

**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.

No. 20 Civ. 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.

No. 20 Civ. 5781 (JMF)

DEFENDANTS' RESPONSE TO PLAINTIFFS' LOCAL RULE 56.1 STATEMENT

Pursuant to Local Civil Rule 56.1, Defendants submit the following responses to Plaintiffs'

Local Rule 56.1 Statement of Material Facts as to Which There is No Genuine Issue to Be Tried.

1. Defendants do not dispute this statement.
2. Defendants do not dispute this statement.
3. Defendants state that the cited DHS document provides estimates that as of 2015,

California and Texas are the two states with the two largest populations of illegal aliens. *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).

4. Defendants state that the cited DHS document provides estimates that as of 2015, California had an illegal alien population of 2.9 million and Texas had an illegal alien population of 1.9 million. *Id.* at 4.

5. Defendants do not dispute this statement.

6. Defendants do not dispute this statement.

7. Defendants do not dispute this statement.

8. Defendants do not dispute that that the quoted language appears in the Memorandum.

9. Defendants do not dispute that that the quoted language appears in the Memorandum.

10. Defendants do not dispute this statement.

11. Defendants do not dispute this statement.

12. Defendants state that the Census Bureau's total estimated population of the State of California as of July 1, 2019 was 39,512,223. 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/timeseries/demo/popest/2010s-state-total.html> (last visited August 17, 2020).

13. Defendants do not dispute this statement.

14. Defendants do not dispute this statement.

15. Defendants state that the Census Bureau's total estimated population of the State of Texas as of July 1, 2019 was 28,995,881. *Id.*

16. Defendants do not dispute that Florida is the third most populous State after California and Texas, and do not dispute that according to the Census Bureau Florida has a total population of 18,801,310 as of April 1, 2010. *Id.* Defendants state that the Census Bureau's total estimated population of the State of Florida as of July 1, 2019 was 21,477,737. *Id.*

17. Defendants do not dispute this statement.

18. Defendants do not dispute this statement.

19. Defendants dispute Plaintiffs' characterization of the Memorandum anticipating any particular outcome of apportionment. Defendants refer the Court to the cited page of the Memorandum for a full and accurate statement of its contents. *See* 85 Fed. Reg. at 44,680.

20. Defendants dispute that Dr. Christopher Warshaw could have performed any modeling based on "the population count used to calculate Congressional apportionment after the 2020 Census" because that count is not yet known. *See* Fontenot Decl. ¶¶ 4-8.

21. Defendants do not dispute that Table 7 of Dr. Warshaw's Expert Declaration contains the stated probability. Defendants dispute the premise underlying Dr. Warshaw's stated probability insofar as Dr. Warshaw assumes that all illegal aliens will be excluded from the apportionment base, a hypothetical proposition that is not yet known. Abowd Decl. ¶ 15. Defendants also dispute that Dr. Warshaw used a reliable method to reach his stated probabilities.

22. Defendants do not dispute that Table 7 of Dr. Warshaw's Expert Declaration contains the stated probability. But Defendants dispute the premise underlying Dr. Warshaw's stated probability insofar as Dr. Warshaw assumes that all illegal aliens will be excluded from the apportionment base, a hypothetical proposition that is not yet known. Abowd Decl. ¶ 15. Defendants also dispute that Dr. Warshaw used a reliable method to reach his stated probabilities.

23. Defendants do not dispute this statement.

24. Defendants dispute that residents of the City and County of San Francisco will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

25. Defendants do not dispute this statement.

26. Defendants dispute that residents of Monterey County will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

27. Defendants do not dispute this statement.

28. Defendants dispute that residents of Cameron County will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

29. Defendants do not dispute this statement.

30. Defendants dispute that residents of El Paso County will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

31. Defendants do not dispute this statement.

32. Defendants dispute that residents of Hidalgo County will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

33. Defendants do not dispute this statement.

34. Defendants do not dispute this statement.

35. Defendants do not dispute this statement.

36. Defendants do not dispute this statement.

37. Defendants dispute that Dr. Toubia and Mr. Khoury will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

38. Defendants do not dispute this statement.

39. Defendants dispute that Dr. Toubia and Mr. Khoury will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Dr. Toubia and Mr. Khoury will lose political power because it is not yet known whether Dr. Toubia and Mr. Khoury will reside in California after apportionment.

40. Defendants do not dispute this statement.

41. Defendants do not dispute this statement.

42. Defendants do not dispute this statement.

43. Defendants dispute that Ms. Palacios will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Ms. Palacios will lose political power because it is not yet known whether Ms. Palacios will reside in Texas after apportionment.

44. Defendants do not dispute this statement.

45. Defendants dispute that Ms. Ramos will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Ms. Ramos will lose political power because it is not yet known whether Ms. Ramos will reside in Texas after apportionment.

46. Defendants do not dispute this statement.

47. Defendants do not dispute this statement.

48. Defendants do not dispute this statement.

49. Defendants dispute that Ms. Kim will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will

be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Ms. Kim will lose political power because it is not yet known whether Ms. Kim will reside in California after apportionment.

50. Defendants do not dispute this statement.

51. Defendants dispute that Mr. Lee will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Mr. Lee will lose political power because it is not yet known whether Mr. Lee will reside in California after apportionment.

Dated: August 19, 2020

Respectfully submitted,

ETHAN P. DAVIS
Acting Assistant Attorney General

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York

DAVID MORRELL
Deputy Assistant Attorney General

ALEXANDER K. HAAS
Branch Director

DIANE KELLEHER
BRAD ROSENBERG
Assistant Branch Directors

/s/ Elliott M. Davis
DANIEL D. MAULER (VA Bar No. 73190)
ELLIOTT M. DAVIS (NY Reg. No. 4596755)
Trial Attorneys
Civil Division, Federal Programs Branch
U.S. Department of Justice
1100 L St. NW
Washington, DC 20005
Phone: (202) 353-5639
Fax: (202) 616-8470
E-mail: elliott.m.davis@usdoj.gov

Counsel for Defendants