

COMMUNITY ALLIANCE ON PRISONS

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Ms. Karen Hume, Chief

Population Division

U.S. Census Bureau POP.2020.Residence.Rule@census.gov

COMMENTS ON PROPOSED 2020 CENSUS RESIDENCE RULES

Aloha Ms. Hume:

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai`i’s imprisoned people are serving their sentences abroad - thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

Community Alliance on Prisons is saddened that the U.S. Census Bureau has ignored the overwhelming comments in support of changing how incarcerated persons are counted and instead has

determined that the practice of counting prisoners at the correctional facility for the 2020 Census would be consistent with the concept of usual residence.

“When the Census began in 1790, uses for the data were limited. Population statistics were rarely used for planning purposes until the 20th century. It was not until the 1960s that state legislatures were required to periodically redraw legislative district lines to comply with the “One Person One Vote” rule of equal numbers of people in each legislative district. In 1790, the Census’ sole role was to count the number of people in each state to determine their relative populations for purposes of Congressional reapportionment. It didn’t matter — for purposes of comparing Nevada’ population to Utah’s — whether an incarcerated person was counted at home or in the Nevada State Prison, as long as they were counted in the right state. Census data is used very differently today than it was in 1790, and our society has changed radically, but the Census’ method of counting prisoners has unfortunately remained the same.” [1]

We are, therefore, profoundly disappointed by the Census Bureau proposal to again count nearly 2 million people in the wrong place on Census day. Continuing this outdated practice will ensure an inaccurate 2020 Census and another decade of prison gerrymandering. Leaving the current practice in place defies the very concept of democracy and promotes even more inequality.

Hawai`i has been banishing a significant portion of our prison population to corporate prisons on the continental United States for twenty-one years. This failed social experiment has wrought much anguish to our people and communities, the families of those banished, and our over- burdened taxpayers. Our people have not moved to these locations, they were sent involuntarily and will return to their homes and families in Hawai`i after serving their sentences. Hawai`i is their home.

We are well aware of how the corporate prison industry has “gamed” the system by building their dungeons in small towns, enticing public officials who can then benefit from increased federal appropriations to their towns.

Prisons have become a growth industry for rural America with a new prison opening in a small town every fifteen days over the last decade.[2] Now a \$60 billion industry,[3] prisons have developed the economic muscle to bend state priorities to their needs. There are now so many people in prison that legislators who have prisons in their districts are able to short-circuit the democratic process that would otherwise govern the prison industry.

The importance of accuracy in counting citizens to determine voting districts has long been recognized as vital to a thriving democracy. In the 1960’s, the Supreme Court struck down state legislative district plans that gave some citizens more access to government than others, declaring the “One Person One Vote” rule and the principle that “legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.”[4]

There is a basic unfairness in the decision to count incarcerated people in the facility to which they have been involuntarily sent when the Census Bureau has determined that there is a distinction between military personnel who are deployed overseas and those who are stationed or assigned overseas. Deployments are typically short in duration, and **the deployed personnel will be returning to their usual residence** where they are stationed or assigned in the United States after their temporary deployment ends.

How is military deployment different from those involuntarily banished outside their homeland when our incarcerated people will return to Hawai`i upon the completion of their sentences? When *“counting deployed personnel at their usual residence in the United States follows the standard interpretation of the residence*

criteria to count people at their usual residence if they are temporarily away for work purposes”, we fail to see the difference when counting people who are temporarily sentenced to prisons outside of Hawai`i.

Justin Levitt, professor of constitutional law and the law of democracy at Loyola Law School, as well as a practitioner and litigator in the area of political participation encouraged the Census Bureau to count incarcerated individuals at their last known address before incarceration as a means to further equal representation in the democratic process. Professor Levitt bases his comments on the structure of representation and the effects of various voting systems and districting plans.

He explains that the Census counts most people at their “home.” Those whose “usual residence” is different from their “home” are typically in a new location for work or education, “and they are generally intertwined with the communities where they are laying their heads most often” by interacting with their new neighbors, following community rules and regulations, and enjoying the benefits of local services and activities. However, this is not the case for the 2.2 million people in the United States who are incarcerated. Professor Levitt points to the fact that incarcerated individuals have little in common with the residents in the communities surrounding their correctional facilities.

Incarcerated individuals do not interact with the local community, and “most Village Township residents will not likely consider them ‘neighbors.’” Elected officials themselves do not always consider incarcerated people to be their constituents. As Professor Levitt recounts:

[I]n 2002, a New York state legislator representing a district housing thousands of incarcerated individuals said that given a choice between the district’s cows and the district’s prisoners, he would “take his chances”

with the cows, because “[t]hey would be more likely to vote for me.”

Indeed, according to Professor Levitt, 28 states have explicitly provided that incarcerated persons do not lose their residence in their home communities when they are incarcerated.

The New York Times has written nine editorials highlighting how the prisoner miscount harms democracy, and has been joined by the editorial boards of papers as diverse as the Milwaukee Journal-Standard, the Flint Journal (Michigan) and the rural Jackson City Patriot (Jackson City, Michigan).

Please help us correct this problem and get back to the ‘One Person One Vote’ ideal. This is sacred to our democracy. Please help us to achieve fair and equal representation to all the citizens by revising the Residence Rule or Residence Situations to count incarcerated people at their home in the Census. PLEASE PROMOTE DEMOCRACY!

Sincerely,

Kat Brady

Coordinator

[1] New research on Nevada, Montana, and Idaho: How the census is watering down the voting power of some communities, by Peter Wagner, February 7, 2005. <http://www.prisonersofthecensus.org/news/2005/02/07/wpp/>

[2] Building a Prison Economy in Rural America, Tracy Huling in *Invisible Punishment: The Collateral Consequences of Mass Incarceration*, Mark Mauer and Med Chesney-Lind, eds. (New York, The New Press, 2002).

[3] Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States*, 2003, Table 3. [4] *Reynolds v Sims*, 377 U.S. 533 (1964), at 562.

[4] *Reynolds v Sims*, 377 U.S. 533 (1964), at 562.