

Enjoining Truncated Data Collection for the 2020 Census

National Urban League v. Ross
(*Lucy H. Koh, N.D. Cal. 5:20-cv-5799*)

An August 2020 federal complaint filed in the Northern District of California challenged a recent decision to cut short data collection for the 2020 census. A temporary restraining order issued eighteen days later enjoined the truncated data-collection schedule. Another nineteen days later, the district court issued a preliminary injunction, but nineteen days after that, the Supreme Court stayed the injunction. Following an amended complaint and a January 2021 change in administration, the case was resolved by settlement.

Subject: District lines. *Topics:* Malapportionment; Covid-19; case assignment.

According to a federal complaint filed in the Northern District of California on August 18, 2020,

This lawsuit challenges the unconstitutional and illegal decision by Secretary of Commerce Wilbur Ross, and Census Bureau . . . Director Steven Dillingham to sacrifice the accuracy of the 2020 Census by forcing the Census Bureau to compress eight and a half months of vital data-collection and data-processing into four and a half months, against the judgment of the Bureau’s staff and in the midst of a once-in-a-century pandemic.¹

The initial plaintiffs in the action were three organizations, two counties, three cities, and two county officials.² Three days later, the court assigned the case to Judge Lucy H. Koh as related to two cases already pending before her,³ and Judge Koh scheduled a case-management videoconference for August 26.⁴

The related cases, which included some plaintiffs in the new case, challenged President Trump’s decision to exclude unauthorized immigrants from Congressional apportionment counts.⁵ A three-judge district court determined on October 22 that excluding unauthorized immigrants from House of Representatives apportionments “has already been rejected by the

1. Complaint at 1, *Nat’l Urban League v. Ross*, No. 5:20-cv-5799 (N.D. Cal. Aug. 18, 2020), D.E. 1.

2. *Id.* at 7–12.

3. Order, *id.* (Aug. 21, 2020), D.E. 29; *see* Judicial Referral, *id.* (Aug. 18, 2020), D.E. 6 (referral by the assigned magistrate judge for possible relatedness).

Judge Koh was elevated to the court of appeals on December 14, 2021. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

4. Order, *Nat’l Urban League*, No. 5:20-cv-5799 (N.D. Cal. Aug. 21, 2020), D.E. 31; *see* Transcript, *id.* (Aug. 26, 2020, filed Sept. 3, 2020), D.E. 65.

5. Amended Complaint, *California v. Trump*, No. 5:20-cv-5169 (N.D. Cal. Aug. 24, 2020), D.E. 28; Amended Complaint, *City of San Jose v. Trump*, No. 5:20-cv-5167 (N.D. Cal. Aug. 18, 2020), D.E. 46.

Constitution, the applicable statutes, and 230 years of history.”⁶ The Supreme Court, however, ordered the case dismissed on December 28 for lack of jurisdiction.⁷ Ten days before that, the Supreme Court concluded in a case arising in the Southern District of New York, “Everyone agrees by now that the Government cannot feasibly [exclude] the estimated 10.5 million aliens without lawful status.”⁸ It was no more than speculative whether the government would attempt to exclude unauthorized immigrants from apportionment.⁹

Meanwhile, the plaintiffs in the August 18 case filed an amended complaint adding additional plaintiffs on September 1¹⁰ and a motion for a temporary restraining order (TRO) on September 3.¹¹ Judge Koh heard the motion on Friday, September 4.¹²

On Saturday, September 5, Judge Koh issued a TRO enjoining the Census Bureau from “winding down or altering any Census field operations” until a September 17, 2020, preliminary-injunction hearing.¹³

The government defendants briefed the court on their compliance efforts on Tuesday, the day of a case-management conference:¹⁴

Immediately upon receiving the TRO around 10 p.m. Eastern time on September 5, Defendants began taking steps to determine what concrete efforts would be required for Defendants to come into compliance with the TRO.

...

The night of Sunday, September 6, Defendants transmitted a detailed list of instructions to Regional Directors regarding what steps the field offices must take and what they must refrain from doing to comply with the TRO. . . .

Defendants understand that, by its terms, the TRO is effective until the Court holds the scheduled preliminary injunction hearing on September 17, 2020. Defendants will fully comply with the TRO in the meantime. If the Court intends to extend the TRO or otherwise believes that the effect of the TRO lasts beyond September 17, Defendants respectfully request that the

6. *City of San Jose v. Trump*, 497 F. Supp. 3d 680, 687 (N.D. Cal. 2020).

7. *Trump v. City of San Jose*, 592 U.S. ___, 141 S. Ct. 1231 (2020).

8. *Trump v. New York*, 592 U.S. ___, ___, 141 S. Ct. 530, 536 (2020), *vacating* 485 F. Supp. 3d 422 (S.D.N.Y. 2020); *see New York v. Trump*, 490 F. Supp. 3d 736 (S.D.N.Y. 2020) (denying a stay); Docket Sheet, *New York v. Trump*, No. 1:20-cv-5770 (S.D.N.Y. July 24, 2020).

9. *Trump*, 592 U.S. at ___, 141 S. Ct. at 535–36.

10. Amended Complaint, *Nat’l Urban League v. Ross*, No. 5:20-cv-5799 (N.D. Cal. Sept. 1, 2020), D.E. 61 (adding as plaintiffs an organization, a California city, a California county, and two American Indian entities); *see Nat’l Urban League v. Ross*, 489 F. Supp. 3d 939, 950 (N.D. Cal. 2020); *Nat’l Urban League v. Ross*, 484 F. Supp. 3d 802, 804 (N.D. Cal. 2020).

11. Temporary-Restraining-Order Motion, *Nat’l Urban League*, No. 5:20-cv-5799 (N.D. Cal. Sept. 3, 2020), D.E. 66.

12. Transcript, *id.* (Sept. 4, 2020, filed Sept. 5, 2020), D.E. 82.

13. *Nat’l Urban League*, 484 F. Supp. 3d at 808; *see Bob Egelko, Judge Halts Shutdown of Census Bureau Tally*, S.F. Chron., Sept. 7, 2020, at B1.

14. Transcript, *Nat’l Urban League*, No. 5:20-cv-5799 (N.D. Cal. Sept. 8, 2020, filed Sept. 11, 2020), D.E. 98.

Court convert the TRO to a preliminary injunction now in order to afford adequate time for any appellate review.¹⁵

On September 14, Judge Koh set the case for a hearing the following afternoon regarding allegations of the defendants' noncompliance.¹⁶ On September 17, Judge Koh extended the TRO seven days and reset the preliminary-injunction hearing for September 22 because of the defendants' not producing the administrative record on time.¹⁷

On September 24, Judge Koh issued a preliminary injunction staying the Census Bureau's September 30 deadline for the completion of data collection and its December 31 deadline for reporting the tabulation of the total population.¹⁸ By a vote of two to one, the court of appeals denied the defendants an administrative stay of the injunction on September 30.¹⁹

Here, not only would the status quo be upended by an administrative stay, the Bureau's ability to resume field operations would be left in serious doubt. . . .

. . .

Given the extraordinary importance of the census, it is imperative that the Bureau conduct the census in a manner that is most likely to produce a workable report in which the public can have confidence.²⁰

In light of the defendants' injunction violations, Judge Koh issued an order on October 1 clarifying the injunction and noting, "The Court will subject Defendants to sanctions or contempt proceedings if Defendants violate the Injunction Order again."²¹

On October 7, a new panel of the court of appeals gave the government partial relief:

The government has . . . failed to meet its burden to justify a stay pending appeal as to the district court's injunction of the September 30, 2020 data collection deadline.

. . .

[But t]o the extent that the district court enjoined the Defendants from attempting to meet the [statutory] December 31 date, that injunction is stayed pending appeal.²²

15. Notice, *id.* (Sept. 8, 2020), D.E. 86.

16. Order, *id.* (Sept. 14, 2020), D.E. 113.

17. Opinion, *id.* (Sept. 17, 2020), D.E. 142; *see Nat'l Urban League v. Ross*, 489 F. Supp. 3d 939, 950 (N.D. Cal. 2020).

18. *Nat'l Urban League*, 489 F. Supp. 3d at 1003; *Nat'l Urban League v. Ross*, 977 F.3d 698, 700 (9th Cir. 2020); *see Bob Egelko, Judge Rules Census Count Must Not Be Ended Early*, S.F. Chron., Sept. 26, 2020, at B1; Michael Wines, *Federal Judge Blocks Trump Administration from Ending the Census Count Early*, N.Y. Times, Sept. 26, 2020, at A16.

19. *Nat'l Urban League*, 977 F.3d 698; *see Bob Egelko, Court Thwarts Move to Conclude Census Count Early*, S.F. Chron., Oct. 1, 2020, at B1.

20. *Nat'l Urban League*, 977 F.3d at 701–02.

21. *Nat'l Urban League v. Ross*, 491 F. Supp. 3d 572, 584 (N.D. Cal. 2020); *see Bob Egelko, Judge's Order: Census Count Must Continue*, S.F. Chron., Oct. 3, 2020, at B1.

22. *Nat'l Urban League*, 977 F.3d at 780–81.

But, over Justice Sotomayor’s dissent, the Supreme Court stayed the injunction on October 13 “pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought.”²³

On December 22, Judge Koh denied a motion to dismiss a second amended complaint or stay proceedings.²⁴ Five days before the inauguration of a new President, however, Judge Koh approved a stipulated stay “in order to provide for an orderly transition and to let the new Administration assess this case.”²⁵ On January 22, 2021, news media reported,

After the bureau missed a year-end deadline for turning in the apportionment numbers, it said the figures would be completed as close to the previous deadline as possible. Trump administration attorneys recently said they won’t be ready until early March because the bureau needs time to fix irregularities in the data.²⁶

Judge Koh dismissed the case as settled on April 22, 2021,²⁷ and the court of appeals accepted a voluntary dismissal of the appeal five days later.²⁸ According to the *San Francisco Chronicle*,

Under the settlement, population figures to be released [soon] will inform states how many congressional seats they will have in 2022, said attorney Thomas Wolf of the Brennan Center for Justice at New York University. After further Census Bureau analysis and reports, he said, data allowing states to draw district lines based on equal populations will be available by the end of September.²⁹

23. *Ross v. Nat’l Urban League*, 592 U.S. ___, 141 S. Ct. 18 (2020); see Bob Egelko, *High Court Overturns Ruling, Halts 2020 Census*, S.F. Chron., Oct. 14, 2020, at B1; Adam Liptak & Michael Wines, *Supreme Court Permits Freeze of Census, Giving Trump a Win*, N.Y. Times, Oct. 14, 2020, at A1; David G. Savage, *Justices Rule That Administration Can Halt Census Counting Early*, L.A. Times, Oct. 14, 2020, at A1.

24. *Nat’l Urban League v. Ross*, 508 F. Supp. 3d 663 (N.D. Cal. 2020); see Second Amended Complaint, *Nat’l Urban League v. Ross*, No. 5:20-cv-5799 (N.D. Cal. Oct. 27, 2020), D.E. 352.

25. Stipulated Order, *Nat’l Urban League*, No. 5:20-cv-5799 (N.D. Cal. Jan. 15, 2021), D.E. 456.

26. *Time and Transparency Needed as Biden Inherits Frazzled Census*, L.A. Times, Jan. 22, 2021, at A1.

27. Order, *Nat’l Urban League*, No. 5:20-cv-5799 (N.D. Cal. Apr. 22, 2021), D.E. 489.

28. Order, *Nat’l Urban League v. Ross*, No. 20-16868 (9th Cir. Apr. 27, 2021), D.E. 67.

29. Bob Egelko, *Settlement Means Census Counts All, Regardless of Status*, S.F. Chron., Apr. 23, 2021, at A10.