

November 15, 2022

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

Topics:

Reaching and motivating everyone
New data sources

Introduction

The undersigned criminal justice and voting rights organizations submit this joint comment urging the Census Bureau to count incarcerated people at their home addresses in the 2030 Census.

In 2020 and previous Censuses, incarcerated people were counted at the location of the correctional facility they were in on census day rather than at their home address. The resulting redistricting data published by the Census Bureau failed to properly reflect communities on the ground. As a result, hundreds of local governments and over a dozen states took ad hoc steps to correct the redistricting data on their own.¹

Counting incarcerated people at home ensures that communities hit hardest by mass incarceration get equal representation in state and local governments. The Census needs to update its interpretation of the residence rules to count incarcerated people at home and engage in research necessary to make that change successful.

Census' evolution over the decades has not caught up to the realities of mass incarceration

The Census Bureau's interpretation of its "residence rule" — 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 they count incarcerated people is still stuck in the 1700s.

The amount of time spent in a single location is a starting point, not an end-all-be-all for how the Census Bureau applies its residence rules. Most people who are away from home on census day — even if they're gone

¹ For the most up-to-date and comprehensive accounting of states rejecting 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/

for a significant amount of time — are counted at home. The Bureau does this because it recognizes a person's ties to their home and community are what truly define a residence. It relies on family and community ties to count truck drivers, boarding school students, members of Congress, and military personnel at home. But the Bureau fails to apply the same approach when applying the residence rule to incarcerated people.

Impact of Census counting incarcerated people in the wrong place

The Bureau's interpretation of the residence rule, as applied to incarcerated people, produces redistricting data that fails to reflect people in their home communities.

The Bureau's practice of counting incarcerated people as residents of a prison, rather than of their homes, shifts political representation to people who live near correctional facilities at the expense of residents who live further away. In doing this, the Census Bureau creates redistricting data that gives people who live close to prisons a louder voice in government and an unearned influence over its decisions.

For example, after the 2010 redistricting cycle, when most states used unadjusted Census data, there were 24 state house districts across the country where prisons accounted for 10% or more of the districts' population.

The impact of the Bureau's flawed redistricting data was even starker in local government: the 2010 Census counted 1,025 people incarcerated at the New Lisbon Correctional Institution as if they were residents of Juneau County, Wisconsin. When the County Board of Commissioners used that data to draw their county government districts, the facility accounted for 80% of the population of a district. Juneau County is not alone; we have identified hundreds of other communities facing similar problems created by the flawed method of counting incarcerated people.

Inequitable impact

The Bureau's outdated interpretation of the residence rule as applied to incarcerated people disproportionately harms communities already marginalized due to race, gender, sexual orientation, class, and more. For example, Black people, Native American people, Hispanic/Latinx people, and people of two or more races are overrepresented in state prisons.²

² 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>

As you know, the Census Bureau has a stubbornly persistent problem of undercounting disadvantaged communities.³ The Bureau's practice of counting people temporarily incarcerated away from their homes as if they resided in the correctional facility they happened to be in on census day exacerbates this existing problem by further undercounting these areas.

Research needs to improve the 2030 Census

An equitable census requires both that everyone be counted and that everyone be counted in the right place. To ensure an accurate count of incarcerated people in the 2030 Census, we recommend the Bureau:

- Research state and local redistricting data needs. The Bureau should look at how states and local governments use its redistricting data products and the efforts by state and local governments to correct the data to count incarcerated people at home. The Bureau should consult with redistricting data users to ensure that 2030 redistricting data meets their needs.
- Reevaluate how it applies the residence rule to incarcerated people. The Bureau should gain a better understanding of how people who are incarcerated on census day move in, out, and among correctional facilities so that the Bureau can form a more informed conclusion about their residence that is in line with the way other transient populations are counted.
- Research methods and available data to count incarcerated people at home. States have used various administrative data sets to adjust the Census' redistricting data to count incarcerated people at home. The Bureau should survey states' experience using these data sources as well as research additional administrative records or other options available to the Census Bureau.

³ 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>

Thank you for this opportunity to provide feedback ahead of the 2030 Census operational design. We hope that the Bureau will conduct the research necessary to count incarcerated people at home so that the 2030 Census can provide the states with accurate redistricting data.

Sincerely,

American Civil Liberties Union
American Civil Liberties Union of Rhode Island
Black and Pink National
Campaign Legal Center
Chainless Change
Coalition for Effective Public Safety Steering Committee (CEPS)
Coalition for Prisoners' Rights
College & Community Fellowship
National CURE
Colorado-CURE
Michigan Chapter of CURE (MI-CURE)
MS CURE
Oregon CURE
Common Cause Rhode Island
Equal Justice Under Law
Human Impact Partners (HIP)
Human Rights Defense Center
Let's Get Free: The Women and Trans Prisoner Defense Committee
Middle Ground Prison Reform/Arizona.
Missouri Jobs with Justice
National Association of Criminal Defense Lawyers
National Community Action Partnership
National Council of Asian Pacific Americans (NCAPA)
NC Counts Coalition
Parole Preparation Project
Pennsylvania Prison Society
Picture Projects Inc
Prison Policy Initiative
Prisoners' Legal Services of New York
Progressives for Equality and Compassion for Everyone
Southern Coalition for Social Justice
State Voices
The Real Cost of Prisons Project.
The Sentencing Project
Voice of the Experienced
Women on the Rise