

**Written Statement of Louisiana Attorney General Jeff Landry
Before the U.S. House Oversight and Reform Committee
United States House of Representatives
December 3, 2020**

Chairwoman Carolyn Maloney, Ranking Member James Comer, and Members of the Oversight and Reform Committee, it is a privilege to appear before you today to discuss the 2020 census count.

Illegal Immigration Distorts Congressional Apportionment

As Attorney General of the State of Louisiana, I have a special interest in ensuring the accuracy and completeness of the 2020 census. The Committee is aware that Congressional Apportionment is tied directly to the results of the census. If a State's population increases as a result of the census, it receives proportionately more seats in the House of Representatives. Conversely, as a State's population decreases, it receives fewer seats and less representation. Because the size of the House is capped at 435 Members, Congressional Apportionment is a zero-sum game: One State's gain is another State's loss.

As the Supreme Court has recognized,¹ few interests are more vital to a State than the extent of its representation in the House. And for this reason, I am especially concerned about the impact of illegal immigration

¹ *Utah v. Evans*, 536 U.S. 452, 462–63 (2002).

on the census count. Illegal immigration throws a wrench into the machinery of Congressional Apportionment. Illegal immigrants must be excluded from the census count, otherwise they distort the apportionment because States with large bodies of illegal immigrants will receive greater representation in the House.

States enacting so-called “sanctuary policies” in direct violation of federal law should not be rewarded for their defiance with extra representation. And yet, that is exactly the result we see in the data. The United States Department of Homeland Security has observed that sanctuary policies create a “pull factor’ that increases illegal immigration.”² If illegal immigrants are not excluded from the 2020 census, Ohio, Alabama, and Minnesota are likely to each lose a seat in the House. California, New York, and Texas are likely to pick up those extra seats.

Allowing illegal immigration to distort Congressional Apportionment works an injustice to every State, not just those bound to lose seats in the House. This is true because a State with fewer

² See Department of Homeland Security, *To Make America Safe Again, We Must End Sanctuary Cities and Remove Criminal Aliens* (Feb. 15, 2018), <https://www.dhs.gov/news/2018/02/15/make-america-safeagain-we-must-end-sanctuary-cities-and-remove-criminalaliens>.

unauthorized immigrants contains a greater population of eligible voters than a State with relatively more unauthorized immigrants. For this reason, votes of the people in States with fewer unauthorized immigrants are diluted. The Supreme Court has held that the Constitution requires congressional districts to be drawn in a manner that gives each vote equal weight.³ An apportionment that excludes unauthorized immigrants would fix this vote dilution problem.

President Trump’s Memorandum to the Secretary Is Lawful

Fortunately, President Donald Trump has recognized the importance of ensuring an accurate and fair census and apportionment. The President issued a Memorandum for the Secretary of Commerce on July 21, 2020, entitled *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*.⁴ President Trump’s Memorandum correctly explains that “States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives.” The Memorandum directs the Secretary to “take all appropriate action,

³ *Wesberry v. Sanders*, 376 U.S. 1 (1964).

⁴ 85 FR 44679.

consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to" exclude illegal aliens from the apportionment base.

The President's Memorandum is now the subject of litigation before the United States Supreme Court. But, in my view, the President clearly has legal authority to issue his Memorandum to the Secretary of Commerce.

The Founders understood that conducting a census would not be an easy task. For that reason, the Constitution gives Congress broad authority to regulate the details of that great undertaking.⁵ Specifically, the Constitution decrees that "[t]he actual Enumeration shall be made . . . in such Manner as [Congress] shall by Law direct." Congress, in turn, has given the Secretary of Commerce tremendous power to take the census "in such form and content as he may determine."⁶ The Supreme Court has explained that, when determining apportionment, the

⁵ U.S. Const. art. I, § 2, cl. 3.

⁶ 13 U.S.C. § 141.

Secretary has license to wield his broad authority to employ policy decisions that promote equality.⁷

Excluding unauthorized immigrants from the apportionment base unquestionably promotes equality because doing so prevents vote dilution and discourages unlawful sanctuary policies. For this reason, I submitted an *amicus curiae* brief on behalf of nine States to the Supreme Court to encourage the Court to uphold the lawfulness of President Trump's Memorandum.

Conclusion

The State of Louisiana, along with numerous other States, are grateful for the leadership of President Trump as he promotes equality by combatting illegal immigration. I hope the Supreme Court will uphold his Memorandum by following the plain language of the Constitution and federal statutes granting the Secretary broad authority to administer the census and apportionment.

Thank you, and I look forward to answering your questions.

⁷ *Franklin v. Massachusetts*, 505 U.S. 788 (1992).