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New Trump order excluding non-citizens from census could cost Texas a seat in Congress

Census data is used to allocate U.S. House seats and \$1.5 trillion in federal spending, and Texas' high rate of undocumented residents puts it in the crosshairs more than most states.



President Donald Trump speaks during a news conference at the White House, Tuesday, July 21, 2020.(Evan Vucci)

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WASHINGTON — Rebuffed by the Supreme Court over an effort to include a citizenship question on the 2020 Census, President Donald Trump signed an order Tuesday to exclude non-citizens when the once-a-decade population count is used to allocated seats in Congress.

Texas' rapid population growth [means the state could gain three seats](#) in the U.S. House for the coming decade, more than any other state.

But that hinges on including an estimated 1.6 million residents who are in the country without authorization. Texas has more per capita than most states, and excluding those people could cost Texas a seat, experts say likely a new Dallas-area district that could elect the first Hispanic member of Congress from North Texas.

The memo is legally dubious, given that Trump is ordering the Census Bureau to do something the Supreme Court explicitly said it could not do: collect data aimed at separately counting citizens and non-citizens, in order to subtract the latter from population totals.

“For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status,” Trump’s memo says.

“If they don’t count Latinos in all our complexity, we lose one congressmen who would probably be Latino,” said Ramiro Luna-Hinojosa, a veteran of many political campaigns in Texas and Arizona who has been canvassing neighborhoods to pump up participation in the census through an organization called Somos Tejas.

“Really what he is trying to do is devalue the Latino vote,” said Luna-Hinojosa, a Mexican immigrant who holds a work permit through the Obama-era Deferred Action for Childhood Arrivals program, or DACA. “He is not the supreme ruler of everything. We deserve to be counted. Our community deserves representation. We can’t be bullied.”

Texas has had 36 seats in the U.S. House since the 2010 census, second only to California, whose congressional delegation isn’t expected to grow or shrink.

An undercount of just 51,000 people in Texas could be the difference between two or three new seats, according to a December analysis from Election Data Services. And advocates fear that if Trump can exclude people for this purpose, Texas could also lose out on its share of federal funding for schools, roads and other projects.

“You don’t know what the undercount is,” said Michael Li, senior counsel for the Brennan Center for Justice’s Democracy Program. “My guess now is that Texas will do worse than other states because it’s not spending on outreach, it has a large undocumented population and it’s dealing with a pandemic.”



Eli Thonginh, 19, filled out raffle information at a Dallas County census booth earlier this month at an event to encourage residents to take part in the once-a-decade population count. (Ben Torres / Special Contributor)

“Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would ... create perverse incentives encouraging violations of Federal law,” reads the presidential memorandum. “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.”

Challenges loom

Democrats and a host of advocacy groups vowed to fight the order in court, including the League of United Latin American Citizens.

“It is un-American to deny millions of people living in the United States access to health care, education and even representation,” said LULAC national president Domingo Garcia, a Dallas attorney.

With the census already well underway, the practical challenges of implementing that policy loom large, along with the legal obstacles.

Census-takers haven’t been asking about citizenship, so immigrant advocates and others note that any effort to exclude non-citizens would require estimates that could be unreliable — even if the president’s order passes legal muster, which they insist it does not.

“This amounts to nothing less than cooking the numbers for partisan benefit,” said Arturo Vargas, CEO of the National Association of Latino Elected and Appointed Officials Educational Fund.

“This order is a scare tactic to keep the Texas immigrant community from getting the resources and political power it deserves,” said Celia Cole, CEO of Austin-based Feeding Texas, a nonprofit network of food banks.

There are about 475,000 unauthorized immigrants in the Dallas-Fort Worth area, and 1.6 million statewide, [according to the Pew Research Center](#).

Last year, the Supreme Court struck down the administration’s attempt to include a citizenship question on census questionnaires. Democrats view Trump’s move not only as an effort to circumvent that ruling but to throw political red meat to his anti-immigrant base and sow mistrust in immigrant communities.

Illinois Sen. Dick Durbin, a Democrat, called Trump’s order “nothing more than another partisan, fear-mongering press release to discourage immigrants from participating in the census.”



Since the last census in 2010, Texas has had 36 seats in the U.S. House, second only to California. (TNS)

Speaker Nancy Pelosi vowed that the Democrat-controlled House will fight the edict and accused him violating the Constitution and federal law by trying to exclude non-citizens, as part of a “cruel anti-immigrant agenda.”

Democrats also ascribed political motivations, calling it an obvious attempt by Trump to gin up enthusiasm with his base as polls show him lagging with about 100 days to go before Election Day.

“Trump’s latest racist attempt to undercount Texans comes at a steep cost,” said Texas Democratic Party Chair Gilberto Hinojosa, challenging Gov. Greg Abbott and other Republican state officials to fight for a full count to ensure that Texas gets the clout it deserves in Washington. “If Trump is allowed to exclude people from the census count, there is no state harmed more than Texas.”

The pandemic has made it harder for advocacy groups to reach immigrant families and educate them about the census.

Luis Figueroa, legislative and policy director for Every Texan, an Austin-based public policy nonprofit, said Trump’s memo would impose yet another obstacle that could keep immigrants and mixed-status families from being counted.

“The fear and the message are more devastating than the actual policy,” he said.

Texas Counts, the statewide nonprofit created to promote a complete census count, estimates that Texas stands to lose about \$300 million every year for the next 10 years if just 1% of the population is undercounted.

Figueroa said that it’s unfortunate that the census has become a political game because the data collected will be used for the next 10 years to distribute funds to publicly funded programs across the state, like housing vouchers, food stamps and the Women Infants and Children program.

“Ultimately there’s a fear that it’ll mean less money for programs, less investment and less representation, and that hurts all Texans,” he said.

Dale Ho, director of the ACLU’s Voting Rights Project, who argued the Supreme Court case blocking the administration from adding a citizenship question to the 2020 Census, maintained that there’s no latitude.

“The Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose,” he said. “His latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional. We’ll see him in court, and win, again.”

Soco Perales, an organizer with Dallas Area Interfaith, said that organizers will continue to encourage immigrant families to cooperate with the Census.

“That information cannot be shared” with immigration authorities, she said. “Everybody still needs to be counted and it is still safe.”