cases, claims of illegal voting are motivated by political operatives seeking advantage in a heated contest. In another case, an administrator noted that an ex-husband seeking to harass his ex-wife and her boyfriend made an allegation of electoral wrong-doing. In some cases, what appears to be evidence of illegal voting is actually an improper attempt by an eligible citizen to get out of jury service. Several interviewees described how eligible Americans sometimes check a box on a jury service form claiming not to be citizens because they do not want to serve on the jury. “One way for people to get out of jury duty is they can say they’re a noncitizen and fill out a card saying they’re not a citizen,” explained Jacquelyn Callanen, Elections Administrator in Bexar County, Texas. Other times, noted one administrator, a citizen will forget to check the “citizen” box when filling out a driver’s license form and that will trigger a process which could end in a citizen’s registration being canceled, and also artificially inflate the number of alleged noncitizens who are on the registration rolls.

IV. OVERBLOWN AND EXAGGERATED CLAIMS OF FRAUD UNDERMINE ELECTION ADMINISTRATION

False claims of voter fraud undermine the very processes they claim to want to protect. In response to the president's claims, Vermont Secretary of State Jim Condos explained that "unsubstantiated voter fraud claims undermine our democracy and disparage the hundreds of thousands of hard-working election officials across our great nation."³³ Secretaries of State from across the country joined in voicing concerns about the harm false claims do to the public's faith in democracy.³⁴

Most election officials we spoke with for this report echoed these concerns. Several explained that these false allegations make the difficult job of running elections even more difficult, for example, by undermining the public's faith in their local officials' ability to run an election, by making eligible voters reluctant to register for fear of committing a crime, and by making it difficult to retain employees that, come election season, are working long hours for weeks at a time with no days off, all while hearing allegations that they are not doing their jobs effectively.

Conclusion

Studies have consistently shown that our elections are not infected by widespread fraud, and some types of fraud, like in-person impersonation and noncitizen voting, have been found time and again to be very rare. This survey finds that election administrators have reached the same conclusion as academics and researchers based on year-round experiences administering elections. In particular, it finds that voting by noncitizens is incredibly rare.

While voting by ineligible people is rare, voter roll errors do occur. These errors include the registration of ineligible people, and the non-registration of eligible people. Inaccurate rolls cause confusion, expense, and disenfranchisement (a problem identified by Trump, but one that is distinct from illegal voting). They also create security risks because they are more vulnerable than clean rolls to bad actors trying to exploit out-of-date entries. Most relevant to this study, inaccurate voter rolls provide fodder for persons who claim there is widespread fraud in our election systems.

Common-sense steps could safeguard integrity while assuring that all eligible citizens can vote. Automatic voter registration, for example, would clean up voter rolls.³⁵ In addition, other steps include securing the aging voting machines that are beginning to malfunction across the country.³⁶

The country can and should take steps to improve the ways we administer elections, but those decisions should be based on facts and evidence as to what kinds of problems are actually plaguing our elections.

Endnotes

- 1 Donald Trump, Twitter post, November 27, 2016, 3:30 p.m., <http://twitter.com/realDonaldTrump>.
- 2 Donald Trump, Twitter post, November 27, 2016, 7:31 p.m., <http://twitter.com/realDonaldTrump>.
- 3 Donald Trump, Twitter post, January 25, 2017, 7:10 a.m., <http://twitter.com/realDonaldTrump>; Donald Trump, Twitter post, January 25, 2017, 7:13 a.m., <http://twitter.com/realDonaldTrump>.
- 4 Eli Stokols, “Trump brings up vote fraud again, this time in meeting with senators,” *Politico*, February 10, 2017, <http://www.politico.com/story/2017/02/trump-voter-fraud-senators-meeting-234909>.
- 5 Danny Vinik, “Spicer makes misleading voter fraud claim to defend Trump’s false voter fraud claim,” *Politico*, January 24, 2017, <http://www.politico.com/blogs/donald-trump-administration/2017/01/spicer-trump-voter-fraud-claim-234121>.
- 6 Glenn Kessler, “Stephen Miller’s bushels of Pinocchios for false voter-fraud claims,” *Washington Post*, February 12, 2017, https://www.washingtonpost.com/news/fact-checker/wp/2017/02/12/stephen-millers-bushels-of-pinocchios-for-false-voter-fraud-claims/?utm_term=.7f239e2266d8.
- 7 Callum Borchers, “Trump walks back false voter fraud claim in interview with Bill O’Reilly,” *Washington Post*, February 5, 2017, https://www.washingtonpost.com/news/the-fix/wp/2017/02/05/trump-walks-back-false-voter-fraud-claim-in-interview-with-bill-oreilly/?utm_term=.4436b4b1f7f1.
- 8 “Read President Trump’s Interview With TIME on Truth and Falsehoods,” by Michael Scherer, *TIME*, March 23, 2017, <http://time.com/4710456/donald-trump-time-interview-truth-falsehood/>.
- 9 Elizabeth Landers, “Trump was going to investigate voter fraud. What happened?,” *CNN*, April 21, 2017, <http://www.cnn.com/2017/04/21/politics/donald-trump-voter-fraud-mike-pence/>.
- 10 We did not receive data from two of the ten counties with the largest noncitizen populations, Kings County, New York and Queens County, New York. Despite persistent outreach over the course of three months, the New York City Board of Elections did not provide the necessary information prior to this report’s publication.
- 11 All census data used in this analysis is based on the 2011-2015 American Community Survey 5 Year Estimates. The number of adult noncitizens in election jurisdictions is based on computations from the following American Community Survey table: *Sex by Age by Nativity and Citizenship Status. (B05003)*. The adult noncitizen population was computed by summing values for all noncitizens, both male and female, over the age of 18. All computations of the percentage of adult noncitizens in election jurisdictions are relative to the total population. In the case of California and Virginia, election jurisdictions are counties or county equivalents. In New Hampshire, as a general matter, election jurisdictions are county subdivisions.
- 12 States include: Arizona, California, Florida, Georgia, Illinois, Maryland, Nevada, New York, Texas, Virginia and Washington. A list of specific counties consulted for this analysis is on file with the Brennan Center. One jurisdiction had a new administrator who was not in office during 2016, so we also interviewed a former administrator to ensure that our responses reflected relevant past and current experiences.
- 13 In California, there was overlap between the state specific set of jurisdictions and the national set of jurisdictions, given the large number of noncitizens that reside there. Among the 44 counties with the largest populations of noncitizens, 13 are located in California. For this reason, California counties account for a disproportionate share of the registered voters in this analysis. Further, in the case of Virginia, one Virginia County is included among the 44 counties that we identified as having the largest populations of noncitizens.
- 14 We identified “rural” election jurisdictions by consulting data for population density contained in the following table from the 2010 U.S. Decennial Census: *Population, Housing Units, Area, and Density: 2010. 2010 Census Summary File 1. (GCT-PHI)*. For each state, we identified rural jurisdictions by identifying those jurisdictions with (1) a low population density relative to other jurisdictions in the state, and (2) a comparatively high percentage of adult noncitizens relative to other jurisdictions in the state.

- 15 In California and Virginia, our outreach solicited responses and interviews in more than five jurisdictions. For this reason, our state specific analyses in California and Virginia include more than the baseline of five jurisdictions. New Hampshire meets our minimum baseline for the state specific set of election jurisdictions.
- 16 In California, where 23 million voters participated in the November elections, the Secretary of State received 948 election-related complaints in all of 2016. The Secretary of State determined that only 73 of those involved potential wrongdoing by a voter and were worthy of further investigation. Those 73 included 56 allegations of double voting, 16 allegations of fraudulent voter registration, and 1 incident of fraudulent voting. Laurel Rosenhall, *Valid voter fraud complaints in California? Dozens, not millions*, Calmatters, 2017, <https://calmatters.org/articles/valid-voter-fraud-complaints-in-california-dozens-not-millions/>. Nevada's Secretary of State compared lists of voters with persons who indicated to the DMV that they were not citizens and found that three noncitizens may have voted in 2016. State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, <http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos>. In Virginia, a review of nearly all prosecutions for election-related offenses between 2005 and 2015 found 91 total convictions, 85 of which were limited to single incidents in two counties. Bill Bartel, "Virginia voter registration records have loopholes but no evidence of widespread fraud," *The Virginian-Pilot*, February 18, 2017, http://pilotonline.com/news/government/local/virginia-voter-registration-records-have-loopholes-but-no-evidence-of/article_6ad3e1d5-3ef6-56ce-b0d9-7052bf3c3d36.html. In 2007, 2009, and 2011, New Hampshire's Attorney General published the results of post-election investigations into 352 voters that completed a sworn affidavit to prove their eligibility when registering to vote on Election Day. The investigations found that all of those voters were eligible. See New Hampshire Attorney General, *2010 General Election Voter Fraud Report/Investigation*, 2011, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12499>; New Hampshire Attorney General, *2008 General Election Voter Fraud Report/Investigation*, 2009, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12498>; New Hampshire Attorney General, *2006 General Election Voter Fraud Report/Investigation*, 2007, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12497>. A News21 study of prosecutions by state attorneys general in five states – including Arizona, Georgia and Texas where we interviewed administrators – found just 38 successful prosecutions for any kind of election fraud between 2012 and 2016. Those cases included at least 13 cases that did not involve misconduct by a voter, and another 13 cases of double voting in Arizona. That study did not, however, include local prosecutions. Sami Edge and Sean Holstege, "Voter fraud is not a persistent problem," *News21*, August 20, 2016, <https://votingwars.news21.com/voter-fraud-is-not-a-persistent-problem/>. In sworn testimony, an official from the Texas Attorney General's office reported that the Attorney General had received 320 allegations of voter fraud between 2002 and 2012, three of which related to noncitizen voting and resulted in prosecutions. Transcript of Dep. of Major Forrest Mitchell at 193-194, *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (No. 721-14). Less comprehensive studies are available in Maryland and New York. Brian E. Frosh, Attorney General of Maryland, wrote to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, noting that the Maryland State Board of Elections uncovered just two instances of voter fraud after the 2012 general election. Brian E. Frosh, Attorney General of Maryland, to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, March 6, 2017, http://www.marylandattorneygeneral.gov/News%20Documents/Voter_Fraud.pdf. Eric T. Schneiderman, Attorney General of New York, wrote to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, reporting that his office received just two unsubstantiated allegations of voter fraud in 2016. Eric T. Schneiderman, Attorney General of New York, to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, Feb. 22, 2017, https://www.scribd.com/document/340046673/2017-02-22-Ltr-to-Cummings-Brady-Clyburn-Re-Voter-Fraud#from_embed. Finally, in 2012, News21 undertook a nationwide investigation in which they requested records of prosecutions for voter fraud in every state since 2000. News21 did not receive responses or records from every part of every state, but across the 12 states we spoke with, over the course of a decade, that investigation uncovered 28 prosecutions for voting by a noncitizen, at least 10 of which were dismissed by the time of News21's investigation. News21, *Election Fraud in America*, August 12, 2012, <http://votingrights.news21.com/interactive/election-fraud-database/>.
- 17 State of Ohio Secretary of State, "Husted: Investigation Uncovers Non-Citizens Who Registered to Vote & Illegally Cast Ballots," news release, February 27, 2017, https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm_source=Press+Release+February+27&utm_campaign=I+Want+to+Vote+survey+launch+PR&utm_medium=em.
- 18 State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, <http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos>.
- 19 North Carolina State Board of Elections, *Post-Election Audit Report*, 2017, <https://s3.amazonaws.com/dl.ncsbe.gov/>

sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf. For the partisan makeup of the board, see North Carolina State Board of Elections, “About Us,” accessed April 26, 2017, <https://www.ncsbe.gov/about-us>.

- 20 There is cause to subject these allegations to rigorous examination. Ohio and Nevada identified alleged noncitizens by comparing lists of registered voters to individuals who had, at some time in the past, indicated they were noncitizens when visiting the state driver licensing office. Obviously, a person’s citizenship status can change in between license renewals. North Carolina identified its preliminary list of alleged noncitizens by comparing drivers’ license data, voting records, and the U.S. Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) database and concluded that that drivers’ license data and SAVE data were unreliable for determining citizenship status. North Carolina later sent letters to targeted persons to obtain more information, but at this time it remains to be seen how much this later effort remedied the original infirmity. See North Carolina State Board of Elections, *Post-Election Audit Report*, Appendix 1, 2017, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf.
- 21 5,607,641 people voted in Ohio in November 2016. State of Ohio Secretary of State, “Voter Turnout in General Elections,” <https://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Voter%20Turnout%20in%20General%20Elections.aspx>. 1,125,429 voted in Nevada. State of Nevada Secretary of State, “Voter Turnout Statistics,” <http://silverstateelection.com/vote-turnout/>. 4,769,640 voted in North Carolina. North Carolina State Board of Elections, “General Election Voter Turnout,” <https://www.ncsbe.gov/voter-turnout>.
- 22 See State of Nevada Secretary of State, “Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation,” news release, April 19, 2017, <http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos> (alleging that three noncitizens voted in Clark County).
- 23 For example, all jurisdictions (or the state elections office) compare identifying information in the registration application, specifically a driver license number or the last four digits of a social security card, against motor vehicles databases or the social security database, to ensure that a person with those identifying numbers exists. This practice is called for by federal law. See 52 U.S.C. § 21083(a)(5). There are other requirements, for example, requiring persons to sign under penalty of perjury that they are who they say they are. 52 U.S.C. § 20508(b)(2)(C).
- 24 Susan Bucher, Supervisor of Elections in Palm Beach County, Florida noted that her office goes to naturalization ceremonies every week to register new citizens. Supervisor Bucher explained that, “after doing that we go back to check and see if they’re already registered to vote so we don’t have duplicate records and we’ve never found anyone who has a duplicate record. We’ve registered more than around 55,000 and not a single one had registered prior.”
- 25 See, e.g., 18 U.S.C. § 611 (making it unlawful for any alien to vote for candidates for federal offices and imposing penalties of up to one year in prison); Fla. Stat. § 104.16 (“Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree”). Several local jurisdictions, including the city of Chicago and seven Maryland municipalities, allow noncitizens to vote in particular elections. See 105 Ill. Comp. Stat. 5/34-2.1(d)(ii) (2017); Arelis R. Hernández, “Hyattsville will allow non-U.S. citizens to vote in city elections,” *Washington Post*, December 7, 2016, https://www.washingtonpost.com/local/md-politics/hyattsville-will-allow-non-us-citizens-to-vote-in-city-elections/2016/12/07/63bc87ae-bc8c-11e6-ac85-094a21c44abc_story.html?utm_term=.aad9ad43944d.
- 26 A violation of 18 U.S.C. § 1015(f) is a felony punishable by up to 5 years in prison and a \$250,000 fine. See 18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3571(b)(3). States also have their own harsh penalties. In a recent high-profile example, a noncitizen in Texas who voted was sentenced to eight years in prison. Claire Z. Cardona, “Grand Prairie woman illegally voted for the man responsible for prosecuting her,” *Dallas News*, February 10, 2017, <http://www.dallasnews.com/news/tarrant-county/2017/02/08/grand-prairie-woman-found-guilty-illegal-voting>. This was considerably longer than the “affluenza” teen who killed 4 people while driving drunk. Sean Lester, “While North Texas ‘affluenza’ teen went free, similar East Texas case led to 20 years in prison,” *Dallas News*, February 15, 2016, <http://www.dallasnews.com/news/crime/2016/02/15/while-north-texas-affluenza-teen-went-free-similar-east-texas-case-led-to-20-years-in-prison>.
- 27 U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 12, Part F, Chapter 5 (Washington, DC, 2017),

<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html>.

- 28 See, e.g., State of Ohio Secretary of State, “Husted: Investigation Uncovers Non-Citizens Who Registered to Vote & Illegally Cast Ballots,” news release, February 27, 2017, https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm_source=Press+Release+February+27&utm_campaign=I+Want+to+Vote+survey+launch+PR&utm_medium=em. Officials in Florida, Colorado, Michigan, and Iowa have conducted similar investigations. See Florida Department of State, “Secretary of State Ken Detzner Files Lawsuit Against U.S. Department of Homeland Security, Seeks Access to Database of Non-Citizens to Ensure Accuracy of Florida Voter Rolls,” press release, June 11, 2012, <http://dos.myflorida.com/communications/press-releases/2012/secretary-of-state-ken-detzner-files-lawsuit-against-us-department-of-homeland-security-seeks-access-to-database-of-non-citizens-to-ensure-accuracy-of-florida-voter-rolls/>; State of Colorado Department of State, “1 in 8 voters who received letters trending as non-citizens,” news release, August 30, 2012, <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2012/PR20120830Trending.html>; State of Michigan Department of State, “Johnson asks AG to investigate voting by non-U.S. citizens,” news release, December 5, 2013, <http://www.michigan.gov/sos/0,4670,7-127--317582--rss,00.html>; State of Iowa Secretary of State, *DCI Voter Fraud Investigations Report*, 2014, <http://publications.iowa.gov/16874/1/DCI%20Voter%20Fraud%20Report%205-8-14.pdf>.
- 29 Political parties may not have access to lists of noncitizens, but review lists of voters to identify those ineligible for other reasons, particularly when the margin of victory in a contest is small. See, e.g., Colin Campbell, “McCromy campaign expands ballot complaints to 52 counties,” *News & Observer*, November 17, 2016, <http://www.newsobserver.com/news/politics-government/election/article115492333.html>.
- 30 See, e.g., Public Interest Legal Foundation, *Alien Invasion in Virginia*, 2016, https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf; Public Interest Legal Foundation, *Aliens & Felons*, 2016, <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>. Despite using unreliable methodology, these reports, authored by an organization that promotes the myth of widespread voter fraud, identified few noncitizens on the rolls.
- 31 U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 12, Part F, Chapter 5 (Washington, DC, 2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html>.
- 32 See, e.g., Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice, 2007, 7, <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>; Lorraine C. Minnite, *Myth of Voter Fraud* (New York: Cornell University Press, 2010), 5, 77-85.
- 33 State of Vermont Office of the Secretary of State, “Secretary of State Jim Condos’ Statement on Voter Fraud Claims by President Trump,” news release, January 25, 2017, <https://www.sec.state.vt.us/media/824085/voter-fraud-claims-response-press-release.pdf>.
- 34 Brennan Center Staff, “In Their Own Words: Officials Refuting False Claims of Voter Fraud,” *Brennan Center for Justice*, accessed April 26, 2017, <https://www.brennancenter.org/quotes-on-voter-fraud>; see also, National Association of Secretaries of State, “Statement from National Association of Secretaries of State on Election Integrity,” news release, October 18, 2016, <http://www.nass.org/index.php/news-releases-and-statements/release-nass-statement-election-integrity-oct16>.
- 35 See Brennan Center for Justice, *Automatic and Permanent Voter Registration: How it Works*, 2015, https://www.brennancenter.org/sites/default/files/publications/Automatic_Permanent_Voter_Registration_How_It_Works.pdf. Automatic voter registration automatically registers to vote any eligible voter that provided all of the information necessary to register to vote to another government agency, unless a person declines to be registered.
- 36 See Lawrence Norden and Christopher Famighetti, *America’s Voting Machines at Risk*, Brennan Center for Justice, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf.

Appendix: Jurisdictions Interviewed

Accomack County, Virginia

Bexar County, Texas

Cook County, Illinois

City of Alexandria, Virginia

City of Concord, New Hampshire

City of Dover, New Hampshire

City of Fairfax, Virginia

City of Manassas, Virginia

City of Manassas Park, Virginia

City of Somersworth, New Hampshire

Clark County, Nevada

Colusa County, California

Contra Costa County, California

Dallas County, Texas

El Paso County, Texas

Fairfax County, Virginia

Fresno County, California

Gwinnett County, Georgia

Harris County, Texas

Imperial County, California

Kern County, California

King County, Washington

Los Angeles, California

Loudoun County, Virginia

Maricopa County, Arizona

Miami-Dade County, Florida

Montgomery County, Virginia

Orange County, California

Orange County, Florida

Palm Beach County, Florida

Prince George's County, Maryland

Riverside County, California

Sacramento County, California

San Bernardino County, California

San Diego County, California

San Mateo County, California

Santa Clara County, California

Town of Hanover, New Hampshire

Town of Hebron, New Hampshire

Town of Stewartstown, New Hampshire

Travis County, Texas

Westchester County, New York

STAY CONNECTED TO THE BRENNAN CENTER

Visit our website at www.brennancenter.org.
Sign up for our electronic newsletters at www.brennancenter.org/signup.

Latest News | Up-to-the-minute info on our work, publications, events, and more.

Justice Update | Snapshot of our justice work and latest developments in the field.

Money in Politics | Latest state and national developments and original analysis.

Redistricting Round-Up | Analysis of current legal battles and legislative efforts.

Fair Courts | Comprehensive news roundup spotlighting judges and the courts.

Liberty & National Security | Updates on privacy, government oversight, and accountability.

Twitter | www.twitter.com/BrennanCenter
Facebook | www.facebook.com/BrennanCenter
Instagram | www.instagram.com/brennancenter

NEW AND FORTHCOMING BRENNAN CENTER PUBLICATIONS

Election Integrity: A Pro-Voter Agenda
Myrna Pérez

The Justice Department's Voter Fraud Scandal: Lessons
Adam Gitlin and Wendy R. Weiser

Florida: An Outlier in Denying Voting Rights
Erika Wood

Democracy & Justice: Collected Writings, vol. X
Brennan Center for Justice

The Fight to Vote
Michael Waldman

Crime Trends: 1990-2016
Matthew Friedman, Ames Grawert, and James Cullen

Countering Violent Extremism
Faiza Patel and Meghan Koushik

Judicial Selection for the 21st Century
John Kowal

For more information, please visit www.brennancenter.org

BRENNAN
CENTER
FOR JUSTICE
TWENTY
YEARS

at New York University School of Law

120 Broadway
Suite 1750
New York, NY 10271
646-292-8310
www.brennancenter.org