



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

EMERGENCY RESOLUTION

No. 2020-04

Rejecting the Presidential Memorandum which Attempts to Delete Certain Immigrants from the Decennial Congressional Apportionment

Reported to the Caucus by the NHCSL Latino Voting and Elections Task Force
Sen. Otoniel "Tony" Navarrete (AZ), Chair

Sponsored by Sen. Richard Martinez (NM) and Sen. Daniel A. Ivey Soto (NM)

Unanimously approved by the NHCSL Executive Committee on behalf of the entire
Caucus on September 18, 2020

1 **WHEREAS**, on July 21, 2020, President Donald J. Trump issued a Memorandum to the
2 Secretary of Commerce with the purpose of "Excluding Illegal Aliens From the
3 Apportionment Base Following the 2020 Census;"¹ and;

4 **WHEREAS** the term "illegal aliens" in that Memorandum is a dehumanizing slur for
5 undocumented immigrants, and,

6 **WHEREAS**, the Constitution, specifically the Census clause and the Fourteenth
7 Amendment, requires that the number of US Representatives apportioned to each
8 state be determined based on a formula dependent on "the whole number of persons
9 in each State;" and,

¹ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>

Rejecting Presidential Authority to Exclude Certain Immigrants from Apportionment Count

10 **WHEREAS**, while credentialed diplomats and foreign tourists or commercial
11 travelers have never been considered to be “in” a state for purposes of
12 apportionment, all persons living in a state, regardless of immigration status or even
13 of official residence for other purposes, have traditionally been counted as being “in”
14 the state for purposes of apportionment; and,

15 **WHEREAS**, for example, college students temporarily studying outside their home
16 state or country are counted as being in the state where they go to school, not where
17 their permanent residence is because they “use critical local resources, including
18 roads, public transportation and health clinics;”² and,

19 **WHEREAS** the standard the Census Bureau uses is to count persons “where they live
20 and sleep most of the time;”³ and,

21 **WHEREAS**, in the same manner, undocumented immigrants who live and sleep most
22 of the time in a state also use critical local resources, including roads, public
23 transportation and health clinics; and,

24 **WHEREAS**, President Trump has a long record of explicit animus against
25 undocumented immigrants; and,

26 **WHEREAS**, the Supreme Court of the United States has consistently invalidated laws
27 and policies created with “a bare . . . desire to harm a politically unpopular group.”⁴

28 **THEREFORE, BE IT RESOLVED**, that the National Hispanic Caucus of State
29 Legislators rejects the authority of the President to issue the Memorandum ordering
30 the exclusion of undocumented immigrants from the decennial apportionment count.

31 PURSUANT TO THE IMMEDIATE NEEDS PROCESS OUTLINED IN THE BYLAWS, THE
32 NHCSL EXECUTIVE COMMITTEE UNANIMOUSLY ADOPTED THIS RESOLUTION, ON
33 BEHALF OF THE CAUCUS, AT ITS VIRTUAL MEETING OF SEPTEMBER 18, 2020.

² <https://www.census.gov/library/stories/2020/01/student-housing-off-campus-with-parents-college-students-count-2020-census.html>

³ Ibid.

⁴ *United States v. Windsor*, 570 U.S. 744, 133 S.Ct. 2675, 2693. And see *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 535, 537-38 (1973); *City of Clerburne v. Clerburne Living Ctr.*, 473 U.S. 432, 448 (1985); *Romer v. Evans*, 517 U.S. 620, 635 (1996).