

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

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

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

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

Defendants.

20-CV-5781 (JMF)

**PLAINTIFFS' LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to Local Civil Rule 56.1, Plaintiffs the State of New York et al. and the New York Immigration Coalition et al. submit the following statement of material facts as to which there is no genuine issue to be tried.

**EXCLUDING UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT
BASE AFTER THE 2020 CENSUS WILL DEPRIVE CALIFORNIA AND/OR TEXAS OF
CONGRESSIONAL SEATS**

1. Since 1790, no decennial census has excluded any category of persons who usually reside in the United States on their basis of their citizenship or immigration status for purposes of

apportioning congressional representation. *See, e.g., 2020 Decennial Census Residence Rule and Residence Situations*, 80 Fed. Reg. 28,950, 28,950, (2015); Thompson Decl. ¶ 8 (Ex. 57).¹

2. Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018),

https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3. California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4. According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5. As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767 people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf> (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the “Memorandum”) (ECF No. 1-1).

9. The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019. *See id.*

19. The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives. *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census. *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%. *Id.* § 5.2, Tbl. 7.

22. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%. *Id.*

THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT BASE

23. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24. Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25. Plaintiff Monterey County, California is a political subdivision of the State of California. *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26. Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28. Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30. Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California. *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

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Respectfully submitted,

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