

# Dept. of Justice: AG Kaul joins lawsuit against President Trump for illegally seeking to exclude undocumented immigrants from congressional apportionment

Posted on Monday, Aug 3, 2020

**>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

MADISON, Wis. – Wisconsin Attorney General Josh Kaul today joined a large coalition of states, cities, and counties in filing a lawsuit against President Donald Trump for attempting to, once again, illegally leave millions out of the apportionment base that establishes the number of members in the House of Representatives that each state receives. The lawsuit seeks to stop the Trump Administration from politicizing the census and violating basic constitutional commands, and instead aims to ensure the administration counts the “whole number of persons” residing in the country for apportionment, as the U.S. Constitution unambiguously requires.

“President Trump is again trying to rig the Census, ignoring the plain language of the Constitution and how the Census has been conducted for decades,” said AG Kaul. “We’re joining more than 20 other states, several cities and counties, and the United States Conference of Mayors to work to stop that from happening.”

The Constitution is abundantly clear: For purposes of apportioning members of the House of Representatives among the states, every person residing in the U.S. during the census, regardless of legal status, must be counted. But, on July 21, 2020, President Trump declared, in a presidential memorandum, his intent to exclude undocumented immigrants from the apportionment base — the first time such action has been taken in our nation’s history.

This recent effort by President Trump and his administration to exclude undocumented immigrants from the apportionment base is just the latest in the Trump Administration's illegal maneuvers to manipulate the census count and congressional apportionment. In 2018, Secretary Ross directed the Census Bureau to use the 2020 Decennial Census to demand information on the citizenship status of every resident in the country. After a legal battle that made its way through multiple federal courts last year, the U.S. Supreme Court ruled in favor of the plaintiffs and prohibited the Trump Administration from adding a citizenship question to the census. But the president's proclamation this week lays bare the real reason driving the addition of a citizenship question to the census: To exclude undocumented persons from the "whole number of persons" that constitutes the apportionment base and to discriminate against Hispanics and noncitizens.

The Fourteenth Amendment clearly states that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State..." The framers of the Fourteenth Amendment deliberately chose the phrase "whole number of persons" to refer to *all* persons living in each state — including the entire immigrant population. In fact, as James Madison explained at this country's founding, the "fundamental principle" of the Constitution ensures that "the aggregate number of representatives allotted to the several states, is to be...founded on the aggregate number of inhabitants." More than 200 years of history, practice, and judicial and administrative precedents have since established that the apportionment of representatives must be based on all persons living in each state, regardless of their citizenship or immigration status.

Finally, until the president's announcement, even other members of his administration have acknowledged that apportionment must be based on all persons. The person tasked with overseeing the census — Secretary Ross — testified under oath last year during a congressional committee hearing that "The constitutional mandate, sir, for the census is to try to count every person residing in the U.S. at their place of residence on the dates when the census is conducted" — making no mention of an individual's legal status.

In the lawsuit — filed against President Trump, the U.S. Department of Commerce, the U.S. Census Bureau, Commerce Secretary Wilbur Ross, and Census Director Steven Dillingham, and joined by 24 attorneys general, nine cities, four counties, and one combined city and county — the coalition argues that apportionment based on a population count that unlawfully excludes undocumented immigrants will:

- Lead to the loss of congressional seats and presidential electors in the Electoral College,
- Skew the division of electoral districts within jurisdictions by impairing state and local redistricting efforts that rely on the census count,
- Reduce federal funds to state and local jurisdictions by deterring immigrants from responding to the decennial census that is currently underway, and
- Degrade the quality of census data that states and local jurisdictions rely on to perform critical governmental functions.

The coalition also makes clear in this lawsuit that public statements and actions by President Trump and his administration have established that the rationale for excluding undocumented immigrants from the apportionment base has always been motivated by racial animus against immigrants of color, and a desire to curb the political power of immigrant communities of color. The president's memorandum explicitly states that the Trump Administration's goal is to reduce political influence and congressional representation to jurisdictions with a larger share of undocumented immigrants. Further, the president's announcement is clearly intended to promote fear and deter participation in the census by immigrants and their families, as it comes just weeks before enumerators are scheduled to go into the field to encourage households to respond to the census.

The coalition specifically argues that the exclusion of undocumented immigrants from the apportionment base violates the Fourteenth Amendment; the Due Process Clause of the Fifth Amendment; the Tenth Amendment; the Administrative Procedure Act; and Census Act, by being both contrary to law and arbitrary and capricious. Additionally, this exclusion conflicts with long-recognized Supreme Court precedent. Attorney General Kaul and the coalition ask the court to force the president and his administration to hold to their obligation to base congressional apportionment on "the whole number of persons in each state" and to forbid them from excluding undocumented immigrants — or any other person — from the apportionment base.

Attorney General Kaul joined this lawsuit with attorneys general of Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia. The attorneys general are joined by the cities of Central Falls, RI; Chicago, IL; Columbus, OH; New York, NY; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Providence, RI; Seattle, WA; and the city and county of San Francisco.

Additionally, Cameron, El Paso, and Hidalgo Counties in Texas, Monterey County in California, and Howard County in Maryland have joined the lawsuit. Also joining is the U.S. Conference of Mayors.