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Attorney General Balderas Seeks to Intervene in Second Census Challenge Lawsuit

New Mexico to Intervene as Defendant in Alabama Census Case to Ensure Every Person is Counted

Albuquerque, NM---Today, Attorney General Balderas joined a 26-member coalition from around the country — including 15 states, the District of Columbia, three counties, six cities, and the U.S. Conference of Mayors — in opposing the State of Alabama’s attempt to refuse counting every individual in the 2020 decennial census. While the U.S. Department of Commerce and the U.S. Census Bureau, as well as their respective leaders, have been named as defendants in the case, New Mexico moved to intervene as a defendant in the federal case of *Alabama v. U.S. Department of Commerce*, in the Northern District of Alabama, to ensure the case is properly presented and that every resident in America — irrespective of citizenship status — is counted in the decennial census.

“Requiring disclosure of citizenship status for our immigrant communities unfairly punishes poor and minority communities by discouraging participation and ultimately depriving those communities of critical federal funds,” said Attorney General Hector Balderas. “New Mexico received more than \$6 billion in federal funding based on the census in 2015, and requiring citizenship information could cost New Mexico hundreds of millions of dollars due to underreporting.”

In May 2018, the State of Alabama and an Alabama congressman filed a lawsuit challenging the U.S. Census Bureau’s long-standing policy of including all individuals, including non-citizens in the decennial census. The census count is used to distribute billions of dollars in federal funding, as well as determine the number of Representatives each state receives in the U.S. House of Representatives, which, subsequently, determines the number of Electoral College votes each state receives in a presidential election.

Despite Alabama’s objection, Article I of the U.S. Constitution, as amended by the Fourteenth Amendment, is clear that the “actual Enumeration” of the “whole number of persons” in each state includes everyone in the country, regardless of their lawful status. As a three-judge district court noted in rejecting a similar challenge decades ago, “[t]he language of the Constitution is not ambiguous” and “requires the counting of the ‘whole number of persons’ for apportionment

purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly ‘persons.’”

While the United States Department of Justice is defending the Census Bureau and the U.S. Department of Commerce in this case, recent statements by senior officials in the Trump Administration suggest that the Administration’s defense will be inadequate. On July 11, 2019, while announcing that the federal government would no longer seek to add a citizenship question to the 2020 Census, U.S. Attorney General William Barr suggested that the Administration would reconsider the issue at the heart of Alabama’s challenge: whether to count undocumented immigrants in the apportionment count. Additionally, the Court in the Alabama case recently noted that the defense offered by the U.S. Department of Justice has been “halfhearted” and that allowing intervention will ensure the “best arguments” are made in support of the century-old precedent.

The coalition of states, cities, and counties is seeking to intervene as defendants in the lawsuit today in an effort to defend the constitutional mandate that requires the U.S. Census Bureau to count every resident of the United States, as well as defend the century-old Census Bureau precedent of counting “all persons” in the United States, regardless of immigration status, for the purposes of apportionment.

Removing undocumented immigrants from the census count would not only result in the loss of representation in Congress for several states with large immigrant populations, but would also reduce representation of cities and counties with large immigrant populations in state legislatures. It could also result in reductions in crucial federal funding — as over 300 programs and billions of dollars are tied, at least in part, to census population figures. It is imperative for the states, counties, and cities in the coalition to intervene and adequately defend the current policy that includes undocumented immigrants in the census count for all purposes.

Joining Attorney General Balderas in filing the motion to intervene are the Attorneys General of California, Colorado, Connecticut, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia. The states are joined by the cities of New York, NY; Central Falls, RI; Chicago, IL; Philadelphia, PA; Providence, RI; and Seattle, WA. Additionally, Monterey County in California, Hidalgo and Cameron Counties in Texas, and the bipartisan U.S. Conference of Mayors have joined as defendants as well.

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