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Founded in 1986, the Immigration Reform Law Institute (IRLI) is a public-interest legal education and advocacy law firm dedicated to achieving responsible immigration policies that serve national interests.

IRLI is a supporting organization of the Federation for American Immigration Reform.

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August 20, 2020

Hon. Richard C. Wesly
Hon. Peter W. Hall
Hon. Jesse M. Furman
U.S. District Court, Southern District of New York
40 Foley Square
New York, New York 10007

Re: *New York v. Trump*, No. 1:20 cv-5770-JMF (S.D.N.Y.); *New York Immigration Coal. v. Trump*, No. 1:20 cv-5781-JMF (S.D.N.Y.) : Immigration Reform Law Institute Motion for Leave to File *Amicus* Brief

Dear Judges Wesly, Hall, and Furman:

The Immigration Reform Law Institute (“IRLI”) respectfully moves this Court for leave to file a proposed *amicus* brief in support of the federal defendants’ combined cross-motion to dismiss and opposition to the plaintiffs’ motion for partial summary judgment or interim relief and (Dkt. No. 118). A copy of the proposed *amicus* brief is attached to this letter motion as an exhibit. IRLI’s counsel reached out to all parties by email dated August 13 and report as follows: (1) the defendants do not oppose the motion; (2) the governmental plaintiffs in No. 1:20 cv-5770 and the non-governmental plaintiffs in No. 1:20 cv-5781 consent to the motion.

Although no rules directly govern the filing of *amicus* briefs in district courts,¹ the courts have broad discretion to permit the filing of *amicus* briefs. *In re GLG Life Tech. Corp. Sec. Litig.*, 287 F.R.D. 262, 265 (S.D.N.Y. 2012). Indeed, this Court’s order dated August 17, 2020 (Dkt. No. 111), granted leave to file four *amicus* briefs in support of the plaintiffs. For the reasons set forth below, IRLI respectfully moves this Court for leave to file IRLI’s *amicus* brief on the important issues before this Court.

¹ Consistent with FED. R. APP. P. 29(a)(4)(E), counsel for movant authored this motion and brief in whole, and no counsel for a party authored the motion and brief in whole or in part, nor did any person or entity, other than the movant and its counsel, make a monetary contribution to preparation or submission of the motion and brief.

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IRLI is a nonprofit 501(c)(3) public interest law firm dedicated both to litigating immigration-related cases in the interests of United States citizens and to assisting courts in understanding federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of immigration-related cases, including an *amicus* brief in the district court proceedings in this litigation. For more than twenty years the Board of Immigration Appeals has solicited supplementary briefing, drafted by IRLI staff, from the Federation for American Immigration Reform, of which IRLI is a supporting organization.

By way of background, the plaintiffs challenge a memorandum that the President issued to establish “the policy of the United States to exclude” illegal aliens from the apportionment base “to the extent feasible and to the maximum extent of the President’s discretion under the law.” Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020). The plaintiffs have moved for partial summary judgment or a preliminary injunction, and the federal defendants have cross-moved to dismiss on jurisdictional grounds under FED. R. CIV. P. 12(b)(1) and for failure to state a claim on which relief can be granted under FED. R. CIV. P. 12(b)(6). Movant IRLI respectfully submits that its proffered *amicus* brief brings several relevant matters to the Court’s attention with respect to the merits issues under FED. R. CIV. P. 12(b)(6):

- **Only members of the national political community should be represented in the national government.** The IRLI *amicus* brief cites Supreme Court decisions and Founding-Era history for the proposition that only members of the “national political community”² should be represented in the national government. *See* IRLI *Amicus* Br. at 3-5.
- **Illegal aliens are not part of the national political community.** The IRLI *amicus* brief cites Supreme Court decisions and appellate decisions from other Circuits to show that illegal aliens are not part of the national political community, which the Census measures. *See* IRLI *Amicus* Br. at 5-8.

These issues are relevant to deciding the pending motions, and movant IRLI respectfully submits that filing the IRLI *amicus* brief will aid the Court.

² The phrase “national political community” comes from *Blumen v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

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For the foregoing reasons, movant IRLI respectfully requests that the Court grant leave to file the accompanying *amicus* brief.

Dated: August 20, 2020

Respectfully submitted,

/s/ Gina M. D'Andrea

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