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Trump signs executive order on 2020 Census declaring undocumented immigrants are not persons

President Trump signed a memorandum Tuesday calling for the exclusion of undocumented immigrants from the population totals calculated in the ongoing decennial Census. The move is aimed at setting a legal precedent that undocumented immigrants are not “persons” from the standpoint of the Constitution and the US government.

The order directs Commerce Secretary Wilbur Ross to provide in the Census results “information permitting the President, to the extent practicable” to leave out the number of undocumented immigrants living in the US from the apportionment count. The apportionment count is what determines the extent of federal funding as well as number of representatives allotted to the various states.

Nearly two years ago, Trump’s first attempt to weaponize the census in his war on immigrants, adding a question on immigration status to the census questionnaire, was struck down by the Supreme Court. That decision means that the Bureau of the Census does not possess any information on the identity or number of immigrants, and by law, apportionment must be based on an “enumeration” of the population, not on estimates.

What Ross is actually being instructed to do is not clear, and some press accounts suggest that Trump’s executive order is entirely symbolic, but even if that were true, the political significance would be immense. The administration is declaring itself in favor of overturning more than 200 years of constitutional and legal precedent, under which the Census is to count all “persons” resident in the country, regardless of their immigration

status, and members of the House of Representatives represent districts drawn to include an equal number of “persons,” again without regard to whether they have legal documents. The White House press secretary turned this reality upside down, defending Trump’s order as an action to protect democratic institutions. “Giving congressional representation and political influence to illegal aliens,” she said, “would be a perversion of our democratic principles... [It] could also create perverse incentives—such as potentially rewarding states that encourage violations of Federal immigration law—that would undermine our system of government.”

Since the first census in 1790, all people residing in the United States, citizens and non-citizens, have been included in the official population count. The Constitution makes it clear that “persons” residing in the states should be counted every 10 years to determine each state’s share of seats in the House of Representatives. This is reiterated by the 14th Amendment, which declared the legal equality of former slaves, ended the counting of slaves as 3/5ths of a person, and requires the counting of the “whole number of persons in each state.”

In that sense, Trump’s executive order is an attempt to roll back history in the most regressive way imaginable. Undocumented immigrants, as per this order, do not count as “persons” at all. The right-wing spokespersons of the ruling class have, even in the midst of the ongoing pandemic, made similar arguments. Senator Rand Paul, while pushing through the amendments to the CARES Act, declared on the Senate floor that undocumented immigrants could not claim federal aid because they were “not legitimate persons.” The denial of person-hood has been and continues to be an essential step in stripping away democratic and human rights.

In its convoluted attempt to defend the indefensible, the White House memo put forth even more specious claims, arguing that the term “person” in the constitution really means “inhabitant” and that the president has discretion to define what that means, declaring some people who inhabit the country are not really there at all.

The US census does not have any question regarding citizenship status, so the idea that it could be a tool to separate citizens from non-citizens, and even different categories of non-citizens, would appear to make no sense. However, Trump signed an executive order in July 2019 to enable the Census Bureau to use government records, including those supplied by state departments of motor vehicles and federal agencies such as the

Department of Homeland Security, to produce anonymized citizenship data that could be used to redraw voting districts.

NPR reported this week that four states, Iowa, Nebraska, South Carolina and South Dakota, have already entered into agreements to share drivers license and state identification card information with the Trump administration. These moves, coupled with the latest order, will undoubtedly serve to terrify immigrant communities and drive down their participation in the census, with disastrous long-term consequences in terms of federal funding for much needed programs in already impoverished districts.

According to the US Constitution, the President does not have final authority over the census. Article 1, Section 2 of the founding document authorizes Congress to carry out “the actual enumeration” of the country’s population in “such manner as they shall by law direct.” In Title 2 of the U.S. Code, Congress detailed its instructions for the president to report to lawmakers the tally of the “whole number of persons” living in each state for the reapportionment of House seats. In Title 13, Congress established additional key dates for the “tabulation of total population.” Every aspect of the census process, other than the reporting at the end, is something determined by the legislature.

In trying to circumvent the Constitution on the issue of the census in this manner, Trump is not only pandering to his core supporters by playing the anti-immigrant card but also furthering an even more dangerous agenda of governing through executive decree.

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