

United States District Court  
Northern District of California

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.

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

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

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

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

of the Fourteenth Amendment of the Constitution; the Census Act; the Reapportionment Act; and the separation of powers.

Finally, the Court issues the following permanent injunction:

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

The Clerk shall close the file.

**IT IS SO ORDERED.**

Dated: October 22, 2020

/s/

RICHARD R. CLIFTON  
United States Circuit Judge

/s/

LUCY H. KOH  
United States District Judge

/s/

EDWARD M. CHEN  
United States District Judge