



ASIAN AMERICANS
**ADVANCING
JUSTICE**
AAJC

VIA EMAIL

September 1, 2016

Ms. Karen Humes
Chief, Population Division
U.S. Census Bureau
Room 6H174
Washington, DC 20233
Email: POP.2020.Residence.Rule@census.gov

Re: Proposed 2020 Census Residence Criteria and Residence Situations
(Document Citations: 81 FR 42577 & 81 FR 48365)

Dear Ms. Humes,

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) submits this comment in response to the Census Bureau's federal register notice regarding the Proposed 2020 Census Residence Criteria and Residence Situations, 81 FR 42577 (June 30, 2016) and 81 FR 48365 (July 25, 2016) (extending the comment period for the initial request). We are disappointed in the Census Bureau's decision to continue counting incarcerated persons at their facility on Census Day. We urge the Census Bureau to reconsider how incarcerated persons will be counted for the 2020 Census and change where they will be counted from the particular facility where they happen to be located on Census Day to their home address.

Organizational Information

Advancing Justice | AAJC is a national non-profit, non-partisan organization founded in 1991. Advancing Justice | AAJC's mission is to advance the human and civil rights of Asian Americans, and build and promote a fair and equitable society for all. Our wide-ranging efforts include promoting civic engagement, forging strong and safe communities and creating an inclusive society. Advancing Justice | AAJC is part of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five nonprofit organizations in Los Angeles and San Francisco, CA, Chicago, IL, Atlanta, GA and Washington, D.C. who joined to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. Additionally, over 150 organizations are involved in Advancing Justice | AAJC's community partners network, serving communities in 31 states and the District of Columbia.

Advancing Justice | AAJC considers the Census, including the American Community Survey (ACS), to be the backbone of its mission to advance the human and civil rights of Asian Americans and build and promote a fair and equitable society for all. Advancing Justice has maintained a permanent census program monitoring census policy, educating policy makers, and conducting community outreach and education to encourage participation in the surveys conducted by the Census Bureau.

Advancing Justice | AAJC has also been extensively involved in improving the current level of political and civic engagement among Asian American communities and increasing Asian American access to the voting process in conjunction with the Advancing Justice affiliates and community partners. We work on enforcement and protection of the Voting Rights Act and other voting statutes, protection of the vote, and improvement of election administration. During the last redistricting cycle, we worked with the Advancing Justice affiliates and our local partners to ensure Asian American communities had a voice during the redistricting process and were able to work to keep their communities of interest together. Since those efforts, Advancing Justice | AAJC has been engaged in conversations around redistricting reform and ensuring proper representation for all.

Census Bureau’s Proposed Rule for Counting Incarcerated Persons Is Inconsistent and Should Be Changed

Definition of Usual Residence Means Incarcerated Persons Should Not Be Counted at Correctional Facility

The Census Bureau’s proposed rule for counting incarcerated persons in their facility is inconsistent with the Bureau’s definition of “usual residence.” In the Federal Register notice, the Census Bureau defines “usual residence” “as the place where a person lives and sleeps most of the time, which is not always the same as their legal residence, voting residence, or where they prefer to be counted.” They further note that “counting prisoners anywhere other than the facility would violate the concept of usual residence, since the majority of people in prisons live and sleep most of the time at the prison.” This is simply not the case. Many incarcerated people serve relatively short sentences. For example, the majority of people incarcerated in Rhode Island spend less than 100 days in the state’s correctional facilities.¹ Incarcerated persons are also frequently transferred between facilities, at the discretion of the administration, and usually do not remain at any particular facility for even a year.² In fact, almost three-fourths of incarcerated people are moved between facilities before they go back home.³ The reality is that incarcerated persons found in a facility on Census Day will not have been in that facility for very

¹ Order, *Davidson v. City of Cranston* 3 (D.R.I. 2016), available at <https://www.aclu.org/legal-document/davidson-v-cranston-memorandum-and-order>.

² Department of Justice, Bureau of Justice Statistics, *Sexual Victimization Reported by Former State Prisoners 20 (2008)*, available at <http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>.

³ *Id.*



long, and will likely leave it soon, and thus the facility is not the usual residence of incarcerated persons.

Incarcerated Persons Should Be Counted at Home Based on Factors Utilized by Census Bureau in Determining How to Count Other Residence Scenarios

In residence situations where the Census Bureau needs to make a determination about the respondents' usual residence, the Census Bureau has looked to community and family ties as an important factor. The U.S. Supreme Court referenced the concept of "enduring ties" in its opinion in *Franklin v. Massachusetts*, a case that unsuccessfully challenged the Census Bureau's decision to count military personnel serving overseas in the 1990 Census for purposes of congressional apportionment.⁴ The majority opinion in *Franklin* noted that the concept of usual residence "has been used broadly enough to include some element of allegiance or enduring tie to a place."

The reality is that incarcerated persons are not members of the residential communities surrounding the correctional facilities. Not only are they physically prohibited from interacting with the community, whether it is through use of services and amenities of the community to participating in civic engagement such as voting and public debates, the local laws and ordinances of the surrounding communities rarely impact them. Former Census Bureau Director Kenneth Prewitt has noted that the practice of counting incarcerated persons in the facilities they happen to be assigned to on Census Day "ignore[s] the reality of prison life. Incarcerated people have virtually no contact with the community surrounding the prison. Upon release the vast majority return to the community in which they lived prior to incarceration."⁵ The surrounding communities do not consider the incarcerated persons to be members of their communities and certainly incarcerated persons, who did not choose to live in that community and who often return home after their sentence, do not establish "enduring ties" or consider themselves to be members of that community. However, this is not to say that there is no community for incarcerated persons. The community that remains meaningful and relevant for incarcerated persons is their home communities. They have family ties, including children, spouses, other relatives, as well as homes where they resided prior to their confinement and where they are likely to return to after their confinement. Thus, incarcerated persons should be counted at their home address and not at the facility to which they are assigned on Census Day.

The Census Bureau's decision to count incarcerated persons at the facility is even more concerning when compared to how the Bureau plans on counting other similarly-situation population groups in the same proposed 2020 Census residence criteria and residence situations. For example, the Census Bureau is proposing to change how it will count deployed military personnel who are stationed or assigned to a U.S. base. Under the Bureau's proposal, deployed service members will be counted at their home address (usual residence) in the U.S.,

⁴ 505 U.S. 788 (1992).

⁵ Kenneth Prewitt, Forward to Patricia Allard & Kristen D. Levingston, *Accuracy Counts: Incarcerated People and the Census* (2004), available at http://www.brennancenter.org/sites/default/files/legacy/d/RV4_AccuracyCounts.pdf.



even if they *live and sleep elsewhere for most of the time* at the time the Census is conducted. In making this change, the Census Bureau notes in the Federal Register notice that “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.” Additionally, many comments to the Census Bureau referenced the need to count deployed military in their home community for purposes of funding, planning, and ensuring sufficient resources for the soldiers and their families. Similarly, incarcerated persons are temporarily in the facilities for varying, but typically short, durations and incarcerated persons generally return to their usual residence when they are released. As previously noted, the incarcerated populations has no ties to the community of the facility and there is a need to ensure that their home community, where they have family and ties, have the necessary funding, resources and planning needed. Treating these two similarly-situation populations differently, and changing the policy as it pertains to one group but not the other, is a blatant inconsistency in the proposed 2020 Census Residence Criteria and Residence Situations and must be brought into alignment with one another.

The Census Bureau Must Modernize How Incarcerated Persons Are Counted to Avoid Inequity in Representation

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation’s incarcerated population has more than quadrupled to over two million people. The Asian American and Pacific Islander (AAPI) prison population increased by 30 percent from 1999 to 2004 while the white prison population rose by only 2.5 percent. During the prison boom in the 1990s, the AAPI prison population grew 250 percent to the overall prison population’s 77 percent. And a closer look at disaggregated data shows that mass incarceration has increasingly become more of an issue for specific AAPI communities. For example, according to a study by the Office of Hawaiian Affairs in 2010, Native Hawaiians comprised about 39 percent of Hawaii's state prison population in comparison to the state's overall Native Hawaiian population of 24 percent.⁶ In California, a study found that 64.6 percent of the state’s AAPI prisoners were immigrants and refugees. The largest populations among them were Vietnamese (22 percent) and Filipino (19.8 percent), followed by Pacific Islanders (9.9 percent) and Laotians (8.5 percent).⁷ Thus, the manner in which this population is counted now has huge implications for the accuracy of the Census.

By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a population that is disproportionately male, urban, and African-American or Latino into just 5,393 Census blocks that are located far from the actual homes of incarcerated people. In Illinois, for

⁶ Office of Hawaiian Affairs, Justice Policy Institute, University of Hawai‘i and Georgetown University, Report: The Disparate Treatment of Native Hawaiians in the Criminal Justice System, available at <http://www.oha.org/governance/criminal-justice/>

⁷ Sarita Ahuja and Robert Chlala, Asian Americans/Pacific Islanders in Philanthropy, Widening the Lens on Boys and Men of Color: California AAPI & AMEMSA Perspectives, available at http://www.asianprisonersupport.com/wp-content/uploads/2014/01/aapip_bymoc-final.screen.pdf.



example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.

When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.

New York State is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses.⁸ It is time for the Census Bureau to modernize the way it counts incarcerated persons by counting them at their home address.

Conclusion

Thank you for this opportunity to comment on the Proposed 2020 Census Residence Criteria and Residence Situations as the Bureau strives to count everyone in the right place while keeping up with changes in society and population realities. Because Advancing Justice | AAJC believes in a population count that accurately represents communities and a consistent application of the residence criteria, we urge you to reconsider and change the Residence Criteria to counting incarcerated people as residents of their home address.

Sincerely,



Terry A. Minnis
Director of Census & Voting Programs
Asian Americans Advancing Justice | AAJC

⁸ See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).

