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ATTORNEY GENERAL RAOUL FILES LAWSUIT AGAINST FEDERAL GOVERNMENT FOR ILLEGALLY SEEKING TO EXCLUDE UNDOCUMENTED IMMIGRANTS FROM CONGRESSIONAL APPORTIONMENT

Chicago — Attorney General Kwame Raoul today joined a coalition of states, cities, and counties in filing a lawsuit against the federal government for attempting to illegally leave millions out of the apportionment base that establishes the number of members in the House of Representatives and electors in the Electoral College that each state receives. The lawsuit seeks to stop the federal government from politicizing the census and violating basic constitutional commands, and instead aims to ensure the administration counts the “whole number of persons” residing in the country for apportionment, as the U.S. Constitution unambiguously requires.

“The Constitution requires the federal government to conduct a count of every person in this country, regardless of citizenship status, every 10 years,” Raoul said. “An accurate census count ensures that each state receives fair representation in Congress, the proper number of Electoral College votes, and its fair share of federal funding, which are all fundamental to our democracy. I am committed to fighting unconstitutional efforts to undermine the integrity of the census and election process.”

Raoul and the coalition argue that the Constitution is abundantly clear: for purposes of apportioning members of the House of Representatives among the states, every person residing in the United States during the census, regardless of legal status, must be counted. But, on July 21, a presidential memorandum announced plans to exclude undocumented immigrants from the apportionment base – the first time in history such action has been taken.

This week’s effort by the federal government to exclude undocumented immigrants from the apportionment base is just the latest illegal maneuver to manipulate the census count and congressional apportionment. In 2018, Commerce Secretary Wilbur Ross directed the Census Bureau to use the 2020 Decennial Census to demand information on the citizenship status of every resident in the country. After a legal battle that made its way through multiple federal courts last year, the U.S. Supreme Court ruled in favor of the plaintiffs and prohibited the federal government from adding a citizenship question to the census. In the new lawsuit, Raoul and the coalition argue the president’s proclamation this week lays bare the real reason driving the addition of a citizenship question to the census: to exclude undocumented persons from the “whole number of persons” that constitutes the apportionment base and to discriminate against Hispanics and noncitizens.

The Fourteenth Amendment clearly states that “representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State..” The framers of the Fourteenth Amendment deliberately chose the phrase “whole number of persons” to refer to all persons living in each state – including the entire immigrant population. More than 200 years of history, practice, and judicial and administrative precedents have since established that the apportionment of representatives must be based on all persons living in each state, regardless of their citizenship or immigration status.

In the lawsuit, filed against the president, the U.S. Department of Commerce, the U.S. Census Bureau, Commerce Secretary Ross, and Census Director Steven Dillingham, Raoul and the coalition argue that apportionment based on a population count that unlawfully excludes undocumented immigrants will:

- Lead to the loss of congressional seats and presidential electors in the Electoral College.

- Skew the division of electoral districts within jurisdictions by impairing state and local redistricting efforts that rely on the census count.
- Reduce federal funds to state and local jurisdictions by deterring immigrants from responding to the decennial census that is currently underway.
- Degrade the quality of census data that states and local jurisdictions rely on to perform critical governmental functions.

Raoul and the coalition also make clear in today's lawsuit that public statements and actions by the federal government have established that the rationale for excluding undocumented immigrants from the apportionment base has always been motivated by racial animus against immigrants of color and a desire to curb the political power of immigrant communities of color. The president's memorandum explicitly states that the federal government's goal is to reduce political influence and congressional representation to jurisdictions with a larger share of undocumented immigrants. Further, the president's announcement is clearly intended to promote fear and deter participation in the census by immigrants and their families, as it comes just weeks before enumerators are scheduled to go into the field to encourage households to respond to the census.

The coalition specifically asserts claims that the exclusion of undocumented immigrants from the apportionment base violates the Fourteenth Amendment; the Due Process Clause of the Fifth Amendment; the Tenth Amendment; and the Administrative Procedure Act, by being both contrary to law and arbitrary and capricious. Additionally, Raoul and the coalition contend that this exclusion conflicts with long-recognized Supreme Court precedent. Raoul and the coalition ask the court to compel the administration to hold to their obligation to base congressional apportionment on "the whole number of persons in each state" and to forbid them from excluding undocumented immigrants – or any other person – from the apportionment base.

Joining Raoul in today's lawsuit are the attorneys general of Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington. The attorneys general are joined by the cities of Central Falls, R.I.; Chicago; Columbus, Ohio; New York; Philadelphia, Pa.; Phoenix, Ariz.; Pittsburgh, Pa.; Providence, R.I.; Seattle, Wash.; and the city and county of San Francisco. Additionally, Cameron, El Paso, and Hidalgo Counties in Texas and Monterey County in California have joined the lawsuit.