



Written by [Luis Miguel](#) on December 19, 2020

SCOTUS Gives Trump Momentary Win, Tosses Challenge to Excluding Illegals From Census

The Supreme Court delivered the president a win this week by declining to issue a ruling on whether the Trump administration may direct that illegal aliens be excluded from the census count for the purpose of determining congressional representation.

The court's majority released an unsigned [opinion](#) on Friday stating that issuing a ruling at this time would be premature because it cannot yet be ascertained in what manner the administration will implement President Trump's directive, as outlined in a memo he signed in July.



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Thus, there is presently no redressable injury.

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"At present, this case is riddled with contingencies and speculation that impede judicial review," the court's unsigned opinion read.

"The President, to be sure, has made clear his desire to exclude aliens without lawful status from the apportionment base. But the President qualified his directive by providing that the Secretary should gather information 'to the extent practicable' and that aliens should be excluded 'to the extent feasible,'" it continued. "Any prediction of how the Executive Branch might eventually implement this general statement of policy is 'no more than conjecture' at this time."

A minority opinion authored by Justice Stephen Breyer and co-signed by Justices Elena Kagan and Sonia Sotomayor [said](#) that "The plain meaning of the governing statutes, decades of historical practice, and uniform interpretations from all three branches of Government demonstrate that aliens without lawful status cannot be excluded from the decennial census solely on account of that status. The Government's effort to remove them from the apportionment base is unlawful, and I believe this Court should say so."

According to the Census Bureau's website, the census numbers must be delivered to the president by the end of the month. He must then give the numbers to Congress within a week of the next session's opening in early January. Within 15 days of that, the clerk of the House must inform governors how many House members their individual states will have during so the states can go ahead with their apportionment, a process carried out by state legislatures.

Since the numbers have not even been delivered yet, the court argued that it is not even certain to what degree the government will carry out the instructions in the president's memo.

"Everyone agrees by now that the Government cannot feasibly implement the memorandum by excluding the estimated 10.5 million aliens without lawful status," the majority opinion later said. "Yet the only evidence speaking to the predicted change in apportionment unrealistically assumes that the President will exclude the entire undocumented population."



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While the high court's decision marks a win for the president, it is only a narrow and temporary one. The above language suggests that even the conservative majority wouldn't go along with President Trump if he attempted to exclude all illegal aliens from being counted in the census. That is, if he tries to prevent their being counted, it would have to be on a limited basis if he wants to avoid getting shot down by the Supreme Court in the future.

In fact, left-wing pro-migration advocates are already boasting that they still have an opportunity to win down the line. Dale Ho of the ACLU's Voting Right Project declared that his group will return to court once more clarity exists on the government's actions.

"This Supreme Court decision is only about timing, not the merits," Ho said. "This ruling does not authorize President Trump's goal of excluding undocumented immigrants from the census count used to apportion the House of Representatives. The legal mandate is clear — every single person counts in the census, and every single person is represented in Congress. If this policy is ever actually implemented, we'll be right back in court challenging it."

Nevertheless, the administration celebrated the Supreme Court's decision.

"We are pleased that today's ruling clears the way for the Commerce Department to continue its work on the census and send its full tabulation to the President," DOJ spokesperson Mollie Timmons said in a statement.

It also remains to be seen how the results of the election will impact the policy; should President Trump fail to pull off a Hail Mary and secure a second term, it's possible that the census numbers could be delayed long enough for them to arrive after Joe Biden is in the White House, and the Democrat would almost certainly discard President Trump's directive.



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