

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STATE OF MISSOURI, DAVID MASON,
ANDREA MCCANN, JESSICA FISHER, and
PHILLIP FISHER,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, HOWARD W. LUTNICK in his
official capacity as Secretary of Commerce,
UNITED STATES CENSUS BUREAU, and
GEORGE COOK in his official capacity as Acting
Director of the U.S. Census Bureau,

Defendants.

Case No. 4:26-cv-00131 (JAR)

**MOTION FOR LEAVE TO FILE PROPOSED RESPONSE IN OPPOSITION TO
PLAINTIFFS' REQUEST FOR THREE-JUDGE PANEL BY NAACP INTERVENORS**

Proposed Intervenor National Association for the Advancement of Colored People (“NAACP”), National Association for the Advancement of Colored People Missouri State Conference (“Missouri NAACP”), Services, Immigrant Rights, and Education Network (“SIREN”), Massachusetts Immigrant and Refugee Advocacy Coalition (“MIRA”), H. Victoria Morgan, Gabe Reiss, Carrie Nicolas, Lucia Ornelas, and Veronica Zavala (collectively “NAACP Intervenor”) respectfully move the Court for leave to file a Proposed Response in Opposition to the Plaintiffs’ Request for a Three-Judge Panel. *See* ECF No. 3; *see also* Compl. at 94, ECF No. 1.

The Court has said that it is “awaiting any response to the request for a three-judge panel before it completes the analysis required by the statute.” ECF No. 46 at 2. The Court did not set a deadline for Defendants to respond. Defendants appeared by counsel on April 1, 2026, and

Plaintiffs filed a motion for immediate appointment of a three-judge panel the same day (which the Court denied). ECF No. 44; ECF No. 46. The local rules provide that responses are due two weeks after a motion, which would be April 15, 2026. *See* Local Rule 4.01(b).

NAACP Intervenors' motion to intervene, ECF No. 21, remains pending. To preserve their rights, avoid delay, and aid in the Court's decision-making, NAACP Intervenors move for leave to file a Proposed Response in Opposition to the Plaintiffs' Request for a Three-Judge Panel. NAACP Intervenors request that the Court accept this filing for consideration in the event that the Court grants their Motion to Intervene.

WHEREFORE, NAACP Intervenors respectfully request that the Court grant the motion for leave to file.

Dated: April 15, 2026

Respectfully submitted,

/s/ Abha Khanna

Abha Khanna*

ELIAS LAW GROUP LLP

1700 Seventh Avenue, Suite 2100

Seattle, WA 98101

Telephone: (202) 656-0177

akhanna@elias.law

David R. Fox*

Christopher D. Dodge*

Branden D. Lewiston*

Kevin R. Kowalewski*

ELIAS LAW GROUP LLP

250 Massachusetts Ave NW, Suite 400

Washington, DC 20001

Telephone: (202) 968-4490

dfox@elias.law

cdodge@elias.law

blewiston@elias.law

kkowalewski@elias.law

J. Andrew Hirth, #57807

TGH LITIGATION LLC

28 N. 8th St., Suite 200

Columbia, MO 65201
Telephone: (573) 256-2850
andy@tghlitigation.com

**Appearing pro hac vice*

Counsel for Proposed Intervenors

EXHIBIT 1

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INTRODUCTION

Plaintiffs’ assertion that “a three-judge court must be empaneled before this Court has jurisdiction,” ECF No. 44, gets things backwards. Jurisdiction comes first. “[A] three-judge court is *not* required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts.” *Shapiro v. McManus*, 577 U.S. 39, 44 (2015) (emphasis added) (quoting *Gonzalez v. Automatic Emps. Credit Union*, 419 U.S. 90, 100 (1974)). Accordingly, “an individual district court judge may consider threshold jurisdictional challenges prior to convening a three-judge panel.” *Wertheimer v. Fed. Election Comm’n*, 268 F.3d 1070, 1072 (D.C. Cir. 2001). Here, for the reasons given in the NAACP Intervenors’ proposed Motion to Dismiss, Plaintiffs’ claims are not justiciable for a host of reasons. *See* ECF No. 40-2 (“Mem. Supp. Mot. Dismiss”). There is therefore no need or reason to convene a three-judge court.

Moreover, a three-judge court is unlikely to be needed even if parts of Plaintiffs’ claims survive NAACP Intervenors’ threshold justiciability arguments. Plaintiffs are entitled to a three-judge court only if their action “challeng[es] the constitutionality of the apportionment of congressional districts.” 28 U.S.C. § 2284(a). But the crux of Plaintiffs’ complaint targets *census* practices with which they disagree. Plaintiffs admit as much—they repeatedly allege that decisions relating to the 2020 Census “caused” their injuries. Compl. ¶¶ 100, 174, 175, ECF No. 1. And Plaintiffs do not name as defendants the Clerk of the House of Representatives or the President—the two government actors who actually effectuate the apportionment of representatives between the states. *See* Mem. Supp. Mot. Dismiss at 3–4. Courts facing similar challenges to census practices that *affect* apportionment, but do not themselves *constitute* apportionment, have consistently held that § 2284 does not apply. *See Alabama v. U.S. Dep’t of Com.*, 493 F. Supp. 3d 1123, 1128 (N.D. Ala. 2020) (“Plaintiffs’ challenge to the Residence Rule is not a challenge to the

actual division of congressional districts but rather a challenge to a practice that might affect a future division of districts.”). The same conclusion follows here.

For both reasons, Plaintiffs’ request for a three-judge court should thus be denied.

BACKGROUND

On January 30, 2026, Plaintiffs filed their 12-count complaint, alleging that the “Residence Criteria” for the 2020 Census violated “Section 2 of the Fourteenth Amendment, the Census Clause of Article I, Section 2, the Electoral Apportionment Clause of Article II, Section I, 2 U.S.C. § 2a, and 13 U.S.C. § 141” because they count noncitizens in the decennial Census and, accordingly, include them in the tabulation base for apportionment. Compl. ¶ 164, ECF No. 1. Plaintiffs further allege that the 2030 Census will be unlawful for the same reasons. *Id.* ¶ 224.¹

Plaintiffs have asked the Court to appoint a three-judge court several times over. *E.g.*, Compl. at 94; ECF No. 3. On the same day that Defendants entered an appearance, Plaintiffs filed a “Motion for Appointment of Three-Judge Panel Under 28 U.S.C. § 2284,” requesting “immediate” appointment of a three-judge court and arguing “that a three-judge court must be empaneled before this Court has jurisdiction to grant Defendants’ motion for an extension of time or any other motion.” ECF No. 44. The Court denied the motion and stated that it will “make the requisite determination in due course and in accordance with the statute.” ECF No. 46 at 4. The Court further advised that it was “awaiting any response to the request for a three-judge panel before it completes the analysis required by the statute.” *Id.* at 2. The Court did not set a date for Defendants to respond to Plaintiffs’ request, and Defendants have not yet responded.

¹ On February 27, 2026, NAACP Intervenors moved to intervene. *See* ECF No. 21. Although the motion to intervene remains pending, NAACP Intervenors filed a proposed motion to dismiss on March 31, 2026. *See* Mem. Supp. Mot. Dismiss.

ARGUMENT

I. The Court must determine whether it has jurisdiction, including whether the complaint is justiciable, before ruling on the request for a three-judge court.

There is no need to convene a three-judge court in this case because Plaintiffs' claims are not justiciable in federal court at all. As explained in NAACP Intervenors' Proposed Motion to Dismiss, Plaintiffs' retrospective claims are non-justiciable because the injunction they request would not afford them relief and because federal law bars re-doing the last census or apportionment at this late date. *See* Mem. Supp. Mot. Dismiss at 3–6. Plaintiffs' prospective claims are, likewise, nonjusticiable because their claims rely on conjecture and speculation about the “rules and regulations that will govern the years-away 2030 Census” and thus do not allege a concrete injury sufficient for standing. *Id.* at 8–9. Moreover, Plaintiffs do not even name as Defendants the officials responsible for interstate apportionment—the President and the Clerk of the House of Representatives. *See Franklin v. Massachusetts*, 505 U.S. 788, 793 (1992); 2 U.S.C. § 2a. They therefore could not obtain relief that directly alters apportionment, so their apportionment-based injuries are not redressable in any event. *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) (“It is a federal court’s judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability.”). There is therefore no justiciable federal case or controversy before this Court.

“Without jurisdiction the court cannot proceed at all in any cause.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868)). “The requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’” *Id.* at 94–95 (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). Accordingly, “[i]t is well established that a court has a special obligation to consider whether it

has subject matter jurisdiction in every case.” *Hart v. United States*, 630 F.3d 1085, 1089 (8th Cir. 2011). This obligation includes the “concomitant responsibility” to consider jurisdiction *sua sponte* if a court believes jurisdiction may be lacking. *Id.*

Plaintiffs’ hasty push for immediate appointment of a three-judge court inverts this core jurisdictional principle. As this Court explained, *see* ECF No. 46, a district court does not instantly relinquish jurisdiction upon a request for a three-judge court pursuant to 28 U.S.C. § 2284. After all, “a district judge need not unthinkingly initiate the procedures to convene a three-judge court without first examining the allegations in the complaint.” *Shapiro*, 577 U.S. at 44. Indeed, as the Supreme Court has consistently held, “a three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts.” *Id.* at 44–45 (alteration omitted) (quoting *Gonzalez*, 419 U.S. at 100); *see also NAACP v. Merrill*, 939 F.3d 470, 475 (2d Cir. 2019) (per curiam) (applying Supreme Court precedent to hold that a complaint should not be referred to a three-judge court unless it is “justiciable and otherwise confers subject matter jurisdiction on the federal courts”).

The Court must therefore address the serious jurisdictional problems with Plaintiffs’ claims before appointing a three-judge court to decide their claims. *See Shapiro*, 577 U.S. at 44–45; *Ex parte Poresky*, 290 U.S. 30, 31 (1933) (“[T]he provision requiring the presence of a court of three judges necessarily assumes that the District Court has jurisdiction.”). If the Court concludes—as it should—that it does not have jurisdiction, it must then promptly dismiss Plaintiffs’ complaint under Rule 12(b)(1). *See, e.g., Larry v. Arkansas*, No. 4:18-CV-00116-KGB, 2018 WL 11579908, at *3 (E.D. Ark. Apr. 23, 2018) (single-judge district court dismissing a claim pursuant to Rule 12(b)(1) prior to acting on a request for a three-judge court).

This approach, required by Article III and Supreme Court precedent, has the added benefit of promoting judicial economy. If the Court holds that it is without jurisdiction and dismisses the case, it need not expend resources on whether Plaintiffs' claims require a three-judge court under 28 U.S.C. § 2284 or on convening a panel that will shortly be disbanded. If the Court determines that it has jurisdiction over *some* of the claims in Plaintiffs' 12-count complaint but not others, what claims are left may bear upon or simplify the 28 U.S.C. § 2284 analysis.

II. A challenge to a census practice is not a challenge to apportionment and does not require a three-judge court.

Even setting aside the jurisdictional defects in Plaintiffs' complaint, a three-judge court is still not warranted because Plaintiffs ultimately challenge the census residency criteria, and sue only census officials, so they do not directly challenge "the apportionment of congressional districts" as would be required to entitle them to a three-judge court. 28 U.S.C. § 2284(a).

"[T]he three-judge court statutes are to be applied literally and strictly to decrease the number of such panels convened." *Alsager v. Dist. Ct. of Polk Cnty. (Juv. Div.)*, 518 F.2d 1160, 1166 (8th Cir. 1975) (citing *Gonzalez*, 419 U.S. 90). "[A]ll the district judge must 'determin[e]' is whether the 'request for three judges' is made in a case covered by § 2284(a)—no more, no less." *Shapiro*, 577 U.S. at 46. This is a purely legal inquiry: "[§ 2284(a)] does not give a district court or a court of appeals a broad discretion to choose between a single judge or a three-judge court." *Armour v. Ohio*, 925 F.2d 987, 989 (6th Cir. 1991) (citing *Hamilton v. Mengel*, 629 F. Supp. 1110, 1112 (D. Utah 1986)).

Consistent with that guiding principle, and as this Court has noted, several courts have concluded that claims akin to Plaintiffs' do not require a three-judge court under 28 U.S.C. § 2284(a). *See* ECF No. 46 at 2. Most notably, the *Alabama* court, when addressing nearly carbon copy claims to the 2030 Census claims that Plaintiffs raise here, concluded that a three-judge court

was not warranted. 493 F. Supp. 3d at 1128. That case concerned a challenge to the Census Bureau’s “Residence Rule” for the 2020 Census, which the plaintiffs there said violated the Constitution because it counted noncitizens in the census figure used for apportionment. *Id.* The underlying theories in this case and *Alabama* are virtually identical: The *Alabama* plaintiffs alleged that “that the Residence Rule is unconstitutional because an apportionment of members of the House of Representatives and Electoral College votes among the states based on population figures which include illegal aliens would violate § 2 of the Fourteenth Amendment, Article I, § 2’s requirement of an ‘actual Enumeration’ of the population of the United States, and Article II, § 1 of the United States Constitution.” Am. Compl. ¶ 4, *Alabama v. U.S. Dep’t of Com.*, 2:18-cv-00772-RDP (N.D. Ala. Sep. 10, 2019), ECF No. 112. Here, similarly, Plaintiffs allege that the “Residence Criteria for the 2030 Census violate the Fourteenth Amendment by causing the upcoming decennial apportionment to include illegal aliens and temporary visa holders” and that the 2031 Apportionment would therefore unconstitutionally “award[] representation to . . . States based on that tainted apportionment base.” Compl. ¶¶ 179, 204, 209; *id.* ¶¶ 215, 220 (alleging that the Residence Criteria violate Article II, Section 1 in the same way). Both complaints therefore challenge a Census Bureau regulation (a regulation that does not exist presently in this case) that bears upon a future apportionment, rather than apportionment itself. As *Alabama* put it, “Plaintiffs’ challenge to the Residence Rule is not a challenge to the actual division of congressional districts but rather a challenge to a practice that might affect a future division of districts.” 493 F. Supp. 3d at 1128.

Alabama does not stand alone; a pair of decisions relating to the 1980 Census previously rejected convening three-judge courts for cases that principally challenge counting non-citizens in the apportionment base. In one case, a court found a three-judge court was improperly convened

because the challenged Census Bureau regulation would “produce data on which the apportionment of House of Representative members to states will be based” but did not otherwise challenge “any state action reapportioning congressional districts.” *Fed’n for Am. Immigr. Reform v. Klutznick*, 486 F. Supp. 564, 565 (D.D.C. 1980). In a parallel case, a single district court judge denied a request for a three-judge court because “the legal challenge must be to the final product—the apportionment—and not merely to the composition of an ingredient—the census—used in the product’s manufacture.” *City of Philadelphia v. Klutznick*, 503 F. Supp. 657, 658 (E.D. Pa. 1980).

The persuasive reasoning in these three cases forecloses convening a three-judge court to hear Plaintiffs’ challenges to census practices merely on the ground that those practices may affect, or may have affected, apportionment. As *Alabama* explains, accepting “Plaintiffs’ broad reading of § 2284(a)—that apportionment includes underlying conduct that may affect an apportionment—” would mean “there is hardly any challenge to a governmental practice potentially affecting a future apportionment that would not be required to be decided by a three-judge panel.” 493 F. Supp. 3d at 1130. And as the *Alabama* court noted, while three-judge courts were convened in other cases related to the 2020 Census, most of those cases failed to provide any statutory analysis for why the panel was warranted. *Id.* at 1128–29. The one court that offered its reasoning convened a three-judge court because it could not “definitively conclude that three judges are not required,” *id.* (internal quotation marks omitted) (quoting Request to the Chief Judge for a Three-Judge Panel, *New York v. Trump*, No. 20-cv-5770 (S.D.N.Y. Aug. 12, 2020), ECF No. 68), reasoning that is directly inconsistent with the test laid out in § 2284(a) and the Supreme Court’s command to determine “whether the ‘request for three judges’ is made in a case covered by § 2284(a)—no more, no less.” *Shapiro*, 577 U.S. at 44.

It makes no difference that Plaintiffs also purport to challenge the 2021 apportionment itself. Their basis for doing so still consists entirely of arguments about how the 2020 Census should have been conducted, along with a demand for an injunction “requiring Defendants to redo the 2020 Census” and to *then* “[c]alculate a new apportionment of seats in the House of Representatives” and “submit that apportionment calculation to the President for subsequent transmittal to the clerk of the House and, from him, to the States.” Compl., Prayer for Relief ¶ 4. But Plaintiffs have not sued the President or the Clerk of the House of Representatives—they have sued only census defendants, so they necessarily challenge only census actions by census actors. *See Brackeen*, 599 U.S. at 293 (holding that plaintiffs’ asserted injury was not redressable because they did not sue the parties that enforced the challenged law). Even their 2020 claims are therefore indistinguishable from the claims in *Alabama*—challenges to Census practices that Plaintiffs hope might influence apportionment, rather than direct challenges to the apportionment itself.

At bottom, Plaintiffs may frame their case as a challenge to the 2021 apportionment, but their claims are ultimately about nothing more than the Census Bureau’s practices. Applying the text of 28 U.S.C. § 2284(A) “literally and strictly,” *Alsager*, 518 F.2d at 1166, as this Court must, Plaintiffs’ claims do not challenge the constitutionality of “apportionment.”

CONCLUSION

NAACP Intervenors respectfully submit that the Court should reject Plaintiffs’ motion that the Court request a three-judge court under 28 U.S.C. § 2284(a).

Dated: April 15, 2026

Respectfully submitted,

/s/ Abha Khanna

Abha Khanna*

ELIAS LAW GROUP LLP

1700 Seventh Avenue, Suite 2100

Seattle, WA 98101

Telephone: (202) 656-0177

akhanna@elias.law

David R. Fox*

Christopher D. Dodge*

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Kevin R. Kowalewski*

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