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AAJC

June 21, 2024

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Dear James Whitehorne, Jason Devine, Steve Wilson, Maria Malagon, and John
Stelmachowicz,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the rights of all persons in the United States, we write to thank you for meeting with members from our coalition on March 12, 2024, and for updating us on the upcoming *Federal Register* Notice on proposed Residence Criteria and Residence Situations for the 2030 Census. As discussed, there is a critical need to modernize the residence rules and to count incarcerated individuals in their home communities rather than where they are located on Census Day. Below is a summary of the key points we raised at the meeting.

1. The residence rules must reflect the real-life circumstances of incarcerated persons and the needs of the states and communities in which they live.

Nearly half of the U.S. population now lives in a place that has rejected the current practice of counting incarcerated individuals where they are on Census Day. Nineteen states and more than 200 local governments – collectively covering about half (49.6 percent) of the nation's population – have changed their redistricting practices or laws to create redistricting

President and CEO
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data that reflect incarcerated people counted at their pre-incarceration addresses, to ensure equality of representation.¹ New approaches to this issue have been so rapid that the National Conference of State Legislatures, a bipartisan organization that assists state lawmakers on policy issues, recently called state efforts to end prison gerrymandering “the fastest-growing trend in redistricting.”² The changes in state laws and local redistricting practices are a stunning rejection of the status quo. They suggest that the Census Bureau should not continue to deliberately and knowingly count two million people in the wrong place.

2. Representation and, therefore, democracy, are distorted by counting incarcerated persons where they are housed on Census Day rather than in the home communities to which most will return.

The residence rule governing incarcerated persons does not represent a sound democratic policy in the current era of mass incarceration. Roughly two million people are presently confined in the U.S.³ Prisons are typically located in rural areas that are geographically and demographically far removed from the urban communities most incarcerated people consider home. Counting incarcerated individuals as residents of the prison distorts political apportionment for rural communities and creates significant burdens on state and local legislative data users who use census data for redistricting purposes.⁴ Incarcerated people have no representative nexus with the local, state, or federal legislators who represent the area surrounding the correctional facility. When incarcerated people vote – either because they are awaiting trial, serving time for misdemeanors, or live in the few states that allow voting despite a felony conviction – they are required to vote by absentee ballot in their home district, defined by their pre-incarceration address.

3. Incarcerated people are not part of the social and economic fabric of the communities surrounding the facilities where they are serving their sentences.

While incarcerated, people do not become members of the surrounding community. They do not participate in economic, social, or civic activity in the community, beyond possible limited government tasks with tight movement restrictions. People traveling for business or pleasure aren't counted at the hotels at which they are staying on Census Day, even though they have far more interaction with the community they are visiting. Incarcerated people do not form any enduring ties to a prison town. They are involuntarily transferred to a prison location, shuffled through the correctional facility system at the convenience of the state, and then leave as soon as given the chance.

¹ “Minnesota ends prison gerrymandering.” *Prison Gerrymandering Project*. May 20, 2024.

https://www.prisonersofthecensus.org/news/2024/05/20/minnesota_ends_prisongerrymandering/

² Williams, Ben. “Reating Inmate Data for Redistricting: It’s Not a Yes or No Question.” *National Conference of State Legislatures*. May 30, 2023. <https://www.ncsl.org/state-legislatures-news/details/reallocating-inmate-data-for-redistricting-its-not-a-yes-or-no-question>.

³ “Growth in Mass Incarceration.” *The Sentencing Project*. <https://www.sentencingproject.org/research/>.

⁴ Kajstura, Aleks and Wessler, Mike. “What the ten worst prison gerrymanders of the 2020 redistricting cycle tell us about how the problem is changing.” *Prison Gerrymandering Project*. February 26, 2024.

<https://www.prisonersofthecensus.org/news/2024/02/26/worst-gerrymanders/>.

People overwhelmingly return to their home communities after release, but even those who don't do not stay in the prison town. If they did stay in these towns, the Census Bureau's own data would document consistent explosive local population increases in these areas as over five million people are released from correctional facilities every year.⁵ The data do not show such a growth because people do not stay in prison towns upon release.

4. Criteria used to apply the residence rule to incarcerated people should be applied in the same manner as for other people away from home on Census Day.

Counting incarcerated people at home would align the residence rule for people in correctional facilities with the way the rules treat other people away from home on Census Day.

It is evident from the Bureau's application of the "usual residence" concept to different living situations that the Bureau considers not just time spent at a location, but a person's enduring family and community ties to a location, in determining usual residence. By counting incarcerated people at the facility in which they are incarcerated on Census Day, the Bureau has placed too much weight on the length of time incarcerated people are away from home and ignored very real, sustained family and community ties.

Other similarly situated people are counted at their home address, while incarcerated people are strangely singled out to be counted in the wrong place. Even if a person who is incarcerated happens to spend most of the year, or decade even, at the facility where they happen to be on Census Day (which is, as we explain below, not the case for vast numbers of incarcerated persons), counting them at home would still be consistent with the way the Bureau applies the residence rules to people in comparable situations. Much like many other people away from home on Census Day, a person who is incarcerated will, under typical circumstances, return home.

For example, when deciding to continue counting boarding school students at their parental home, the Bureau did so because of the students' age and dependency on their parents, and the likelihood that they would return to their parents' residence when they are not attending their boarding school....⁶ The Bureau should consider that similar familial ties, and often financial dependency on family members, bring incarcerated people back to their home community after incarceration. In fact, incarcerated people are far more likely to return home than boarding students, most of whom move on to college within a few short months after graduation.

Equally relevant, we note that counting incarcerated people at their home address is *not* inconsistent with the residence rule governing where college students are counted — their college-based address — because the "usual residence" factors are notably different. Incarcerated individuals have *virtually no ties* to the community in which the facilities housing them are located, while college students often frequent business establishments and participate in social activities in the cities or towns in which their institutions are located. For example, students go to restaurants and bars, shop in stores, seek medical attention, buy gas, and often rent apartments in their institution's host city; in addition, many volunteer with local

⁵ Sawyer, Wendy and Wagner, Peter. "Mass Incarceration: The Whole Pie 2024." *Prison Policy Initiative*. March 14, 2024. <https://www.prisonpolicy.org/reports/pie2024.html>.

⁶ Federal Register. "Proposed 2020 Census Residence Criteria and Residence Situations." 81 FR 42577, 42580. June 30, 2016. <https://www.federalregister.gov/documents/2016/06/30/2016-15372/proposed-2020-census-residence-criteria-and-residence-situations>.

nonprofits, attend faith institutions, and hold down jobs off-campus. Incarcerated people have no access to the communities in which jails and prisons are located. In other words, application of the usual residence concept to both groups requires that the Census Bureau treat them *differently* in the residence rules, with incarcerated people being counted at their home address.

Individuals who are incarcerated on Census Day are found to be home most of the time, as many people in jails are away from home for a few days or less.⁷ But short stays in prison are common; for example, in Rhode Island, the median length of stay for people serving a sentence in the state's correctional facilities is only 99 days.⁸ Even people away from home for a year or longer are not in one place; they often move between multiple facilities. While they are being shuffled between facilities, incarcerated people maintain a usual residence elsewhere; their pre-incarceration home remains the only actual stable address.

Regardless of sentence length, data clearly show that incarcerated individuals don't reside (i.e. eat and sleep most of the time) at the particular correctional facility where they are housed on Census Day. Usually, those enumerated at a state or federal prison on Census Day have not been at that facility for very long and are likely to leave it soon. For example, 75 percent of people serve time in more than one prison facility, and 12 percent of people serve time in at least five facilities before returning home.⁹ The address of the facility where someone is incarcerated on Census Day should be the address of last resort, as it is with any other individual for whom a usual residence cannot be identified – the place where they are physically present on April 1.

5. Equity requires counting incarcerated people at home.

Finally, the current rules' inconsistency with other practices creates inequities. The most glaring example involves how the Bureau counts children who are away from home at the time of the census. Children at boarding schools on Census Day are counted at home, while those who have even a short stay at a juvenile correctional facility are counted at the location of the facility. Members of the armed forces and federal civilian employees stationed abroad on Census Day (as well as family members, such as children, living with them) are counted at their "home of record," which identifies their state of residence when they enlisted in federal service, even if they will never return there, for purposes of congressional apportionment.

For the foregoing reasons, we urge the Census Bureau to update the current residence rules to maintain the accuracy of the census, ensure fair representation of incarcerated individuals within their home communities, and to prioritize equity among all residents regardless of their incarceration status. Thank

⁷Kajstura, Aleks. "Most incarcerated people will return home; the Census Bureau should count them there." *Prison Gerrymandering Project*. May 14, 2024. <https://www.prisonersofthecensus.org/news/2024/05/14/home-addresses/#:~:text=In%20most%20states%2C%20people%20are%20held%20pre%2Dtrial,to%20the%20state's%202020%20redistricting%20data%20that>.

⁸ Kajstura, Aleks. "Most incarcerated people will return home; the Census Bureau should count them there." *Prison Gerrymandering Project*. May 14, 2024. <https://www.prisonersofthecensus.org/news/2024/05/14/home-addresses/#:~:text=In%20most%20states%2C%20people%20are%20held%20pre%2Dtrial,to%20the%20state's%202020%20redistricting%20data%20that>.

⁹ *Id.*

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you for considering our views. We look forward to the release of proposed residence rules for the 2030 Census and to continued discussions about this important component of census accuracy. If you have any questions, please contact Meeta Anand, senior program director of census and data equity at The Leadership Conference on Civil and Human Rights, at anand@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights