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September 1, 2016

Karen Humes
Chief, Population Division
U.S. Census Bureau
Room 5H174
Washington, DC 20233
Via email: POP.2020.Residence.Rule@census.gov

Re: 2020 Census Residence Rule and Residence Situations

Dear Ms. Humes:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the undersigned organizations, we appreciate the opportunity to provide comments in response to the Census Bureau's Federal Register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016).

The Bureau's proposal to continue counting incarcerated people at the facility in which they are housed on Census Day ignores the transient and temporary nature of incarceration. It also is inconsistent with other changes included in the same set of proposed residence criteria for the 2020 Census. If made final, this proposal will lead to another decade of vital policy decisions based on a census that counts incarcerated people in the wrong place. Therefore, we urge you to count incarcerated people as members of the community from which they come and not as members of the community in which they are incarcerated on Census Day.

American demographics and living situations have changed dramatically over the more than two centuries since the first census in 1790. Census methods and operations have evolved in response to many of these changes, in order to continue to provide an accurate portrait of the nation, its people, and its communities. But despite significant changes in the location and composition of the incarcerated population, especially over the last several decades, the policy governing the enumeration of incarcerated persons has not similarly evolved to reflect these consequential shifts in the relationship between the location of incarcerated persons on Census Day and their "usual residence."

The Census Bureau's decision to maintain the status quo ignores overwhelming public comments in favor of an updated policy that recognizes the temporal nature of most incarcerations. Moreover, the proposed method of counting the incarcerated population is inconsistent with how the Census Bureau counts other groups that eat and sleep in a location that is not their usual residence. Finally, the policy that the Census Bureau is proposing to retain will result in census counts that skew the distribution of political representation and

our very understanding of the composition and well-being of communities across America, for an entire decade following the census.

The Census Bureau’s Proposal is against the Weight of Public Consensus

The Census Bureau blatantly ignored the overwhelming consensus urging a change in the census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96 percent of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of an incarceration system that regularly shuffles incarcerated people between facilities, deserves far more consideration than it was given.

The Census Bureau’s Proposal Treats Similarly-Situated Populations Inconsistently and Fails to Recognize the Range of Factors that Often Influence the Criteria Governing Different Situations

It is important to recognize and acknowledge that the concept of “usual residence” established by the Census Act of 1790 has not been consistently applied, through time and across living situations. While the Census Bureau notes in its proposed 2020 Census Residence Criteria that usual residence “is not necessarily the same as a person’s voting residence or legal residence,” former Census Director John G. Keane, in testimony before Congress in 1988, added that it is also not necessarily “*where a person is found on Census Day*” (emphasis added).¹

Equally important is the concept of “enduring ties,” which the U.S. Supreme Court referenced in its opinion in *Franklin v. Massachusetts*ⁱⁱ, 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. 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 Census Bureau’s decision with respect to incarcerated persons is especially troubling in light of its concurrent decision to *change* the rule governing where 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., even if they *live and sleep elsewhere for most of the time* at the time the census is conducted. Like most incarcerated persons, these service members are away from their homes temporarily; the average length of deployments can vary greatly from decade to decade, depending on U.S. engagement in theaters of military conflict overseas. In its summary of comments on the proposed Residence Criteria for the military overseas, the Census Bureau cites concerns about the need for accurate data to support funding, planning, and services in military communities, but is dismissive of similar arguments regarding an accurate portrait of communities that most incarcerated persons consider to be their usual home and to which most will return following their temporary confinement.

Changing one policy, but not the other, illuminates a glaring inconsistency in the proposed 2020 Census Residence Rules that the Census Bureau has not adequately explained.

The Census Bureau’s Proposal Will Reduce the Accuracy of Data and Result in Vote Dilution

Failure to count incarcerated persons at their home address preserves an unacceptably discriminatory census result that deprives underserved urban neighborhoods of fair representation, while shifting political power to communities that do not represent the interests of incarcerated persons or their families. Because African-Americans and Latinos are disproportionately incarcerated,ⁱⁱⁱ counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. Thus, predominantly African American and Latino communities will continue to be hit especially hard by an outdated policy that renders so many of their young men invisible for all statistical purposes.

The proposed counting rules will perpetuate the distortion of democracy that results from padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else. This vote dilution is particularly extreme for urban communities and communities of color that have disproportionately high rates of incarceration.

Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to count everyone in the right place, to reflect enormous demographic shifts, changes in the prison infrastructure, and the urgent needs of communities. If you have any questions about these comments, please contact Corrine Yu, Managing Policy Director, at 202-466-3311.

Sincerely,

The Leadership Conference on Civil and Human Rights
9to5, National Association of Working Women
A. Philip Randolph Institute
AFL-CIO
American Association for Access, Equity and Diversity
American Civil Liberties Union
American-Arab Anti-Discrimination Committee
Andrew Goodman Foundation
Asian Americans Advancing Justice | AAJC
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Coalition on Human Needs
Common Cause
Demos
Franciscan Action Network
Hip Hop Caucus
Justice in Aging
Medical Mission Sisters
NAACP
NAACP Legal Defense & Educational Fund, Inc.
NALEO Education Fund
National Association of Social Workers (NASW)
National CAPACD

National Center for Lesbian Rights
National Council of Asian Pacific Americans (NCAPA)
National Council of Jewish Women
National Education Association
National Health Care for the Homeless Council
National LGBTQ Task Force
National Low Income Housing Coalition
National Organization for Women
NETWORK Lobby for Catholic Social Justice
People Demanding Action
Prison Policy Initiative
RESULTS
Service Employees International Union (SEIU)
Southeast Asia Resource Action Center (SEARAC)
Southern Coalition for Social Justice
State Voices
Union for Reform Judaism
Voices for Progress

ⁱ Testimony of Dr. John G. Keane, Director, Bureau of the Census, before the House Subcommittee on Census and Population, “Census Residence Rules: Military Personnel Abroad,” April 18, 1988 (Serial No. 100-49).

ⁱⁱ 505 U.S. 788 (1992).

ⁱⁱⁱ According to Prison Policy Initiative’s analysis of 2010 Census data, Blacks are incarcerated at five times the rate of non-Hispanic Whites, and Latinos are incarcerated at a rate almost two times higher than non-Hispanic Whites. Comments of Prison Policy Initiative, regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015), dated July 20, 2015.