



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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August 31, 2016

Via E-mail and First Class Mail

Karen Humes, Chief
Population Division
U.S. Census Bureau
Room 6H174
Washington, DC 20233

Re: 2020 Census Residence Criteria and Residence Situations

Dear Chief Humes,

The Asian American Legal Defense and Education Fund (AALDEF) submits this comment in response to the Census Bureau's Federal Register Notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016).

AALDEF, founded in 1974, is a New York-based national organization that protects and promotes the civil rights of Asian Americans through litigation, advocacy, education, and organizing. Voter access and political empowerment are at the center of AALDEF's mission. For every major election since 1988, AALDEF has deployed poll monitors and volunteers to conduct the nation's largest nonpartisan survey of Asian American voters, which records voters' candidate preferences, issue priorities, and problems and obstacles that they encountered at the polls. We have also led redistricting efforts in New York City and numerous other jurisdictions across the country, contributing research and advocating for the creation of district maps that more accurately reflect the changing demographics of these jurisdictions and protect the voting rights of Blacks, Latinos, and Asian Americans.

As a civil rights organization that has done extensive voting rights work, we write to advocate for census residence criteria that are consistent with the demands of equal protection and fair representation. Accordingly, **we urge the U.S. Census Bureau to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.**

It is an understatement to say that the American criminal justice system looks vastly different today as compared to 1790, when the planners of the first census established the concept of "usual residence." With a five-fold increase in prison population over the last 40 years and more than two million people currently jailed, the United States is today's world leader in incarceration.¹

While all racial groups have seen their incarceration rates increase, minority groups have starkly higher incarceration rates than white Americans. Whites are underrepresented in prisons, while

¹ The Sentencing Project, "Trends in U.S. Corrections," December 15, 2015, <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

Blacks, Hispanics, Asian Americans, and other minority groups are heavily overrepresented. Although Whites (non-Hispanic) are 64% of the U.S. population and 39% of the prison system,²

- Blacks are 13% of the U.S. population, and 40% of the prison system;
- Hispanics are 16% of the U.S. population, and 19% of the prison system; and
- Asian Americans are 6% of the U.S. population, and 9% of the prison system.³

Blacks are incarcerated five times more than Whites are, and Hispanics are twice as likely to be incarcerated as Whites.

These changes in the scope and the demographic of the American criminal justice system create new perspectives and amplify existing challenges when evaluating the implications and consequences of the census residence criteria. Currently, as a result of the U.S. Census Bureau's policy of counting people in prison as residents of the prison, incarcerated individuals are grouped together with non-incarcerated individuals living in the surrounding community to form legislative districts in all states, except for New York, Maryland, Delaware, and California. These four states have passed laws to use other data for redistricting purposes, in direct response to the U.S. Census Bureau's reluctance to move away from rules largely outdated and unjust as it pertains to incarcerated individuals.

Indeed, the sheer size of the U.S. prison population, especially as simultaneously considered with the racial breakdown of incarcerated (and consequently, in many cases, disenfranchised) Americans and the rural or suburban location of most state and federal prisons, is cause for concern about the implications of this policy for voting rights, fair representation, and redistricting.

Given the data above, along with a formidable pool of academic and governmental research corroborating this summary, we believe that the U.S. Census Bureau's current residence criteria for people in prison have unjust consequences that may violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. At the federal, state, and local levels, prison gerrymandering (as many characterize the effects of the current census residence criteria) has inverse consequences for residents of prison-containing districts and residents of non-prison containing districts. District maps drawn according to the census data mean that:

Residents of prison-containing districts:	Residents on non-prison-containing districts:
- Gain more impact per vote cast against their counterparts in non-prison-containing districts, since their district population contains incarcerated individuals, many of whom are not permitted to vote, but whose presence allows for the existence of the district as is.	- Have less impact per vote cast than their counterparts in prison-containing districts.
- Enjoy an increase in the representative-constituent ratio since politicians often	- Suffer decreased power that their concerns and issues have in federal,

² Data from the 2010 U.S. Census, SF-1 table P42 and the PCT20 table series.

³ "Asian Americans and Pacific Islanders Behind Bars," December 2015, http://www.searac.org/sites/default/files/18877%20APIs%20Behind%20Bars_web.pdf.

<p>do not consider themselves accountable to their incarcerated “constituents.” Both practically and theoretically, this means that their concerns are given more representation in federal, state, and local legislatures, as compared with the concerns of their counterparts in non-prison-containing districts.</p>	<p>state, and local legislatures against their counterparts in prison-containing districts who are effectively receiving more representation per person.</p>
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These considerations against the 2020 census residence criteria are even more compelling in light of the racial disparities between prisoner-sending communities and prisoner-receiving communities. Prisoner-sending and/or non-prisoner-receiving communities, the ones losing out on voting power and representation, are more likely to form urban districts of significant minority populations than prisoner-receiving communities. Meanwhile, most prisoner-receiving communities, the ones gaining in voting power and representation, are more likely to form rural, majority white districts.

In New York, 91% of prisoners are housed in facilities located in upstate New York, even though 66% come from and ultimately return downstate to New York City.⁴ In 2002, before the state adopted legislation counting incarcerated people in their home communities for redistricting purposes, residents of the prison-containing, mostly-rural, and majority-white Wyoming County enjoyed significantly increased voting power and representation in the state legislature against the interests of the residents of the urban, heavily-immigrant, majority-minority Queens County, which contained the most over-populated districts in the State.⁵ Indeed, if prisoners had been counted at their home residence, no fewer than seven State Senate districts would have been more than five 5% too small to constitute a district.⁶ Similarly, at the federal level, seven congressional districts in the state would not have qualified as districts at all.⁷

Conclusion

“One person, one vote” and fair representation are sacred principles that are enshrined in the founding documents and philosophy of American democracy. Drastic changes in the scope and the demographics of the American criminal justice system have exacerbated the potentially unconstitutional implications that counting prisoners at their facilities has had against these principles. In light of the considerations above, AALDEF, as a civil rights organization concerned with protecting voting rights for all, urges the U.S. Census Bureau to amend its

⁴ Michael Li and Connor Mealey, “Proposed Census Rule Could Hurt Communities,” July 13, 2016, <https://www.brennancenter.org/blog/proposed-census-rule-could-hurt-communities>.

⁵ Peter Wagner, “Importing Constituents: Prisoners and Political Clout in New York,” April 22, 2002, <http://www.prisonpolicy.org/importing/importing.html>.

⁶ Prison Policy Initiative, “Gerrymandering and relying on the miscount of prisoners combine to violate the U.S. Constitution in New York,” <http://www.prisonersofthecensus.org/nygerrymander.html>.

⁷ Brennan Center for Justice, “Census Fact Sheet,” <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Census%20Fact%20Sheet%20revised%20FINAL.pdf>.

residence criteria to count incarcerated people at their home residence instead of the particular facility in which they are residing on Census Day.

We thank you in advance for your serious consideration of these comments, and appreciate this opportunity to submit a comment regarding the Census Residence Criteria and Residence Situations to the U.S. Census Bureau. Any questions relating to this comment should be directed to Jerry Vattamala, Director, Democracy Program, at (212) 966-5932 x 209 or jvattamala@aaldef.org.

Sincerely,

A handwritten signature in black ink that reads "Jerry Vattamala". The signature is written in a cursive style with a large, sweeping initial "J".

Jerry Vattamala
Director, Democracy Program