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Hawaii Attorney General Joins Coalition Defending Census Against Trump Administration's Latest Effort to Undermine the U.S. Census

HONOLULU – Yesterday, a large coalition of states, cities, and counties argued before the United States Supreme Court against further efforts by the Trump Administration to unlawfully leave millions of undocumented immigrants out of the apportionment base that establishes the number of members in the House of Representatives for each state. Despite numerous losses in its efforts to politicize the 2020 Decennial Census, the Trump Administration has again attempted to violate basic constitutional and statutory commands. The coalition of states argued that the administration must count the “whole number of persons” residing in the country for apportionment — as the U.S. Constitution and the Census Act unambiguously require.

“The Federal Government’s position is contrary to the U.S. Constitution and the Census Act,” said Attorney General Connors. “Excluding undocumented immigrants destabilizes the structure of our democracy and has immediate impacts on critical state government functions.”

In July, a coalition of states, cities, and counties — led by New York Attorney General Letitia James — [filed a lawsuit against President Trump, Secretary of Commerce Wilbur Ross, and others after they announced that they would leave millions of undocumented immigrants out of the apportionment base that follows the decennial census count](#). The lawsuit sought to stop the Trump Administration from violating the longstanding constitutional and statutory requirement to count the “whole number of persons” residing in each state for apportionment, without regard to immigration status. In August, [the coalition filed a motion for summary judgment in the case](#), which was [granted in September by a three-judge court that stated that the president’s plan to exclude undocumented immigrants from the apportionment base was unlawful](#).

During yesterday’s oral argument before the U.S. Supreme Court, New York Solicitor General Barbara D. Underwood — arguing on behalf of the coalition of states — explained that excluding undocumented immigrants from the apportionment base would lead to the loss of congressional seats and presidential electors in the Electoral College, especially for immigrant-rich states, and degrade the quality of census data that states and local jurisdictions rely on to perform critical governmental functions. Additionally,

excluding immigrants would reduce the resources available to state and local jurisdictions.

The U.S. Constitution and the Census Act clearly state that, for purposes of apportioning members of the House of Representatives among the states, every person residing in the U.S. on Census Day — or April 1 this past year — must be counted. But in July, President Trump declared in a presidential memorandum that he intended to exclude undocumented immigrants from the apportionment base — the first time such action has been taken in the nation’s history.

Specifically, Article I Section 2 of the U.S. Constitution says representatives shall be apportioned among states according to their respective numbers. In 1868, after the Civil War ended and slaves were freed, the Fourteenth Amendment was adopted to provide equal protection under the law to all persons, stating that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State[.]” The framers deliberately chose the phrase “whole number of persons” to refer to all persons living in each state — including the entire immigrant population.

When the framers made this change, they could have chosen to add language that would allow undocumented immigrants to be left out of the apportionment base, but they didn’t. Since that time, more than 150 years of history, practice, and judicial and administrative precedents have since established that the apportionment of representatives must be based on all persons living in each state, regardless of their citizenship or immigration status. Additionally, Congress has reinforced that requirement by providing that the census must tabulate the “total population” by states, and the apportionment should be based on the “whole number of persons” in each state as determined by the census.

Notably, until the president’s announcement in July, even other members of his administration acknowledged that apportionment must be based on all persons. The person tasked with overseeing the census — Secretary Ross — testified under oath during a congressional committee hearing last year that “[t]he constitutional mandate, sir, for the census is to try to count every person residing in the U.S. at their place of residence on the dates when the census is conducted” — making no mention of an individual’s legal status.

The coalition argues that the exclusion of undocumented immigrants from the apportionment base violates, Article I Section 2 of the U.S. Constitution, the Fourteenth Amendment, and the Census Act. Additionally, this exclusion conflicts with long-recognized Supreme Court precedent. The coalition asks the Supreme Court to require the president and his administration to adhere to their obligation to base congressional apportionment on “the whole number of persons in each state” and to forbid them from excluding undocumented immigrants from the apportionment base, just as the lower court did.

Joining Attorney General Connors and New York Attorney General James in today’s case were the attorneys general of Colorado, Connecticut, Delaware, Illinois, Maine,

Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and the District of Columbia. The attorneys general are joined by the cities of Central Falls, RI; Chicago, IL; Columbus, OH; New York, NY; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Providence, RI; Seattle, WA; the city and county of San Francisco, CA; Monterey County, CA; Howard County in Maryland; Cameron, El Paso, and Hidalgo Counties in Texas; and the bipartisan U.S. Conference of Mayors.

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