

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 7. Mediation Questionnaire**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>*

**9th Cir. Case Number(s)**

**Case Name**

**Counsel submitting this form**

**Represented party/parties**

*Briefly describe the dispute that gave rise to this lawsuit.*

See Addendum A.

*Briefly describe the result below and the main issues on appeal.*

The three-judge district court below granted partial summary judgment to the plaintiffs, declaring that the Presidential Memorandum violates the Apportionment and Enumeration Clauses, U.S. Const. Art. I, § 2, Cl. 3 & Amdt. XIV, § 2; the Census Act, 13 U.S.C. § 141; the Reapportionment Act, 2 U.S.C. § 2a; and the separation of powers. The court also entered a permanent injunction against all defendants except the President. The main issues on appeal are: (1) whether the relief entered satisfies the requirements of Article III of the Constitution; and (2) whether the Memorandum is a permissible exercise of the President's discretion under the provisions of law governing congressional apportionment.

*Describe any proceedings remaining below or any related proceedings in other tribunals.*

See Addendum B.

**Signature**

**Date**

*(use "s/[typed name]" to sign electronically-filed documents)*

## ADDENDUM A

### City of San Jose, et al., v. Donald J. Trump, et al., No. 20-17104

*Briefly describe the dispute that gave rise to this lawsuit.*

The Constitution provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2. That apportionment is enabled by the Constitution's further requirement that a decennial census be conducted “in such Manner as [Congress] shall by Law direct.” *Id.* art. I, § 2, cl. 3. Congress in turn has directed the Secretary of Commerce to conduct the decennial census “in such form and content as he may determine,” 13 U.S.C. § 141(a), and has required the Secretary to report the “tabulation of total population by States” to the President, 13 U.S.C. § 141(b). The President then transmits to Congress “a statement showing the whole number of persons in each State” and “the number of Representatives to which each State is entitled under an apportionment” using a specified formula. 2 U.S.C. § 2a(a).

On July 21, 2020, the President issued a Presidential Memorandum explaining that “it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (citation omitted). The Memorandum directs the Secretary of Commerce to provide “information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy.” *Id.* Plaintiffs in this case challenge that Memorandum on a variety of constitutional and statutory grounds.

## ADDENDUM B

### City of San Jose, et al., v. Donald J. Trump, et al., No. 20-17104

*Describe any proceedings remaining below or any related proceedings in other tribunals.*

The district court granted summary judgment on some of plaintiffs' constitutional and statutory claims, and proceedings on the remainder of their claims are ongoing below. Defendants have also appealed directly to the Supreme Court from the decision of the three-judge district court below, *see* 28 U.S.C. § 1253, and proceedings are ongoing in that Court. *See* No. 20-561 (S. Ct.). In addition, the district court's opinion was entered in both this case and in a related case, and there is now a separate appeal in the related case pending before this Court, *see State of California v. Trump*, No. 20-17105. Finally, other challenges to the Presidential Memorandum on similar grounds remain ongoing in a number of other courts. *See New York v. Trump*, No. 20-366 (S. Ct.); *New York v. Trump*, No. 20-3142 (2d Cir.); *Common Cause v. Trump*, No. 20-cv-2023 (D.D.C.); *Useche v. Trump*, No. 8:20-cv-2225 (D. Md.); *La Union del Pueblo Entero v. Trump*, No. 8:19-cv-2710 (D. Md.); *Haitian-Americans United, Inc. v.* , No. 1:20-cv-11421 (D. Mass.).