



Written by [Luis Miguel](#) on December 1, 2020

SCOTUS Hints at Ducking Illegal-alien Census Debate for Now, Giving Trump Momentary Win

The Supreme Court this week appeared inclined to refrain from issuing an immediate ruling to stop President Trump's plan to count and then subtract illegal aliens from the Census for the purpose of divvying up congressional seats and federal funds.

The 6-3 conservative majority court on Monday seemed to be willing to let the administration tally some of the illegal population for the 2020 census. Overall, however, the opinion was to defer future challenges about how that data could be used to determine House seats among the states, one of the primary motivators in the White House's desire to count and exclude illegal aliens.



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If the administration successfully went through with its aims, it could deal a blow to states such as California that boast huge illegal-alien populations.

During more than an hour of hearing over-the-phone arguments, the high court's justices expressed doubt that the government has time to fulfill its goal in what may be the closing days of the Trump presidency. Samuel Alito, one of the court's constitutionalist justices, said it would be a "monumental task" to complete such a count by December 31.

Several states, including New York, want the Supreme Court to affirm a lower court decision and block the White House plan.

Some of the justices implied that if the government does not go forward with its proposal to exclude all illegal aliens from the census, then the challengers would not be able to show that they had the legal injury necessary to bring the case. The court could rule that the case is therefore premature and sidestep a decision on the legality of Trump's plan — a very narrow victory for the president.

"We don't know what the President is going to do, we don't know how many aliens will be excluded," said Chief Justice John Roberts.

At one point, Trump appointee Amy Coney Barrett suggested that the Founders intended for all residents to be counted in the Census, so that excluding illegal aliens may not pass the constitutionality test.

"A lot of the historical evidence and longstanding practice really cuts against your position," she told an administrative lawyer.

Justice Brett Kavanaugh agreed that the challengers have "advanced forceful constitutional and statutory arguments" against the "categorical exclusion of all unlawful non-citizens," but said he wasn't sure that the government was going to go that far. He further noted that if the Trump administration



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ultimately chose not to exclude all illegal aliens, new challenges would inevitably arise.

“The 2020 Census is about power and money,” [said](#) Thomas Wolf, senior counsel for the Brennan Center, adding that “These numbers will determine how seats in Congress are split up over the next 10 years which will determine the political power that communities will have for the next decade and will determine whether they receive their fair share of the \$1.5 trillion that is annually distributed by the federal government.”

President Trump’s effort faces some roadblocks. For one, Census officials have indicated they are having difficulties processing census responses to produce the final count. If the numbers aren’t transferred to the president until after inauguration day on January 20 (assuming the president is unable to win in his voter-fraud case before the Electoral College makes a Biden win official), the entire case could be moot because a President Biden would almost certainly not carry out the Trump administration’s proposal.

The president issued a memo in July outlining a new policy requiring illegal aliens to be excluded from the apportionment base. It instructed the commerce secretary to submit two different numbers to the president. The first is the census count. The second is the count with illegals excluded. The government says other administrative records could be used to determine individuals’ immigration status.

Acting Solicitor General Jeffrey Wall on Monday urged the court to wipe away lower court opinion that went against the administration because it has yet to determine the exact number of individuals it might seek to exclude. He left open the possibility of a post apportionment challenge.

This is the second time in two terms that the Supreme Court has taken on the 2020 Census. Back in September, the court voted in a 5-4 decision (Roberts sided with the four liberal justices) to strike down the citizenship question that President Trump wanted to add to the census.

It remains uncertain how immigration-related cases would fare now that conservative Barrett has since replaced longtime liberal justice Ruth Bader Ginsburg.



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