



Northern  
California



ASIAN AMERICANS  
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October 20, 2022

*Sent via e-mail*

James A. Kus,  
Fresno County Clerk and Registrar of Voters  
2221 Kern Street  
Fresno, CA 94721  
[Clerk-services@FresnoCountyCA.gov](mailto:Clerk-services@FresnoCountyCA.gov)

**Re: Section 203 Compliance for the November 2022 General Election**

Dear Registrar James Kus:

On May 12, 2022, we sent a letter to your office reminding you of your obligations under Section 203 of the federal Voting Rights Act (VRA), 52 U.S.C. § 10503, to provide available election-related materials in Spanish. We also flagged Section 203 deficiencies with your elections website. For your reference, we have attached the May 2022 letter as Exhibit A.

On May 20, 2022, your office provided a response stating that the flagged election-related materials in our May 2022 letter would be translated on or around May 27, 2022. However, your office has not yet made some key election materials on your website available in Spanish even though Fresno County has already begun early voting and sent out Vote-by-Mail (VBM) ballots. For your reference, we have attached your response letter as Exhibit B. This is not only disservice to limited English proficient (“LEP”) voters in Fresno County but is also contrary to federal law. We again urge you to immediately correct these deficiencies ahead of the November 8, 2022 election to ensure that no additional important election dates (e.g., close of registration) pass without access to adequate translations.

**Continued Deficiencies**

Section 203 requires that any election material provided to voters in English, including material provided on the county election website or via mail by county election officials, should also be provided in the county’s Section 203 language.<sup>1</sup> The Department of Justice (DOJ) has interpreted the language requirements of Section 203 to “apply to all stages of the electoral

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<sup>1</sup> Department of Justice, Civil Rights Division, *About Language Minority Voting Rights* (last updated Jan. 4, 2022), <https://bit.ly/3EPzzGu> (noting that, when investigating language minority cases, the DOJ looks at website information and other election information provided in English “to determine whether that same information is being made available to each language minority community”); County Clerk/Registrar of Voters (CC/ROV) Memorandum #21204 (Dec. 10, 2021), <https://bit.ly/3MbDmjI> (directing election officials to review DOJ guidance on Section 203).

**American Civil Liberties Union Foundation of Northern California**

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process...including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting processes.”<sup>2</sup>

Our team again reviewed your county’s election website and found that critical election information available in English continues to be unavailable in Spanish.<sup>3</sup> As previously noted, although there is a tool that translates the website into Spanish, the Spanish translated website still links to some webpages and documents only available in English. For example, the measures listed on your county’s election website are not available in Spanish.<sup>4</sup> In addition, the links titled “Guia del Candidato” and “Formulario de Quejas Electorales” continue to direct readers to English versions of the election information.<sup>5</sup>

**We request that your office or the administrator of your county’s election website immediately correct these deficiencies to comply with Section 203.** We also request that you notify us when you have made these corrections and again reiterate the urgency of these changes in light of important upcoming election dates.

### **Best Practices for Translating Election Materials**

Accuracy of election information is of utmost importance, and we urge your office to avoid relying on software such as Google Translate to translate election materials. This includes avoiding the use of Google Translate widget to translate the County’s election website. The U.S. Election Assistance Commission (EAC) recommends that translators have plain language, linguistic, and cultural expertise to support the review of translations for accuracy and dialectical nuances.<sup>6</sup> Using automatic electronic translations for election websites, however, means that the information will likely be error-filled because these services and web widgets are not designed to parse nuance.<sup>7</sup> For this reason, the EAC notes that “[h]uman translation is of much higher quality than electronic translation software,”<sup>8</sup> and even Google Translate’s disclaimer states that “no automated translation is perfect nor is it intended to replace human translators.”<sup>9</sup> Please confirm with us that your office will not be relying solely on Google Translate to translate your website into Spanish.

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<sup>2</sup> 28 C.F.R. § 55.15.

<sup>3</sup> See County Clerk/Elections, County of Fresno, <https://www.co.fresno.ca.us/departments/county-clerk-registrar-of-voters> (last accessed October 20, 2022).

<sup>4</sup> Identification Letters for Local Ballot Measures (Aug. 15, 2022), [www.co.fresno.ca.us/home/showpublisheddocument/68368/637963412705370000](https://www.co.fresno.ca.us/home/showpublisheddocument/68368/637963412705370000)

<sup>5</sup> County of Fresno Registrar of Voters, Candidate Guide and Calendar of Events, <https://www.co.fresno.ca.us/home/showpublisheddocument/67527/637945085104770000> (last accessed October 20, 2022); Fresno County Elections Complaint Form, <https://bit.ly/3MdMi8O> (last accessed October 20, 2022)

<sup>6</sup> U.S. Election Assistance Commission, *Language Accessibility* at 5 (April 2019), <https://bit.ly/3838X8k> [hereinafter “EAC on Language Accessibility”].

<sup>7</sup> See, e.g., Yeganeh Torbati, *Google Says Google Translate Can’t Replace Human Translators. Immigration Officials Have Used it to Vet Refugees*, PROPUBLICA, Sept. 26, 2019, <https://bit.ly/3869ari>.

<sup>8</sup> EAC on Language Accessibility, *supra* note 6 at 5.

<sup>9</sup> Google, *Attribution Requirements*, <https://bit.ly/3vKrO0a>.

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The November 2022 general election is only a few weeks away. Eligible voters in your county are looking to your office for the information they need to participate meaningfully in the election. We urge you to update your website and provide all election materials sent via mail in Spanish. Without these resources, LEP voters will not have equal access to crucial and accurate information such as important registration deadlines, different voting options, ballot drop off information, voting locations, and how to vote by mail.

We understand the pressures your office faces in the weeks leading up to the election. We look forward to a response by October 27, 2022.

Sincerely,



Brandee Calagui  
Democracy & Civic Engagement Program  
Legal Policy Assistant  
ACLU Foundation of Northern California



Deanna Kitamura  
Senior Staff Attorney  
Asian Americans Advancing Justice –  
Asian Law Caucus



Allison Lim  
Democracy & Civic Engagement Program  
Legal Fellow  
ACLU Foundation of Northern California

# **EXHIBIT A**

May 12, 2022

*Sent via e-mail*

James A. Kus,  
Fresno County Clerk and Registrar of Voters  
2221 Kern Street  
Fresno, CA 93721  
Clerk-services@FresnoCountyCa.gov

**Re: Section 203 Compliance for the June 2022 Primary**

Dear Registrar James Kus:

Under Section 203 of the federal Voting Rights Act (VRA), 52 U.S.C. § 10503, your county must provide all election-related materials in Spanish. We reviewed your election website and identified several deficiencies, highlighted below. We urge that you immediately correct these deficiencies and request that all election materials you send by mail be in English and in Spanish.

### **Background**

All communities, regardless of their ability to speak English proficiently, deserve equitable access to the ballot box. The importance of equitable access is particularly pronounced in California which is home to 6.43 million limited-English proficient (LEP) individuals over the age of five.<sup>1</sup> The 2020 Census also shows sharply growing numbers of Latine and Asian American residents in California—a growth that accounts for nearly all of the state’s population gains.<sup>2</sup> These two populations are the least likely to vote and the most likely to have limited-English proficiency.<sup>3</sup> While there are several reasons and obstacles contributing to lower turnout at the polls of Latine and Asian American voters, lack of language assistance is a significant factor.

To address the needs of LEP residents and facilitate voting, Section 203 states that a jurisdiction subject to the section is required to provide “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots . . . in the language of the applicable minority group as well as in the English language.”<sup>4</sup> Information provided in English must be available in the minority language “so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.”<sup>5</sup>

Providing California voters with language assistance is especially critical in an era experiencing an all-out assault on voting rights. We must continue to lead and take bold steps to protect voting rights

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<sup>1</sup> 2020 5-year American Community Survey data.

<sup>2</sup> Andrea Briseño and Phillip Reese, *California Latino Population Grew in the Last Decade While Number of Whites Fell, Census Shows*, THE SACRAMENTO BEE (Aug. 24, 2021), <https://bit.ly/3rApffP>.

<sup>3</sup> Asian Americans Advancing Justice – California, *Voices of Democracy: The State of Language Access in California’s November 2016 Elections* at 9 (2017), <https://bit.ly/3w2S461>.

<sup>4</sup> 52 U.S.C. § 10503(c).

<sup>5</sup> Department of Justice, Civil Rights Division, *About Language Minority Voting Rights* (last updated Jan. 4, 2022), <https://bit.ly/3EPzzGu> [hereinafter “DOJ on Language Minority Rights”] (section on legal requirements).

and remove barriers to the ballot box for all eligible voters, including voters who are members of language minority groups. Your office can help by ensuring that all election materials are accessible to both English proficient and LEP voters.

### **Website Requirements**

Section 203 requires that any election material provided to voters in English, including material provided on the county election website or via mail by county election officials, should also be provided in the county's Section 203 language.<sup>6</sup> The Department of Justice (DOJ) has interpreted the language requirements of Section 203 to “apply to all stages of the electoral process . . . including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.”<sup>7</sup>

Our team reviewed your county's election website and found that critical election information available to English speakers is unavailable in Spanish.<sup>8</sup> Although there is a Google Translate tool that translates the English website into Spanish, many of the linked documents on the translated page are only available in English. For example, the links titled “Guia del candidato,” “Formulario de Quejas Electorales,” “Hoja de hechos,” and “Registro de votante condicional” all direct a reader to the English version of the election information.<sup>9</sup> Overall, there is critical election-related information that is not accessible to LEP voters on the Fresno County election website.

**We request that your office or the administrator of your county's election website immediately correct these deficiencies in order to comply with Section 203.** We also request that you notify us when you have made these corrections. People are increasingly relying on election websites for election-related information: from finding their polling location to voter registration information. To ensure that LEP voters also have access to critical election information, your office must provide the information in Spanish.

### **Election Materials via Mail**

The language requirements of Section 203 also apply to materials provided by mail.<sup>10</sup> The best way to comply with Section 203 requirements is to mail all registered voters materials in both English and Spanish. However, when materials “provided by mail . . . generally to residents or registered voters are not all provided in the applicable minority language” the DOJ “will consider whether an effective targeting system has been developed” to determine Section 203 compliance.<sup>11</sup> “For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of

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<sup>6</sup> DOJ on Language Minority Rights, *supra* note 5 (noting that, when investigating language minority cases, the DOJ looks at website information and other election information provided in English “to determine whether that same information is being made available to each language minority community”); County Clerk/Registrar of Voters (CC/ROV) Memorandum #21204 (Dec. 10, 2021), <https://bit.ly/3MbDmJI> (directing election officials to review DOJ guidance on Section 203).

<sup>7</sup> 28 C.F.R. § 55.15.

<sup>8</sup> See County of Fresno Registrar of Voters, <https://bit.ly/3PjJPvq> (last accessed May 12, 2022) (Spanish version of the Fresno County election website under Google Translate “Spanish”).

<sup>9</sup> County of Fresno Registrar of Voters, Candidate Guide and Calendar of Events, <https://bit.ly/3FCKJhW> (last accessed May 12, 2022); Fresno County Elections Complaint Form, <https://bit.ly/3MdMi8O> (last accessed May 12, 2022); Statewide Direct Primary Election June 7, 2022 Fact Sheet, <https://bit.ly/3yOsqFt> (last accessed May 12, 2022); Conditional Voter Registration, <https://bit.ly/3PesMLd> (last accessed May 12, 2022).

<sup>10</sup> DOJ, Civil Rights Division, *Language Minority Citizens: Section 203 of the Voting Rights Act*, <https://bit.ly/3Mxz4TN> (requiring that mailed materials such as sample ballots, voter information pamphlets, and absentee ballots be translated to Section 203 languages).

<sup>11</sup> 28 C.F.R. § 55.18(a).

minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity regarding the availability of such materials may be sufficient.”<sup>12</sup>

As your office prepares and starts to mail out election-information materials, please keep in mind these critical language requirements. **Specifically, we ask that any election information and mailers sent by the County to registered voters be sent in both English and Spanish.**

### **Best Practices for Translating Election Materials**

Accuracy of election information is of utmost importance, and we urge your office to avoid relying on software such as Google Translate to translate election materials. This includes avoiding the use of the Google Translate widget to translate the County’s election website. The U.S. Election Assistance Commission (EAC) recommends that translators have plain language, linguistic, and cultural expertise to support the review of translations for accuracy and dialectical nuances.<sup>13</sup> Using automatic electronic translations for election websites, however, means that the information will likely be error-filled because these services and web widgets are not designed to parse nuance.<sup>14</sup> For this reason, the EAC notes that “[h]uman translation is of much higher quality than electronic translation software,”<sup>15</sup> and even Google Translate’s disclaimer states that “no automated translation is perfect nor is it intended to replace human translators.”<sup>16</sup> Please confirm with us that your office will not be relying solely on Google Translate to translate your website into Spanish.

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The June 2022 primary is only a few weeks away. Eligible voters in your county are looking to your office for the information they need to participate meaningfully in the election. We urge you to update your website and provide all election materials sent via mail in Spanish. Without these resources, LEP voters will not have equal access to crucial and accurate information such as important registration deadlines, different voting options, ballot drop off information, voting locations, and how to vote by mail.

We understand the pressures your office faces in the weeks leading up to the election. We look forward to a response by May 20, 2022.

Sincerely,



Angélica Salceda  
Democracy and Civic Engagement, Director  
ACLU Foundation of Northern California



Deanna Kitamura  
Senior Staff Attorney  
Asian Americans Advancing Justice –  
Asian Law Caucus

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<sup>12</sup> *Id.*; see also Complaint, *United States v. San Diego Cnty.*, No. 04CV1273JEG (S.D. Cal. June 23, 2004) (citing as a Section 203 violation San Diego’s failure “to translate into Spanish and Tagalog certain election-related information, including but not limited to information contained in legal notices publicizing elections and materials available to the general public on the Internet website of the Registrar of Voters.”)

<sup>13</sup> U.S. Election Assistance Commission, *Language Accessibility* at 5 (April 2019), <https://bit.ly/3838X8k> [hereinafter “EAC on Language Accessibility”].

<sup>14</sup> See, e.g., Yeganeh Torbati, *Google Says Google Translate Can’t Replace Human Translators. Immigration Officials Have Used it to Vet Refugees*, PROPUBLICA, Sept. 26, 2019, <https://bit.ly/3869ari>.

<sup>15</sup> EAC on Language Accessibility, *supra* note 12 at 5.

<sup>16</sup> Google, *Attribution Requirements*, <https://bit.ly/3vKrO0a>.

# **EXHIBIT B**





# County of Fresno

COUNTY CLERK/REGISTRAR OF VOTERS  
JAMES A. KUS

May 20, 2022

## **VIA E-MAIL ONLY**

Angelica Salceda  
Democracy and Civic Engagement, Director  
ACLU Foundation of Northern California  
E-Mail Address: [asalceda@aclunc.org](mailto:asalceda@aclunc.org)

Deanna Kitamura  
Senior Staff Attorney  
Asian Americans Advancing Justice – Asian Law Caucus  
E-Mail Address: [deannak@advancingjustice-alc.org](mailto:deannak@advancingjustice-alc.org)

RE: *Section 203 Compliance for June 2022 Primary Letter, Dated May 12, 2022*

Dear Ms. Salceda and Ms. Kitamura:

Thank you for your letter, dated May 12, 2022, regarding the County of Fresno, County Clerk/Registrar of Voters' Department's ("Department") compliance with Section 203 of the Voting Rights Act ("Section 203") for the June 2022 primary election.

We appreciate your organizations' continued efforts to ensure language accessibility throughout California and in Fresno County.

We understand that you have expressed the following concerns (footnote references omitted):

Our team reviewed your county's election website and found that critical election information available to English speakers is unavailable in Spanish. Although there is a Google Translate tool that translates the English website into Spanish, many of the linked documents on the translated page are only available in English. For example, the links titled "Guia del candidato," "Formulario de Quejas Electorales," "Hoja de hechos," and "Registro de votante condicional" all direct a reader to the English version of the election information. Overall, there is critical election-related information that is not accessible to LEP voters on the Fresno County election website.

In your May 12, 2022, letter, you make the following requests:

**Request 1:** "that [our] office or the administrator of [our] county's election website immediately correct these deficiencies in order to comply with Section 203;"

[YOUR DIRECT LINK TO  
Fresno County Elections](https://www.vote-fresno.com)

★ [VoteFresnoCounty.com](https://www.vote-fresno.com) ★

2221 Kern Street • Fresno, California 93721  
Clerk (559) 600-2575 • Elections (559)600-8683 • Fax (559)488-3279

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Angelica Salceda, Democracy and Civic Engagement, Director, ACLU Foundation of Northern California  
Deanna Kitamura, Senior Staff Attorney, Asian Americans Advancing Justice – Asian Law Caucus  
RE: *Section 203 Compliance for June 2022 Primary Letter, Dated May 12, 2022*  
May 20, 2022  
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Request 2: “that any election information and mailers sent by the County to registered voters be sent in both English and Spanish;” and

Request 3: “that [our] office will not be relying solely on Google Translate to translate [our] website into Spanish.

We provide responses, below, to each of your requests.

Response to Request 1: The Department has reviewed all links located on the Department’s webpage dedicated to the June 7, 2022 primary election (<https://www.co.fresno.ca.us/departments/county-clerk-registrar-of-voters/election-races/statewide-direct-primary-election-june-2022>), as well as on the Department’s general website ([VoteFresnoCounty.com](http://VoteFresnoCounty.com)), and we have begun to translate all links/files that are not already available in Spanish, including those links cited in your letter (e.g., “Guía del candidato,” “Formulario de Quejas Electorales,” “Hoja de hechos,” and “Registro de votante condicional”). We anticipate that most Spanish translations will be completed by Friday, May 27, 2022.

The Department will provide you with an update on May 27, 2022, regarding our progress.

Response to Request 2: The Department has faithfully and consistently translated and distributed all mailed election materials in Spanish. Whenever possible, mailed election materials have been distributed in a bilingual format.

The Department will provide you with copies of any mailings we have distributed to Fresno County registered voters for the June 2022 primary election upon request. You may contact the Department at (559) 600-8683 or contact me directly at [jkus@fresnocountyca.gov](mailto:jkus@fresnocountyca.gov) to request these materials.

Response to Request 3: The Department will continue to explore implementation of recommendations and requests like yours and will work closely with our Language Accessibility Advisory Committee to expand language accessibility in Fresno County elections, including investigating a transition from utilizing Google translation services on our website.

Sincerely,



James A. Kus  
County Clerk/Registrar of Voters

Cc: Brandee Calagui ([bcalagui@aclunc.org](mailto:bcalagui@aclunc.org))