

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CITY OF SAN JOSE, CALIFORNIA, et al.,
Plaintiffs,
v.
DONALD J. TRUMP, et al.,
Defendants.

No. 20-CV-05167-RRC-LHK-EMC

STATE OF CALIFORNIA, et al.,
Plaintiffs,
v.
DONALD J. TRUMP, et al.,
Defendants.

No. 20-CV-05169-RRC-LHK-EMC

**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

Before: RICHARD R. CLIFTON, United States Circuit Judge
LUCY H. KOH, United States District Judge
EDWARD M. CHEN, United States District Judge

PER CURIAM.

1 On October 22, 2020, we granted Plaintiffs’ motion for partial summary judgment and
2 denied Defendants’ motion to dismiss, or in the alternative, motion for partial summary judgment.
3 *See City of San Jose v. Trump*, 20-cv-05167, ECF No. 101; *State of California v. Trump*, 20-cv-
4 05169, ECF No. 82.

5 Pursuant to Fed. R. Civ. P. 54(b), we certify that there is no just reason for delay. The
6 United States Supreme Court has scheduled oral argument and briefing in a case that challenges
7 the same July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from the
8 Apportionment Basis Following the 2020 Census (the “Presidential Memorandum”), which
9 declared that it is the policy of the United States to exclude from the apportionment base aliens
10 who are not in a lawful immigration status. *See Trump v. New York*, No. 20-366. In *New York*,
11 Appellants’ brief on the merits, and any amicus curiae briefs in support of appellants or in support
12 of neither party, shall be filed on or before Friday, October 30, 2020. Appellees’ briefs on the
13 merits, and any amicus curiae briefs in support of appellees, shall be filed on or before Monday,
14 November 16, 2020. The reply brief shall be filed by 2 p.m., Monday, November 23, 2020. Oral
15 argument is set for Monday, November 30, 2020. *See U.S. Supreme Court, Miscellaneous Order*
16 (Oct. 16, 2020).

17 Accordingly, final judgment is entered on the claims for which we granted partial summary
18 judgment. Specifically, final judgment is entered for Plaintiffs and against Defendants on the
19 following claims: (1) violation of the Apportionment and Enumeration Clauses of Article I,
20 Section 2 of the Constitution and Section 2 of the Fourteenth Amendment of the Constitution (*City*
21 *of San Jose Claim One; State of California Claim One*); (2) violation of the Census Act and the
22 Reapportionment Act (*City of San Jose Claim Three; State of California Claim Three*); and (3) the
23 separation of powers (*State of California Claim Two*). *See City of San Jose v. Trump*, 20-cv-05167,
24 ECF No. 46 (*City of San Jose Plaintiffs’ Amended Complaint*); *State of California v. Trump*, 20-
25 cv-05169, ECF No. 28 (*State of California Plaintiffs’ Amended Complaint*).

26 We hereby declare that the Presidential Memorandum is unlawful as a violation of the
27 Apportionment and Enumeration Clauses of Article I, Section 2 of the Constitution and Section 2

United States District Court
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1 of the Fourteenth Amendment of the Constitution; the Census Act; the Reapportionment Act; and
2 the separation of powers.

3 Finally, the Court issues the following permanent injunction:

4 The Court enjoins all Defendants other than the President from including in the
5 Secretary's report to the President pursuant to Section 141(b) any "information
6 permitting the President . . . to exercise the President's discretion to carry out the
7 policy set forth in section 2" of the Presidential Memorandum—that is, any
8 information concerning the number of aliens in each State "who are not in a lawful
9 immigration status under the Immigration and Nationality Act"—in the Secretary's
10 report to the President pursuant to 13 U.S.C. § 141(b) or otherwise as part of the
11 decennial census. Presidential Memorandum, 85 Fed. Reg. at 44,680 Presidential
12 Memorandum, 85 Fed. Reg. at 44,680. Instead, consistent with the Census Act, the
13 Secretary's Section 141(b) report shall include only "[t]he tabulation of total
14 population by States under" Section 141(a) "as required for the apportionment of
15 Representatives in Congress among the several States," 13 U.S.C. § 141(b)—that
16 is, "information tabulated according to the methodology set forth in [the Residence
17 Rule]," Presidential Memorandum, 85 Fed. Reg. at 44,680.

18 The Clerk shall close the file.

19 **IT IS SO ORDERED.**

20 Dated: October 22, 2020

21 _____
22 /s/
23 RICHARD R. CLIFTON
24 United States Circuit Judge

25 _____
26 /s/
27 LUCY H. KOH
28 United States District Judge

/s/

EDWARD M. CHEN
United States District Judge