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9 *through Attorney General Xavier Becerra*

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 CITY OF SAN JOSE, CALIFORNIA, et al.,

15 Plaintiffs,

16 v.

17 DONALD J. TRUMP, in his official capacity  
as President of the United States, et al.,

18 Defendants.

19  
20 STATE OF CALIFORNIA, et al.,

21 Plaintiffs,

22 v.

23 DONALD J. TRUMP, in his official capacity  
as President of the United States, et al.,

24 Defendants.

Case No. 5:20-cv-05167-LHK-RRC-EMC  
Case No. 5:20-cv-05169-LHK-RRC-EMC

**DECLARATION OF SHANNON D.  
LANKENAU IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Date: October 8, 2020  
Time: 1:30 p.m.  
Place: Courtroom 8, 4th Floor  
Judge: Honorable Richard R. Clifton  
Honorable Lucy H. Koh  
Honorable Edward M. Chen

1 I, Shannon D. Lankenau, declare as follows:

2 1. I am an active member of the State Bar of California, a member in good standing  
3 of the Bar of this Court, an associate at Latham & Watkins LLP, and counsel for Plaintiffs in the  
4 above-titled action. I make this declaration in support of Plaintiffs' Motion for Partial Summary  
5 Judgment. I have personal, first-hand knowledge of the matters set forth below and, if called as a  
6 witness, I could and would testify competently thereto.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of a report by Andrew  
8 Reamer, titled "Counting for Dollars 2020 – The Role of the Decennial Census in the  
9 Geographic Distribution of Federal Funds – Brief 7: Comprehensive Accounting of Census-  
10 Guided Federal Spending (FY2017) Part B: State Estimates," available at  
11 [https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Counting%20for%20Dollars%2020%20-%20Comprehensive%20Accounting\\_Report%207B%20Feb%202020%20rev.pdf](https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Counting%20for%20Dollars%2020%20-%20Comprehensive%20Accounting_Report%207B%20Feb%202020%20rev.pdf).  
12

13 3. Attached hereto as Exhibit 2 is a true and correct copy of the U.S. Census  
14 Bureau's webpage, titled "2020 Census Count Guides Funding of New Roads and Bridges,"  
15 dated December 4, 2019, available at [https://www.census.gov/library/stories/2019/12/2020-](https://www.census.gov/library/stories/2019/12/2020-census-count-guides-funding-of-new-roads-and-bridges.html)  
16 [census-count-guides-funding-of-new-roads-and-bridges.html](https://www.census.gov/library/stories/2019/12/2020-census-count-guides-funding-of-new-roads-and-bridges.html).

17 4. Attached hereto as Exhibit 3 is a true and correct copy of the U.S. Department of  
18 Commerce's webpage, titled "U.S. Department of Commerce Announces Reinstatement of  
19 Citizenship Question to the 2020 Decennial Census," dated March 26, 2018, available at  
20 [https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-](https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-reinstatement-citizenship-question-2020)  
21 [reinstatement-citizenship-question-2020](https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-reinstatement-citizenship-question-2020).

22 5. Attached hereto as Exhibit 4 is a true and correct copy of Memorandum from  
23 Wilbur L. Ross, Jr., Secretary of Commerce, to Karen Dunn Kelley, Under Secretary of  
24 Commerce for Econ. Affairs, regarding "Reinstatement of a Citizenship Question on the 2020  
25 Decennial Census Questionnaire," dated March 26, 2018, available at  
26 [https://www.commerce.gov/sites/default/files/2018-03-26\\_2.pdf](https://www.commerce.gov/sites/default/files/2018-03-26_2.pdf).

27 6. Attached hereto as Exhibit 5 is a true and correct copy of an article by Bryan  
28 Lowry in the Kansas City Star, titled "That Citizenship Question on the 2020 Census? Kobach

1 Says He Pitched It to Trump,” dated March 27, 2018, available at  
2 <https://www.kansascity.com/news/politics-government/article207007581.html>.

3 7. Attached hereto as Exhibit 6 is a true and correct copy of an article by Michael  
4 Wines in the New York Times, titled “Deceased G.O.P. Strategist’s Hard Drives Reveal New  
5 Details on the Census Citizenship Question,” dated May 30, 2019, available at  
6 <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

7 8. Attached hereto as Exhibit 7 is a true and correct copy of “Remarks on  
8 Citizenship and the Census” by the Administration of Donald J. Trump on July 11, 2019,  
9 available at <https://www.govinfo.gov/content/pkg/DCPD-201900465/pdf/DCPD-201900465.pdf>.

10 9. Attached hereto as Exhibit 8 is a true and correct copy of a “Statement From the  
11 President Regarding Apportionment” from the White House on July 21, 2020, available at  
12 <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

13 10. Attached hereto as Exhibit 9 is a true and correct copy of an online report from  
14 Pew Research Center, titled “U.S. Unauthorized Immigrant Population Estimates By State,  
15 2016,” dated February 5, 2019, available at [https://www.pewresearch.org/hispanic/interactives/u-](https://www.pewresearch.org/hispanic/interactives/u-s-unauthorized-immigrants-by-state/)  
16 [s-unauthorized-immigrants-by-state/](https://www.pewresearch.org/hispanic/interactives/u-s-unauthorized-immigrants-by-state/).

17 11. Attached hereto as Exhibit 10 is a true and correct copy of a report by the U.S.  
18 Department of Homeland Security, Office of Immigration Statistics, titled “Population  
19 Estimates, Illegal Alien Population Residing in the United States: January 2015,” dated  
20 December 2018, available at  
21 [https://www.dhs.gov/sites/default/files/publications/18\\_1214\\_PLCY\\_pops-est-report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf).

22 12. Attached hereto as Exhibit 11 is a true and correct copy of an article by Jeffrey S.  
23 Passel and D’Vera Cohn of Pew Research Center, titled “How Removing Unauthorized  
24 Immigrants From Census Statistics Could Affect House Reapportionment,” dated July 24, 2020,  
25 available at [https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-](https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/)  
26 [immigrants-from-census-statistics-could-affect-house-reapportionment/](https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/).

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1           13. Attached hereto as Exhibit 12 is a true and correct copy of an excerpt of the  
2 definitions of “Inhabitant” and “Person” from A Dictionary of the English Language, by Noah  
3 Webster, dated 1868.

4           14. Attached hereto as Exhibit 13 is a true and correct copy of an excerpt of Chapter  
5 the Tenth in “Commentaries on the Laws of England” by William Blackstone, dated 1765.

6           15. Attached hereto as Exhibit 14 is a true and correct copy of Volume II of  
7 “Commentaries on American Law” by James Kent, dated 1826.

8           16. Attached hereto as Exhibit 15 is a true and correct copy of Volume II of “Records  
9 of the Federal Convention of 1787” by Max Farrand, dated 1911.

10           17. Attached hereto as Exhibit 16 is a true and correct copy of “The Federalist No.  
11 54” by James Madison, dated February 12, 1788.

12           18. Attached hereto as Exhibit 17 is a true and correct Volume I of “Records of the  
13 Federal Convention of 1787” by Max Farrand, dated 1911.

14           19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of “The  
15 Congressional Globe,” 39th Congress, First Session, dated December 4, 1865.

16           20. Attached hereto as Exhibit 19 is a true and correct copy of an article by William  
17 W. Van Alstyne, titled “The Fourteenth Amendment, the “Right” to Vote, and the Understanding  
18 of the Thirty-Ninth Congress” in the Supreme Court Review, dated 1965.

19           21. Attached hereto as Exhibit 20 is a true and correct copy of “An Act providing for  
20 the enumeration of the Inhabitants of the United States,” approved at the Second Session of the  
21 First Congress, dated March 1, 1790.

22           22. Attached hereto as Exhibit 21 is a true and correct copy of “Enumeration of  
23 Undocumented Aliens in the Decennial Census: Hearing Before the Subcommittee on Energy,  
24 Nuclear Proliferation, & Government Processes of the Senate Committee on Governmental  
25 Affairs” in the Ninety-Ninth Congress, First Session, dated September 18, 1985.

26           23. Attached hereto as Exhibit 22 is a true and correct copy of a web printout of the  
27 U.S. Census Bureau’s “1860 Census: Population of the United States,” dated 1864, available at  
28 <https://www2.census.gov/library/publications/decennial/1860/population/1860a-02.pdf>.

1           24. Attached hereto as Exhibit 23 is a true and correct copy of "Power of Congress to  
2 Exclude Aliens from Enumeration for Purposes of Apportionment of Representatives" by C.E.  
3 Turney, Law Assistant, Senate Legislative Counsel, dated Apr. 30, 1929, reprinted at 71  
4 Congressional Record 1821-22 (1929).

5           25. Attached hereto as Exhibit 24 is a true and correct copy of an index to  
6 Congressional proceedings showing "Joint resolutions for amendment to the Constitution for  
7 exclusion of aliens in the apportionment of Representatives (see S.J. Res. 62; H.J. Res. 20)."

8           26. Attached hereto as Exhibit 25 is a true and correct copy of an excerpt of volume  
9 86, part 8 of the Congressional Records, dated 1940.

10          27. Attached hereto as Exhibit 26 is a true and correct copy of an excerpt of volume  
11 135, part 11 of the Congressional Records, dated July 13, 1989.

12          28. Attached hereto as Exhibit 27 is a true and correct copy of Joint Resolution No.  
13 11 introduced in the House of Representatives at the First session of the 111th Congress, dated  
14 January 7, 2009.

15          29. Attached hereto as Exhibit 28 is a true and correct copy of an article by an  
16 unknown author, titled Constitutionality of Excluding Aliens from the Census for Apportionment  
17 and Redistricting Purposes in Congressional Research Service, R41048, dated April 13, 2012.

18          30. Attached hereto as Exhibit 29 is a true and correct copy of a letter from Thomas  
19 M. Boyd, Acting Assistant Attorney General, dated June 29, 1988, reprinted at 1990 Census  
20 Procedures and Demographic Impact on the State of Michigan: Hearing Before the Committee  
21 on Post Office and Civil Service, House of Representatives, 100th Congress 240-44 (1988).

22          31. Attached hereto as Exhibit 30 is a true and correct copy of a letter from Carol T.  
23 Crawford, Assistant Attorney General, dated September 22, 1989, 135 Congressional Record  
24 S12234 (1989).

25          32. Attached hereto as Exhibit 31 is a true and correct copy of a web printout of the  
26 definition of "Inhabitant" in Merriam-Webster Online Dictionary, available at  
27 <https://www.merriam-webster.com/dictionary/inhabitant>.

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1           33. Attached hereto as Exhibit 32 is a true and correct copy of an excerpt of the  
2 definitions of "Inhabitant" and "Person" from A Dictionary of the English Language, by Samuel  
3 Johnson, Third Edition, dated 1766.

4           34. Attached hereto as Exhibit 33 is a true and correct copy of a Memorandum on the  
5 Method of Equal Proportions by Professor Edward Huntington, reprinted at 71 Congressional  
6 Record 4965, dated Mar. 2, 1929.

7           35. Attached hereto as Exhibit 34 is a true and correct copy of a printout of the U.S.  
8 Census Bureau's Computing Apportionment, last revised March 30, 2020, available at  
9 [https://www.census.gov/topics/public-sector/congressional-](https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html)  
10 [apportionment/about/computing.html](https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html).

11           36. Attached hereto as Exhibit 35 is a true and correct copy of a web printout of the  
12 definition of "Person" in Merriam-Webster Online Dictionary, available at  
13 <https://www.merriam-webster.com/dictionary/person>.

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16 I declare under penalty of perjury that the foregoing is true and correct.

17

18 Executed on: August 27, 2020

LATHAM & WATKINS LLP

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By: /s/ Shannon D. Lankenau  
Shannon D. Lankenau

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Shannon D. Lankenau (Bar No. 294263)  
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*Attorneys for Plaintiffs City of San Jose, King  
County, Arlington County, Harris County, Black  
Alliance for Just Immigration, Liccardo, Ellis,  
Yilma, Kargbo-Thompson, and Etienne*

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**ATTESTATION**

I, Gabrielle D. Boutin, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

DATED: August 27, 2020

/s/ Gabrielle D. Boutin

Gabrielle D. Boutin



## CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v.**  
**Donald J. Trump, et al.**

No. **5:20-cv-05169-LHK-RRC-**  
**EMC**

I hereby certify that on August 27, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF SHANNON D. LANKENAU IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 27, 2020, at Sacramento, California.

Tracie L. Campbell

Declarant

*/s/ Tracie Campbell*

Signature

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