

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA; and)

Morris J. Brooks, Jr.,)
Representative for Alabama’s 5th)
Congressional District,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
COMMERCE; and WILBUR L. ROSS, in his)
official capacity as Secretary of Commerce;)

BUREAU OF THE CENSUS, an agency within the)
United States Department of Commerce; and RON)
S. JARMIN, in his capacity as performing the)
non-exclusive functions and duties of the Director)
of the U.S. Census Bureau,)

Defendants,)

COUNTY OF SANTA CLARA, CALIFORNIA;)
KING COUNTY, WASHINGTON; and CITY OF)
JOSÉ, CALIFONRIA;)

Diana Martinez; Raisa Sequeira; Saulo Corona;)
Irving Medina; Joey Cardenas; Florinda P. Chavez;)
and CHICANOS POR LA CAUSA,)

Intervenor Defendants.)

Civil Action No.
2:18-cv-00772-RDP

LOCAL GOVERNMENT INTERVENORS’ SUPPLEMENTAL MEMORANDUM

INTRODUCTION

The County of Santa Clara, California; King County, Washington; and the City of San José, California (collectively, “Local Government Intervenors”) file this Memorandum in response to the Court’s request for supplemental briefing addressing (1) whether the State of Alabama’s and Representative Morris J. Brooks, Jr.’s (together, “Plaintiffs”) claimed representational injury is likely to be redressed by the requested relief in light of *Franklin v. Massachusetts*, 505 U.S. 788 (1992) and (2) whether Plaintiffs have Article III standing based on their claimed financial injury. (*See* Doc. 55).

The claims in this action lack merit at a minimum because the law is clear that the constitutionally mandated “actual Enumeration” of the “whole number of persons” requires the counting of undocumented persons. Local Government Intervenors intend to file a motion for judgment on the pleadings to that effect at the appropriate time. However, Local Government Intervenors believe that Plaintiff State of Alabama has plausibly alleged Article III standing in connection with its claims—based on its asserted financial injury.¹

¹ If the State of Alabama has adequately demonstrated standing, Plaintiff Morris J. Brooks Jr. need not separately demonstrate standing. *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 518 (2007).

ARGUMENT

I. Plaintiff State of Alabama Has Adequately Pled Financial Injury to Show Standing to Challenge the Inclusion of Undocumented Persons in the Census Enumeration

To satisfy Article III’s standing requirements, a plaintiff must state facts sufficient to allege that it (1) suffered, or will imminently suffer, an injury in fact (2) fairly traceable to the challenged action of the defendant and (3) likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). These three elements constitute an “irreducible constitutional minimum,” *Lujan*, 504 U.S. at 560, but at the pleading stage, a plaintiff need only state a plausible claim that each of the standing elements exist. *Amnesty Int’l, USA v. Battle*, 559 F.3d 1170, 1177 (11th Cir. 2009) (citing *Lujan*, 504 U.S. at 561) (Courts “presume that general allegations embrace those specific facts that are necessary to support the claim.”).

A. Alabama Has Plausibly Alleged that the Inclusion of Undocumented Persons Pursuant to the Residence Rule Will Cause It Concrete and Non-Speculative Injury

To establish injury in fact, a plaintiff must show “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Spokeo*, 136 S. Ct. at 1548.

Plaintiffs have sufficiently pled a concrete and particularized invasion of a legally protected interest: the inclusion of undocumented persons in the 2020 Census will allegedly result in losses in funding for the State of Alabama from the more than

300 federal programs that depend on census data for allocation.² (Doc. 1, ¶¶ 73–81). *See City of Detroit v. Franklin*, 4 F.3d 1367, 1374–75 (6th Cir. 1993) (city had standing to challenge Census Bureau actions based on claim that undercount would result in loss of federal funds); *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (city and state “alleged concrete harm in the form of dilution of their votes and decreased federal funds flowing to their city and state, thus establishing their standing”); *Glavin v. Clinton*, 19 F. Supp. 2d 543, 550 (E.D. Va. 1998) (plaintiffs had standing where they established proposed census methodology would “directly result in a decrease of federal funding to the states and counties in which Plaintiffs reside”); *City of New York v. U.S. Dept. of Commerce*, 713 F. Supp. 48, 50 (E.D.N.Y. 1989) (defendants conceded state and municipal plaintiffs’ allegation of loss of federal funds satisfied standing requirement); *City of Willacoochee v. Baldrige*, 556 F. Supp. 551, 553–55 (S.D. Ga. 1983) (city and mayor had standing to challenge population count because the loss of funds resulting from inaccurate population data was “distinct and palpable injury”).

Plaintiffs also have pled sufficiently that the loss of federal funding is imminent, as Plaintiffs allege that Alabama will lose federal funding if the Census Bureau continues to count undocumented persons in the 2020 decennial Census. (*See* Doc. 1, ¶¶ 73–81).

² Another district court recently recognized a similar basis for standing in a claim brought by Defendant-Intervenor City of San José against Defendants, challenging the addition of a citizenship question to the 2020 Census. *See* Order Den. Mots. to Dismiss at 12–13, *California v. Ross*, No. 18-cv-01865-RS (N.D. Cal. Aug. 17, 2018), ECF No. 75.

This allegation is sufficient at this stage to establish standing. *See, e.g., Glavin*, 19 F. Supp. 2d at 549–50 (finding injury imminent on a motion to dismiss where the Census Bureau had already committed to “the procedure” by which they “intend to take the [upcoming] census” and that the plaintiffs “need not await the consummation of threatened injury to obtain preventable relief”); *City of New York*, 713 F. Supp. at 50 (finding standing despite defendants’ argument that claimed injuries of loss of federal funding were “based on mere speculation that the 1990 [Census] will be inaccurate”).

B. Alabama Has Plausibly Alleged Its Injury Will Be Caused by Defendants’ Counting of Undocumented Persons and that Its Injury Would Be Redressed if Defendants Do Not Include Undocumented Persons in the 2020 Census

To establish standing, a plaintiff must also allege that its injury was caused or traceable to the defendant, rather than the independent action of a third party, *Bennett v. Spear*, 520 U.S. 154, 167 (1997), and that a favorable judicial action would likely result in relief that redresses the injury, *Harrell v. Fla. Bar*, 608 F.3d 1241, 1260 n.7 (11th Cir. 2010) (citation omitted).

Plaintiffs satisfy the traceability element here by alleging that the Census Bureau’s inclusion of undocumented persons in the 2020 Census enumeration, which will be utilized for apportionment of federal funding, will cause a decrease in Alabama’s share of federal funds under a variety of federal programs relative to its peers with larger populations of undocumented persons. (Doc. 1, ¶¶ 73–81); *see City of Willacoochee*, 556 F. Supp. at 554.

Alabama has adequately pled the third element of standing by alleging that the declaratory judgment and injunction it has requested would redress its complained-of financial injuries by precluding the Census Bureau from counting undocumented persons in the 2020 Census, and thereby increasing Alabama's relative population count and share of federal funding that relies on population count. (Doc. 1, ¶ 81); *cf. Carey*, 637 F.2d at 838 (“[C]itizens who challenge a census undercount on the basis . . . that improper enumeration will result in loss of funds to their city have established both an injury fairly traceable to the Census Bureau and a substantial probability that court intervention will remedy the plaintiffs’ injury.”).

II. The Court Need Not Reach Representational Injury

Because the State of Alabama has adequately pled its standing based on financial injury, the Court need not reach the question of representational injury.

Because the Court has requested briefing on the issue, however, we note that a majority of the Supreme Court in *Franklin v. Massachusetts* agreed that Massachusetts had Article III standing, including with respect to redressability, as Justice Scalia acknowledged in his dissent on that issue. *See* 505 U.S. at 824 n.1.

CONCLUSION

For the foregoing reasons, Local Government Intervenors acknowledge that Plaintiff State of Alabama has sufficiently pled Article III standing.

Respectfully submitted,

Dated: January 4, 2018

/s/ Anil A. Mujumdar

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