



UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF

Paula Xinis
UNITED STATES DISTRICT JUDGE

6500 Cherrywood Lane
Greenbelt, MD 20770
(301) 344-0653

August 17, 2020

Via email & Filed on ECF

Honorable Roger L. Gregory
Chief Judge
United States Court of Appeals
For the Fourth Circuit
Lewis F. Powell, Jr. U. S. Courthouse
1000 East Main Street, Suite 212
Richmond, VA 23219-3518

Re: *La Union Del Pueblo Entero et al. v. Trump et al.*
District Court Case No. PX-8:19-CV-02710

Dear Chief Judge Gregory,

This letter requests appointment of a three-judge panel in the above-captioned case, pursuant to 28 U.S.C. § 2284(a).

On July 21, 2020, the President of the United States issued a memorandum directing the exclusion of undocumented non-citizens from the apportionment base to be determined by the United States 2020 Decennial Census. *See* Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (“the Memorandum”). Plaintiffs challenge the Memorandum on various grounds, including that it unconstitutionally eliminates undocumented non-citizens from the count of whole persons used for the apportionment of congressional districts, in violation of the Enumeration and Equal Protection Clauses of the United States Constitution (Counts I and II).¹ ECF No. 98. Plaintiffs

¹ Several other District Courts are presiding over similar challenges to the Memorandum. *See California v. Trump*, 20-CV-5169 (J. Koh) (N.D. Cal. filed July 28, 2020); *City of San Jose v. Trump*, 20-CV-5167 (J. Koh) (N.D. Cal. filed July 27, 2020); *Haitian-Americans United, Inc. v. Trump*, 20-CV-11421 (J. Woodlock) (D. Mass. filed July 27, 2020); *New York v. Trump*, 20-CV-5770, and *New York Immigration Coalition v. Trump*, 20-CV-5781, (J. Furman) (consolidated) (S.D.N.Y. both filed July 24, 2020); *Common Cause v. Trump*, 20-CV-2023 (J. Cooper) (D.D.C. filed

also allege that Defendants' adherence to the Memorandum is *ultra vires* in that it disregards the limitations established by Congress and pertinent to the 2020 Decennial Census. See 13 U.S.C. § 141, 2 U.S.C. § 2a (Count VIII). ECF No. 98.

Section 2284(a) provides that "a district court of three judges shall be convened" when an action challenges "the constitutionality of the apportionment of congressional districts." 28 U.S.C. § 2284(a); see also *Shapiro v. McManus*, 136 S. Ct. 450, 451 (2015). Counts I and II appear to trigger referral in that respect. Plaintiffs' claims also arguably challenge the "use of [a] statistical method in violation of the Constitution or any provision of law." See, e.g., ECF No. 98 ¶ 167. These claims "shall be heard and determined by a district court of three judges in accordance with section 2284." Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1998, § 209(b), (e)(1) Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) ("1998 Appropriations Act") (codified at 13 U.S.C. § 141 note).

On August 17, 2020, this Court held a conference with the parties to discuss whether this matter should be referred to a three-judge panel pursuant to 28 U.S.C. § 2284(a). ECF No. 100. The parties did not oppose the referral.

Accordingly, and based on a careful review of the Amended Complaint, this Court concludes that Plaintiffs present non-frivolous challenges to the Memorandum that fall within the ambit of 28 U.S.C. § 2284. This Court respectfully requests that you, as Chief Judge of this Circuit, promptly appoint a three-judge panel to preside over the claims presented by this litigation.

Thank you for your consideration. Should you require any additional information, please do not hesitate to contact me.

_____/S/
Paula Xinis
United States District Judge

cc: Chief Judge James Bredar, United States District Court
Kimberly Smith, Law Clerk to the Hon. Chief Judge Roger Gregory
Thelma Evans, Judicial Assistant to the Hon. Chief Judge Roger Gregory
Patricia Connor, Clerk, United States Fourth Circuit Court of Appeals

July 23, 2020). As here, two of these matters have been referred to the Chief Judges of their respective Circuits for three-judge panel appointments pursuant to § 2284(a), and there is an unopposed pending request for referral in another. See Panel Referral, *New York v. Trump*, 20-CV-5770 and *New York Immigration Coalition v. Trump* (S.D.N.Y. Aug. 20, 2020), ECF No. 68; Motion to Convene Three-Judge Court, *Common Cause v. Trump*, 20-CV-2023 (J. Cooper) (D.D.C. Aug. 11, 2020), ECF No. 29. This Court is also presiding over *Useche, et al. v. Trump, et al.*, No. 20-CV-02225, in which Plaintiffs raise near identical constitutional and *ultra vires* challenges to the Memorandum. This Court referred *Useche* to Your Honor for similar consideration by separate correspondence.