

20-366 TRUMP V. NEW YORK

DECISION BELOW: 2020 WL 5422959

LOWER COURT CASE NUMBER: 20-CV-5770 (RCW) (PWH) (JMF)

QUESTION PRESENTED:

Congress has provided that, for purposes of apportioning seats in the House of Representatives, the President shall prepare “a statement showing the whole number of persons in each State * * * as ascertained under the * * * decennial census of the population.” 2 U.S.C. 2a(a). It has further provided that the Secretary of Commerce shall take the decennial census “in such form and content as he may determine,” 13 U.S.C. 141(a), and shall tabulate the results in a report to the President, 13 U.S.C. 141(b). The President has issued a Memorandum instructing the Secretary to include within that report information enabling the President to implement a policy decision to exclude illegal aliens from the base population number for apportionment “to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” 85 Fed. Reg. 44,679, 44,680 (July 23, 2020). At the behest of plaintiffs urging that the exclusion of illegal aliens would unconstitutionally alter the apportionment and chill some persons from participating in the census, a three-judge district court declared the Memorandum unlawful and enjoined the Secretary from including the information in his report. The questions presented are:

1. Whether the relief entered satisfies the requirements of Article III of the Constitution.
2. Whether the Memorandum is a permissible exercise of the President’s discretion under the provisions of law governing congressional apportionment.

FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION IS POSTPONED TO THE HEARING OF THE CASE ON THE MERITS. THE CASE IS SET FOR ARGUMENT ON MONDAY, NOVEMBER 30, 2020. EXPEDITED BRIEFING.

JURISDICTION POSTPONED 10/16/2020