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Re: Comment in response to 87 FR 50599,
Docket Number 220526-0123

Addressing topics:

Reaching and motivating everyone

New data sources

The Prison Policy Initiative submits this comment in response to the Census Bureau's federal register notice Soliciting Input or Suggestions on 2030 Census Preliminary Research, 87 FR 50599 (Aug. 17, 2022). Thank you for this opportunity to explain **why the Census Bureau should count incarcerated as residents of their home address in 2030**, and to highlight the research it must undertake to make this change successful.

This change is necessary because the Census Bureau's past practice of counting incarcerated people as residents of correctional facilities undermines the accuracy of the decennial Census and is inconsistent with its current and historical application of the residence rule.

Changing how the Bureau counts incarcerated people will result in a more accurate and equitable Census.

The Bureau's way of counting incarcerated people only recently began to seriously distort political representation in the country. The prison boom began in the 1970s, but its impact on the 1980 Census was, from a national viewpoint, modest. In fact, the Bureau didn't even find it necessary to mention incarcerated household members on the census form until 1990. But by 2000, the incarceration rate was more than four times higher than two decades earlier. As prison populations grew, so too did the urgency of changing how the Bureau counts people in prison.

Equity implications

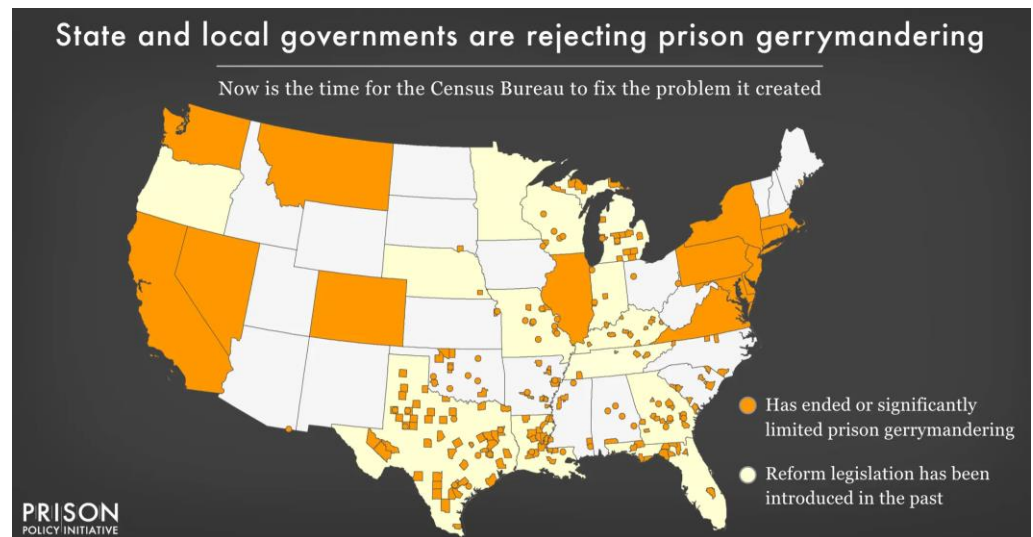
The Bureau's decision to count incarcerated people at the location of the prison disproportionately harms the communities that are hit hardest by incarceration and already marginalized because of their race, gender,

sexual orientation, class, and other defining characteristics. The Bureau's own data shows incarceration rates are not even across all populations: Black people, Native American people, Hispanic/Latinx people, and people of two or more races are disproportionately incarcerated and negatively impacted by the Bureau's residence rule.¹

As you know, the Census Bureau has a stubbornly persistent problem of undercounting disadvantaged communities.² Counting people temporarily incarcerated away from their homes as if they resided in the correctional facility they happen to be in on Census Day exacerbates this problem by further undercounting these communities.

But the problem is not limited to these communities. The Bureau's decision to count incarcerated people at the location of the facility they happen to be at on Census Day, rather than at home, has shifted political power to people who live near correctional facilities to the detriment of every resident of this country who does not live immediately adjacent to their state's largest prison complex.³

Redistricting data users are rejecting the Census Bureau's prison counts



¹ For the most recent and comprehensive demographic data about people in state prisons see *Beyond the count: A deep dive into state prison populations*, Leah Wang, Wendy Sawyer, Tiana Herring, and Emily Widra, Prison Policy Initiative, available at <https://www.prisonpolicy.org/reports/beyondthecount.html#demographics>

² For the Census Bureau's analysis of differential undercounts in the latest Census see *Post-Enumeration Survey and Demographic Analysis Help Evaluate 2020 Census Results*, Census Bureau, available at <https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html>

³ For an analysis of how prison gerrymandering dilutes representation in every level of government in which it operates, and, counter-intuitively, how some of the biggest beneficiaries of ending prison gerrymandering are people who live in rural areas near large prisons see *How many people benefit from ending prison gerrymandering?*, Peter Wagner, Prison Policy Initiative, available at <https://www.prisonersofthecensus.org/news/2014/08/21/how-many/>

During the 2010 redistricting cycle, only two states adjusted their redistricting data to count incarcerated people at home. In 2020, 13 states (California, Colorado, Connecticut, Delaware, Maryland, Montana, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and Washington State) counted incarcerated people at home. Four other states (Illinois, Massachusetts, Michigan, and Tennessee) have also taken steps to reject prison gerrymandering in redistricting.⁴ Hundreds of local jurisdictions have also made changes, in the absence of state-led solutions, to address this problem.⁵

In total, roughly half of the US population now lives in a place that has taken action to mitigate the harms of prison gerrymandering.

This number will almost certainly grow by 2030. The emerging consensus on this issue is powerful evidence that it is time for the Census Bureau to count incarcerated people at home.

To fix this problem, states have taken a variety of actions that affect redistricting in different ways. Most reallocate incarcerated people to their home addresses.

The Massachusetts state legislature took a different approach. Lawmakers concluded that the state constitution prohibited any population adjustments to the Census's redistricting data products. The state has officially requested that the Bureau count incarcerated people at home⁶, but in the meantime, it works with the Census Bureau's group quarters counts to shoehorn the reported prison counts into viable population deviations.

The success of states like Massachusetts to minimize the harm of prison gerrymandering without a full reallocation relies entirely on

⁴ Illinois passed legislation to count people at their home address for redistricting purposes started with the 2030 cycle. Massachusetts, discussed in more detail below, works around the Census' prison data to ameliorate the impact of prison gerrymandering on the state's districts and has officially requested that the Bureau count incarcerated people at home. Michigan and Tennessee have passed state legislation addressing local governments ending prison gerrymandering but the legislation has not yet been extended to state districts. For a summary of how different states are addressing prison gerrymandering see *How many states have ended prison gerrymandering? About a dozen*!* Andrea Fenster, Prison Policy Initiative, available at: https://www.prisonersofthecensus.org/news/2021/10/26/state_count/

⁵ In addition to the hundreds of governments that have avoided prison gerrymandering after the 2000 and 2010 Censuses (decades when zero and two, respectively, states adjusted their redistricting data to count people at home) we identified an additional 21 local governments scattered across 11 states that started doing so after the 2020 Census despite those states continuing to use unadjusted data for state-level districts. This list is available upon request to the Bureau and will be published in a future research publication from the Prison Policy Initiative.

⁶ A copy of the resolution adopted by both chambers of the Massachusetts legislature and delivered to the Census Bureau in 2014 is available at <https://www.prisonersofthecensus.org/news/2014/09/12/ma-resolution-3/>

geographical luck *and* hard work to ensure each district is compliant with the population requirements of equal representation regardless of whether the correctional facilities are factored in or not. If the correctional facilities in the state were larger, or clustered differently, or if the state's free population was distributed differently, or a number of other random factors didn't align precisely, the state could not achieve equal population in its districts using Census data alone.

Indeed, Maine shows that the delicate balance is often impossible without action from the Census Bureau. A single prison in the state accounts for 9% of the ideal population of a State House of Representatives district.⁷ The state's geography, population distribution, and prison locations mean that whenever it uses Census data to redistrict, no matter how much the state tries to avoid the impact of prison gerrymandering, it cannot do so without splitting blocks and running afoul of other traditional redistricting criteria such as compactness.

The Bureau has a duty to provide the states with redistricting data. About half of the US population now lives in a place that must take action to make the data published by the Bureau fit for redistricting use. Each of these places must jump through these logistical hoops to solve a problem that the Bureau could easily address.

Census Bureau acknowledges the evolving needs of states on this issue and should do more to meet it

The Census Bureau has always published block-level counts of people in group quarters, which includes prisons, but this data has traditionally not been available until the summer of the year after the Census in what was then Summary File 1.

To its credit, the Bureau acknowledged government bodies drawing districts need to know where prisons are located in Census data to make decisions about removing these populations or reallocating them elsewhere. Therefore, the Bureau made a critical technical change to the timetable for publishing the 2010 Census that it built upon in 2020. For the 2010 cycle, the Bureau published an Advance Group Quarters Summary File on April 20, 2011. This was after the redistricting data for each state was available, but months earlier than these data tables would have been available in Summary File 1. For 2020, the Census

⁷ The 2020 Census counted 802 people incarcerated at the Maine State Prison (Warren), the state has 151 State House of Representatives districts, each ideally containing 9,022 constituents.

Bureau went even further and published the Group Quarters data as table P5 within the package of PL94-171 redistricting data.

And so, even states with very tight redistricting deadlines were able to identify correctional populations in the Census data to make any necessary adjustments.

Nevertheless, more needs to be done to make the 2030 Census equitable for redistricting. Not only is the Census required to provide the states with data that are fit for use, but it is the only one that can provide a complete solution. The states often run up against roadblocks that the Census Bureau would not. For example, counting people incarcerated across state lines, matching Census race and ethnicity categories, and counting people in Bureau of Prisons facilities (which has refused to cooperate with states) are all problems that the states struggle to address but the Bureau could do far more effectively. The states have shown that incarcerated people can be counted at home, but the Census needs to take this proof of concept and apply it to its own count.

Data mistakes are magnified by the way incarcerated people are currently counted

The way the Census Bureau currently counts incarcerated people diminishes its data quality in two distinct ways:

First, counting incarcerated people at the location of the facility where they are on Census Day gives a distorted picture of where people live and the true nature of the community. In over 100 municipalities with correctional facilities, at least one in three people counted by the Census is actually an out-of-town resident.⁸ For example, in Ina, Illinois, the state's Big Muddy prison accounts for 80% of the population reported for Ina in the Census. The people incarcerated there are, in fact, residents of other villages, towns, and cities scattered across Illinois.

Second, counting incarcerated people as if they were residents of the correctional facility magnifies Census mistakes. For example, when the Bureau counts even a single facility in the wrong place, it drops a

⁸ When a prison accounts for a third of a town's population, the Census' demographic information such as race and ethnicity is not representative of local residents. Mass incarceration's disproportionate impact on Black and Latino communities, coupled with prisons being built largely in white communities distorts the Census' demographic data when people aren't counted in their home communities. This often paints a distorted picture of job opportunities in the local economy. For more detail and chart of the most impacted municipalities see *When the Census says most of your town is in prison*, Aleks Kajstura, Prison Policy Initiative, available at <https://www.prisonersofthecensus.org/news/2020/11/10/municipal/>

thousand people into an arbitrary location. Similarly, a single error can flip the race characteristics of thousands of people, as the Bureau did in reporting 2020 Census populations for the blocks containing Angola Prison in Louisiana.⁹ Mistakes happen even with the best processes; counting people at home ensures that when those mistakes are made, their impact is minimized.

As the Census evolves and improves, incarcerated people are left behind

The Census Bureau's interpretation of its "residence rule," which says that people should be counted where they eat and sleep most of the time, has evolved over the decades to keep pace with a changing society. But the way the Bureau counts incarcerated people is still stuck in the 1700s.

In 2018, while determining how the "residence rule" applied to incarcerated people in the 2020 Census, the Bureau showed a flawed understanding of where incarcerated people live¹⁰ and the realities of modern incarceration. The Bureau insisted that counting incarcerated people anywhere other than the facility would be less consistent with the concept of usual residence.

However, this view of prisons disregarded the fact that many people spend short periods of time behind bars, and even those with longer sentences are often shuffled between facilities for administrative convenience.

On any given day, 30% of incarcerated people are held in jail. The American Jail Association has reported that 75% of people entering U.S. jails are released within 72 hours. The average stay for someone in jail is 26 days. (Importantly, the *median* time served in jails is likely far shorter than 26 days, though no precise figures exist.)¹¹ As a result,

⁹ For a detailed analysis of the mistakes made in reporting population data for Angola Prison in 2020, history of mistakes made with reporting populations for Greenhaven Prison in New York, and other issues with group quarters counts, see Exhibit 1 in *Post Census Group Quarters Review—Comment*, Andrew A. Beveridge, Ph.D., President and Co-Founder of Social Explorer, available at

<https://www.regulations.gov/comment/USBC-2021-0025-0027>

¹⁰ The Bureau's conclusory response to arguments supporting counting incarcerated people at home are available at <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>

¹¹ Length-of-stay data from prisons and jails shows why counting incarcerated people as correctional facility residents doesn't make sense. For our full analysis see *Incarcerated on Census Day: How even brief jail and prison stays can last a decade*, Ginger Jackson-Gleich, Prison Policy Initiative, available at prisonersofthecensus.org/news/2021/06/02/sentence-lengths/

even a brief jail stay of just a few days had repercussions that were felt for a decade.

Prisons tend to hold people serving longer sentences than those in jails. Regardless of sentence length, though, people in prisons don't reside (eat and sleep most of the time) at the particular correctional facility that they happen to be at on Census Day. People enumerated at a state or federal prison on Census Day will not have been at that facility for very long, and are likely to leave it soon:

- 75% of people serve time in more than one prison facility.¹²
- 12% of people serve time in at least five facilities before returning home.¹³
- Most people incarcerated in New York State have only been at their current prison for seven months.¹⁴ (Other states report similar figures.)¹⁵

The way the Census counts incarcerated people is out of step with how it applies the residence rule to other people.

It's past time for the Census to count incarcerated people at home, which would align residence rules for incarcerated people with how the Census Bureau counts others in similar transitory situations. For example, someone who is away from home for a military deployment for a year is counted at their home address, but someone incarcerated for just a few months is counted at the location of the correctional facility.

The most glaring double standard in the Bureau's application of the residence rule to incarcerated people is how it counts kids who are away from home on Census Day. Kids at boarding schools are counted

¹² Among formerly incarcerated people surveyed by the Bureau of Justice Statistics “three-quarters of former inmates had served time in more than one prison facility; nearly 1 in 8 had served time in 5 or more prison facilities before their release”, see Bureau of Justice Statistics, *Sexual Victimization Reported by Former State Prisoners, 2008*, available at <http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>

¹³ Some of the survey respondents were moved through as many as 15 facilities. Table 11 in the survey cited above (fn. 12) lists the breakdown of facility transfers.

¹⁴ While the precise timing varies from state to state we also found similar lengths of stay for people in Georgia, Indiana, and Massachusetts, for details see our 2016 Comments in response to Proposed 2020 Residence Criteria and Residence Situations, 81 FR 42577 (June 30, 2016) jointly by the Prison Policy Initiative and Dēmos, available at https://www.prisonersofthecensus.org/letters/2016/PPI_Demos_2016_FRN_comment.pdf

¹⁵ Vera Institute of Justice provided an analysis of the length of stay in facilities in Nebraska, Oregon, and Washington state. Their findings "derived from work supported under a set of agreements with the Nebraska Department of Correctional Services, the Oregon Department of Corrections, and the Washington Department of Corrections" is presented in their 2016 Comments in response to Proposed 2020 Residence Criteria and Residence Situations, 81 FR 42577 (June 30, 2016) submitted by the Vera Institute of Justice, available at https://www.prisonersofthecensus.org/letters/2016/Vera_Comment_on_Residence_Rule.pdf

at their parents' addresses, while kids who have even a short stay at a juvenile correctional facility are counted at the location of the facility.

The Census Bureau uses the length of time someone spends in a single location as a starting point for applying the residence rule, but it often takes other factors into account. For most people who are away for long times, the Bureau recognizes the importance of family and community ties to count them at home (e.g., truck drivers, boarding school students, Congress, military personnel) but fails to apply the same thinking to incarcerated people.

Suggested areas of research for planning the 2030 Census

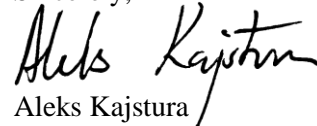
We urge the Bureau to count incarcerated people at home in the 2030 Census and suggest the following research in the current and upcoming planning phases:

1. Quantify the inequitable outcomes of a Census that continues to count incarcerated people at the location of the correctional facility where they are held on Census Day. How does this impact redistricting data and the ability of state and local governments to draw districts that ensure equal representation? How does this data skew the demographic picture of municipalities that contain large correctional facilities?
2. Evaluate how the Bureau's application of its residence rule differs between incarcerated people and other people away from home on Census Day.
3. Explore where state laws mandate that incarceration does not change a person's residence, particularly for purposes of voting. While the Bureau's definition of residence does not need to directly follow state residence law, such laws would help inform the Bureau's conclusion of where someone is assumed to reside for representation and, similarly, where their community ties are assumed to be.
4. Investigate data sources that could be used to enumerate incarcerated people at home. The Bureau already routinely uses administrative records from facilities for Census counts. Most states that ended prison gerrymandering relied on similar administrative records held by their Departments of Corrections to gather the necessary home address data. Some states, such as Nevada, used other data sources (from the Department of Health and Human Services and the Department of Motor Vehicles) to complement and fill holes in their address data. How successful were the states in counting people at home, and how could the Census Bureau improve on that?

5. Investigate the needs of redistricting data users. How many states and local governments take it upon themselves to adjust the PL 94-171 redistricting data to account for incarcerated people being counted at the location of the correctional facility? How many more redistricting bodies wish to do so but have not yet been able to take on that additional burden?¹⁶

We urge the Bureau to engage in this research to lay the groundwork for a more equitable Census in 2030.

Sincerely,



Aleks Kajstura
Legal Director

¹⁶ For example, the Montana redistricting commission's ability to end prison gerrymandering in that state was indirectly made possible by the unexpected COVID pandemic, where travel restrictions meant that funds originally budgeted for travel could be used to pay for geocoding 1,335 addresses and then adjusting the block populations accordingly in the redistricting data files. If not for COVID-imposed travel limitations coinciding with redistricting, the state would have not had the funds to cover such a seemingly simple and basic expense.