

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023- CRC-GGK-DLF

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Earlier today, a three-judge panel of the United States District Court for the Northern District of California issued its unanimous decision in another challenge to the Memorandum. *See City of San Jose et al. v. Trump et al.*, No. 5:20-cv-05167, Dkt. 101 (slip opinion attached).

As to standing, the panel found a sufficient “likelihood” of two forms of injury: apportionment harm (*i.e.*, loss of representation in Congress) and “census degradation” harm. *Id.* at 24-25. The latter entails a variety of harms stemming from the exclusion of undocumented immigrants from the census count that are independent of congressional apportionment, including vis-à-vis “local redistricting (by diluting the political power of areas with high concentrations of [undocumented] immigrants), state and local governments’ share of federal funding, and state and local governments’ ability to perform critical government functions.” *Id.*¹ The panel rejected the Government’s argument that the Memorandum’s “savings clause” negated standing, pointing to (among other things) the President’s history of statements “ma[king] clear his com-

¹ Notably, while motion practice in this case has focused on apportionment injury, Plaintiffs have pleaded harms identical to those that the *San Jose* panel addressed under the banner of “census degradation” injury. *See* 2d Am. Compl. ¶¶ 150-52 (dilution of political power independent of congressional apportionment), ¶¶ 165-72 (loss of government funds and diminished ability to provide municipal services, also independent of congressional apportionment).

mitment” to carrying out the Memorandum; the Administration’s recent statement of “inten[t] to vindicate [the President’s] policy determination”; the Government’s recent representations to the Supreme Court; the sheer “breadth” of administrative data that the Government has collected to implement the Memorandum; and the Government’s failure to “offer[] any evidence that there are any significant impediments to fulfilling” the Memorandum in its entirety. *Id.* at 30-35.

The panel also found the plaintiffs’ claims prudentially ripe, noting that the issues raised were “particularly fit for judicial decision because they are purely legal in nature,” *id.* at 40, and that postponing review would “impact[] the states’ ability to [timely] do redistricting for upcoming elections in 2021 and 2022,” *id.* at 42-43.

As to the merits, the panel rejected the Government’s “facial challenge” argument—*i.e.*, that the plaintiffs’ challenge must fail if the Memorandum may be lawfully applied *to anyone*. *Id.* at 68-69. It then found that “[t]he Constitution’s text, drafting history, 230 years of historical practice, and Supreme Court case law all support the conclusion” that the Memorandum violates Article I and the Fourteenth Amendment. *Id.* at 45-72. It further held that the Memorandum violates 13 U.S.C. § 141 and 2 U.S.C. § 2a, agreeing with the statutory analysis in *New York v. Trump*. *Id.* at 72-86. And it rejected the Government’s arguments based on *Franklin v. Massachusetts*, 505 U.S. 788 (1992), finding that “[i]f anything,” *Franklin* supported the plaintiffs’ position, not the Government’s. *Id.* at 70-72, 77-79.

Finally, as to remedies, the panel issued a declaratory judgment that “[t]he policy announced in the Memorandum is unlawful under the Constitution and the applicable statutes,” *id.* at 87, as well as a permanent injunction prohibiting the Commerce Department defendants (*i.e.*, all defendants other than the President) from providing information concerning undocumented immigrant populations either in “the Secretary’s December 31, 2020 Section 141(b) report to the

President” or in “any reports otherwise provided by the Secretary as part of the decennial census.” *Id.* at 88-89. In this latter respect, the injunction was broader than that granted by the court in *New York v. Trump*, to account for the fact that the Census Bureau now apparently plans to provide the information requested by the Memorandum in piecemeal fashion. *Id.*

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