

**Testimony of Kris W. Kobach
Kansas Secretary of State**

Before the United States House of Representatives

Committee on Oversight and Government Reform

Subcommittee on National Security, and

Subcommittee on Health Care, Benefits, and Administrative Rules

**Hearing on “The President’s Executive Actions on Immigration
and Their Impact on State and Local Elections”**

February 12, 2015

Mr. Chairman and Members of the Committee, I come before you today chiefly in my capacity as Kansas Secretary of State. However, I also serve in my private capacity as the lead attorney representing the ten ICE agents who have sued the Secretary of Homeland Security for the reason that the DACA Directive of June 2012 orders the agents to violate federal law. The US District Court for the Northern District of Texas held that the DACA Directive compels ICE agents to violate the requirements of federal law found at 8 U.S.C. § 1225(b)(2)(A). *Crane v. Napolitano*, 2013 U.S. Dist. LEXIS 57788. The case is currently pending before the Fifth Circuit of the U.S. Court of Appeals. *Crane v. Johnson*, Case No. 14-10049. In both capacities, I have observed the troubling consequences of the Obama Administration’s executive actions.

Four States Require Proof of Citizenship to Prevent Aliens from Voting.

At the outset, it is important to note that four States – Kansas, Arizona, Georgia, and Alabama – require documentary proof of citizenship in order to register to vote. The other 46 states require no such proof of citizenship and face considerably greater vulnerability to the problems caused by the executive actions in immigration. However, even the four states that require proof of citizenship are vulnerable, due to a recent decision of the Election Assistance Commission that allows registrants who use the federal voter registration form to avoid proving their citizenship.

The Problem of Aliens Registering and Voting is Very Real.

The problem of aliens registering to vote is a massive one, nationwide. And I have seen it firsthand in Kansas. Because there is no way of scanning a state’s voter rolls and identifying which of the registered voters are aliens, determining the exact number of aliens on the voter rolls is virtually impossible. But we know that the number is significant, because specific election episodes present evidence of aliens voting and because we can gain some information by

matching driver's license databases against voter rolls. We have used both methods in Kansas, and the substantial evidence of alien voting helped convince the Kansas Legislature to adopt our proof of citizenship requirement, which I proposed in 2011 (along with our photo ID requirement and our security requirements for mail-in ballots).

(1) Seward County, Kansas

The most notorious case of aliens voting in Kansas comes from a county-wide election in Seward County, in the southwest corner of the State. In 1997, Charter Resolution 97-3 to prohibit large hog farming operations was a referendum issue that was placed before county voters. It was a hugely controversial issue that generated 51% voter turnout for the countywide special election. The investors in the proposed hog farming operation were working with a hog processing plant across the state line in Guyman, Oklahoma; and they hoped to raise the hogs in Kansas and render the hogs in Oklahoma. But they would have to win the county referendum in order to bring their plan to fruition.

In the run-up to the election, an astonishing thing happened. More than 50 employees of the Guyman, Oklahoma, hog processing plant sent in voter registration applications in a single envelope addressed to the county clerk's office in Seward County, Kansas. Many of the registration forms contained made-up addresses in Seward County. However, the clerk had no legal authority to reject the registration applications.

Then, on election day, the workers at the Oklahoma hog processing plant were bussed to the Seward County, Kansas, clerk's office in a series of vanloads to vote. The county clerk strongly believed that the registrants were non-citizens, based on her knowledge that most of the plant employees were not citizens, based on the fact that the driver of the van was translating the ballot for the plant employees who could not read English, and based on the fact he was overheard telling the plant workers how to vote. In some cases, personnel at the clerk's office knew that the specific voters were not U.S. Citizens. However, they were powerless to disqualify the voters. All that the clerk could do was instruct the driver not to tell the workers how to vote. At the end of the day, the attempt to use alien votes to steal the election fell short.

(2) North Kansas City, Missouri

Another, more recent, incident of alien voting occurred in August 2010 across the state line in Kansas City, Missouri. In the Democratic primary race for state representative between J.J. Rizzo and Will Royster – a race in which the winner of the primary would almost certainly win the general election – multiple forms of voter fraud occurred. The most troubling was the coordinated voting by members of the Somali refugee community in the North Kansas City area.

On election day, poll workers observed a total of more than 50 Somalis who showed up at the polls to vote. Similar to the Seward County, Kansas, episode, they were escorted into the polling place by a translator/coach. Unable to speak English, the Somalis were directed by the

coach how to vote. They were all told to vote for Rizzo. On this occasion, the use of alien votes to steal the election succeeded; Rizzo won the election. The margin of victory? One vote. I have attached to my testimony an affidavit from a supervising poll judge who observed the fraud firsthand at one of the polling locations where it occurred.

(3) Aliens Found on the Voter Rolls Using Driver's License Databases

One way that a state can identify a small subsection of the aliens on its voter rolls is to cross-check its voter rolls against the state's list of driver's licenses, if the state designates some of its driver's licenses as being held by aliens. In Kansas, in 2009 and 2010, this was done by taking the names of holders of "temporary driver's licenses" that had been issued to aliens during 2007-2010 and checking them against the names on the State's voter rolls. The exercise yielded the names of 20 aliens who had successfully registered to vote before Kansas implemented its proof-of-citizenship requirement in 2013. And many of them had voted. However, it should be noted that this is a small subset of the total number of aliens on our voter rolls: it only includes those aliens who obtained a Kansas driver's license, and only those who did so during a specific three-year period. The total number of aliens on the voter rolls is likely to be in the hundreds. This evidence was presented to the U.S. District Court for the District of Kansas in the case of *Kobach, et al., v. Election Assistance Commission* (2014), to demonstrate that merely signing a statement claiming to be a citizen is not enough. The State of Arizona, a co-plaintiff in the lawsuit, undertook a similar, limited study of its voter rolls and found approximately 200 aliens who had registered.

How the President's Executive Actions Exacerbate the Problem

On June 15, 2012, the Obama Administration unlawfully granted deferred action to approximately 1.8 million illegal aliens willing to claim that they entered the United States before the age of 16 (the "DACA Directive"). And on November 20, 2014, the Administration extended the same executive amnesty to another approximately 4 million illegal aliens. I describe these executive actions as "unlawful" because the only two federal courts that have addressed the question both concluded that the President acted in violation of the law. On April 23, 2013, the Northern District of Texas concluded that the DACA Directive compelled ICE officers to violate 8 U.S.C. § 1225(b)(2)(A). *Crane v. Napolitano*, 2013 U.S. Dist. LEXIS 57788. And on December 16, 2014, the Western District of Pennsylvania concluded that the November 20, 2014, Directive was an unconstitutional exercise of legislative power by the executive branch. *United States v. Elionardo Juarez-Escobar*, Criminal No. 14-0180.

The Directives authorize U.S. Citizenship and Immigration Services to issue employment authorization documents to these amnesty recipients. The aliens can then use their employment documents to obtain driver's licenses in any states. Whether or not a particular state will issue driver's licenses to these aliens is a question of state law. In some states, such as Wisconsin, state law compels the department of motor vehicles to issue driver's licenses to all deferred

action recipients. See WIS. STAT. § 343.14(2)(es)(6). In other states, namely those states within the Ninth Circuit (California, Arizona, Nevada, Oregon, Washington, Oregon, Idaho, Montana, Alaska, and Hawaii), a flawed Ninth Circuit holding now compels those states to give driver's licenses to DACA aliens if the state gives driver's licenses to any other deferred action aliens. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014). In a dozen other states, the state legislatures are considering bills that would make clear that recipients of this unlawful amnesty are not entitled to driver's licenses in those states.

Where a deferred action alien is able to obtain a driver's license, doing so allows the alien to easily satisfy one of the documentation requirements of the Help America Vote Act. However, even if the alien resides in a state that does not provide driver's licenses to such aliens, the alien will still be able to obtain a Social Security Number, another acceptable form of identification. Provided that the alien is willing to sign the application stating that he is a U.S. citizen – something that occurs all the time either because the alien does not understand that he is declaring U.S. citizenship or because the alien is intentionally breaking the law – he will almost certainly become registered in one of the 46 states that do not require proof of citizenship. If the alien registers using the federal voter registration form in Kansas, Arizona, Georgia, or Alabama, he will succeed in registering to vote in federal elections (unless and until the U.S. Supreme Court grants a writ of certiorari to review the Tenth Circuit's holding in *Kobach v. Election Assistance Commission* and reverses the court of appeals).

Based on the empirical evidence that I have seen as the Kansas Secretary of State, it is a certainty that the Administration's executive actions will result in a large number of additional aliens registering to vote throughout the country, in violation of state and federal law. These are irreversible consequences, because *once an alien registers to vote, it is virtually impossible to detect him and remove him from the list of registered voters*. In states like Kansas, we have been working hard to address the problem of aliens illegally voting in our elections. The Administration's actions have set us back in our efforts, increasing the risk of stolen elections and gravely undermining the rule of law.

AFFIDAVIT

State of Missouri)
) ss
County of Platte)

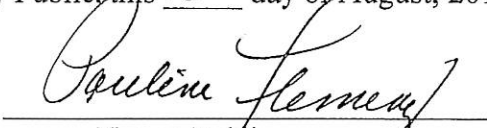
Lindee Hopkins, of 3514 Windsor Avenue, Kansas City, Missouri 64123, being duly sworn does hereby depose and state under oath, to-wit:

1. I was the Supervisory Republican Election Judge for the August 3, 2010, primary election in Jackson County, Missouri, for Ward 11, Precinct 5.
2. That morning a group of three or four Somali adults came in to vote. None of the Somali's were able to speak any English whatsoever. An adult male escorted them into the polling location.
3. None of them could communicate with us election officials at all about voting procedures or which ballot they wanted to cast.
4. The adult male who was with them went outside and brought in a "Rizzo yard sign" into the polling place, he stood in front of the Judge's table, and pointed to the sign and kept saying "this one...this one".
5. Delton, the Democratic Judge, said "that's illegal, that's not supposed to be in here". Shawn, the Democratic Supervisor took no action to remove the sign despite being advised of the problem by Delton.
6. The yard sign was placed at the Judge's table for at least 10-15 minutes in full view of every voter who entered the polling place.
7. At one point the adult male attempted to take the yard sign back to the voting stations but was unable to do so.
8. The group of Somali voters sat at a table together in the voting stations.

9. The adult male stood over the women while they voted, continually talking to them, and would point at specific things on the ballots, instructing the women how to cast their vote and for whom to vote for.
10. He did this to all the voters at the table.


LINDEE HOPKINS

Subscribed and sworn to before me, a Notary Public, this 16th day of August, 2010.


Notary Public

My commission expires:
AUGUST 15, 2010
Notary Public - Notary Seal
State of Missouri
Commissioned for Clay County
My Commission Expires: November 15, 2010
Commission Number: 06523245