

July 15, 2015

VIA FIRST CLASS AND ELECTRONIC MAIL

Attention: Ms. Karen Humes, Chief, Population Division  
Assistant Division Chief for Special Population Statistics  
U.S. Census Bureau  
4700 Silver Hill Road  
Washington, D.C. 20233

Dear Ms. Humes,

LatinoJustice PRLDEF submits this Comment in response to the Census Bureau's Federal Register Notice regarding the 2020 Decennial Residence Rule and Residence Situations, 80 FR 28950 (Released May 20, 2015). We write to urge the U.S. Census Bureau to count and enumerate incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

LatinoJustice PRLDEF, originally established as the Puerto Rican Legal Defense and Education Fund (PRLDEF) in 1972, is one of the country's leading nonprofit civil rights public interest law organizations. We work to advance, promote and protect the legal rights of Latinas and Latinos<sup>1</sup> throughout the nation. Our work is focused on addressing systemic discrimination and ensuring equal access to justice in the advancement of voting rights, housing rights, educational equity, immigrant rights, language access rights, employment rights and workplace justice, seeking to address all forms of discriminatory bias that adversely impact Latinas and Latinos.



LatinoJustice PRLDEF  
99 Hudson Street, 14th Floor  
New York, NY 10013-2815  
Tel: 212.219.3360  
Fax: 212.431.4276  
800.328.2322

As a civil rights organization, we are directly concerned with how Latinas, Latinos, and other communities of color may be impacted by current Census Residence Rules and Residence Situations, particularly where population counts based on Census Residence Rules are employed by elected and appointed officials in redistricting and apportionment schemes. Our organization has litigated in support of New York's state law in *Little v. LATFOR*, which we discuss more in detail below. We believe that ensuring equal representation is imperative to the health of the nation, because it allows for a just democratic system and avoids any racially discriminatory effects of prison gerrymandering.

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<sup>1</sup> As used in this Comment, the terms "Hispanic" or "Latino" are used interchangeably as defined by the U.S. Census Bureau and "refer to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race." Karen R. Humes, Nicholas A. Jones & Roberto R. Ramirez, *Overview of Race and Hispanic Origin: 2010*, 2010 Census Briefs, 1, 2 (March, 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br 02.pdf>.

Prison gerrymandering occurs when incarcerated people are counted in the facilities where they are temporarily detained, which inevitably misconstrues population demographics for state and local redistricting purposes.<sup>2</sup> Partisan political interests that control the redistricting process often engage in prison gerrymandering, using captive prison populations to increase partisan representation.

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 removed far from the actual homes of incarcerated people.<sup>3</sup> In Illinois, for example, 60% of incarcerated people's home residences were in Cook County, yet the Bureau counted 99% of them as if they resided outside Cook County.<sup>4</sup> When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. The consequences of the Bureau's decision to count incarcerated people in the city or town where a prison facility is located carries long-lasting effects, both in the communities where detained people come from and return to, as well as the communities in which detained people are temporarily held.<sup>5</sup>

The Bureau should change its current practice of counting incarcerated people's "usual residence" in state prison facilities to their last primary permanent residence or "usual residence" as identified by those incarcerated for three critical reasons, discussed in detail below.

**First, the current method of counting incarcerated people in communities where a prison facility is located is untenable, because it is not an accurate count of the population.**

The current use of prisons as a "usual residence" for those detained there misconstrues the actual population sizes of communities across the country and results in inadequate community representation in the redistricting context. Census counts of incarcerated people in prisons as a "usual residence" may lead to illegal gerrymandering in state based apportionment or redistricting, where largely white rural populations are overrepresented and more diverse urban populations are underrepresented<sup>6</sup> due to the location of the prison itself.

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<sup>2</sup> See Peter Wagner, Eric Lotke & Andrew Beveridge, *Why the Census Bureau can and must start collecting the home addresses of incarcerated people*, Prison Policy Initiative (February 10, 2006), <http://www.prisonpolicy.org/homeaddresses/report.html>.

<sup>3</sup> See 2010 Group Quarters Shapefile, Prison Policy Initiative, [www.prisonersofthecensus.org/data/2010/groupquartersshapefile.html](http://www.prisonersofthecensus.org/data/2010/groupquartersshapefile.html) (last visited Jul. 13, 2015).

<sup>4</sup> Rose Heyer & Peter Wagner, *Too big to ignore: How counting people in prisons distorted Census 2000*, Prison Policy Initiative (April 2004), <http://www.prisonersofthecensus.org/toobig/size.html>.

<sup>5</sup> *Id.*

<sup>6</sup> Michelle Davis, *Assessing the Constitutionality of Adjusting Prisoner Census Data in Congressional Redistricting: Maryland's Test Case*, 43 U. Balt. L.F. 35, 60 (2012), citing Prison Policy Initiative & Demos, *The Census Count and Prisons: The Problem, the Solutions and what the Census Can Do* (Oct. 4, 2010), [http://www.demos.org/sites/default/files/publications/FACTSHEET\\_PBG\\_WhatCensusCanDo\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/FACTSHEET_PBG_WhatCensusCanDo_Demos.pdf).



African Americans are incarcerated at a rate about 5 times higher than whites and Latinos are incarcerated at a rate about 2 times higher than non-Latino whites, underscoring the racially discriminatory implications of prison gerrymandering,<sup>7</sup> which can lead to potential vote dilution. In 2000, African Americans and Latinos only made up a quarter of the general population but represented almost 63% of the incarcerated population in the whole United States.<sup>8</sup> In 2010, there were 20 counties across the United States where the incarcerated Latino population outnumbered Latinos who were not incarcerated in those same counties – in California, Colorado, Florida, Illinois, Kentucky, Missouri, New York, Pennsylvania, Virginia and West Virginia.<sup>9</sup> This creates inaccuracies on a large scale that labels counties as “diverse” when they are not, and in fact, the majority of the Latino population detained in these communities is segregated by prison walls from the rest of the population. When state legislatures used this flawed data to draw or apportion legislative districts, they impute Latino political clout and political participation to districts where Latinos in actuality have little to no civic voice.<sup>10</sup>

An overwhelmingly large number of Latinos are thus discounted from their communities of origin and enumerated in counties with a very different demographic and geographic profile than their own,<sup>11</sup> since most states incarcerate people far from their usual place of residence. In states as populous as New York, Pennsylvania, Illinois, Georgia, Florida and Texas, Latinos are more likely to be locked up in prisons located in communities that remain largely white, non-diverse, and miles apart, both literally and figuratively, from communities in their home counties.<sup>12</sup>

More often than not, the majority of state prison populations housed in rural areas were counted there despite maintaining a prior usual residence in urban metropolitan areas such as New York City, Chicago, Detroit, Los Angeles and Philadelphia—all of which include significant African American and Latino communities.<sup>13</sup> In 2000, only 25% of New York’s state population lived upstate, yet 91% of detained people in state prisons were incarcerated there.<sup>14</sup> In Illinois, 60% of detained people previously resided in Chicago, yet 99% of the prisons were located elsewhere.<sup>15</sup> In California, 30% of incarcerated people hailed from Los Angeles County, but only 3% of them were located there.<sup>16</sup> Forty percent of incarcerated people in Pennsylvania were from Philadelphia, but the city had no state prisons, hence, no people who were detained were counted in Philadelphia.<sup>17</sup>

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<sup>7</sup> See Peter Wagner & Daniel Kopf, *The racial geography of mass incarceration*, Prison Policy Initiative (July 2015), <http://www.prisonpolicy.org/racialgeography/report.html>. See also Wagner et al., *Why the Census*, *supra* note 2.

<sup>8</sup> Heyer & Wagner, *supra* note 4.

<sup>9</sup> Wagner & Kopf, *supra* note 7.

<sup>10</sup> *Id.*

<sup>11</sup> Heyer & Wagner, *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> See Nathaniel Persily, *The Law of the Census: How to Count, What to Count, Whom to Count, and Where to Count Them*, 32 Cardozo L. Rev. 755, 787 (2011) (“[i]n several states, such as New York and Illinois, the prison population is heavily minority and from urban centers, while prisons are located in rural, largely white counties.”).

<sup>14</sup> Heyer & Wagner, *supra* note 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

In Michigan, 30% of the state's incarcerated people were from Detroit, but only 11% of the state's cells were located there.<sup>18</sup> The Census Bureau is therefore inaccurately counting the size of the populations in many urban communities that detained people are actually members of, by counting them in the community where the prison is located.

The use of the prison location itself as a "usual residence" for Census population counts is also misleading and results in inaccurate conclusions<sup>19</sup> for apportionment purposes. Some counties were reported to be growing when in fact it was their prison population that was increasing.<sup>20</sup> With regard to Latino populations, many counties may report a large number of Latino residents because they have a large Latino population that is incarcerated.<sup>21</sup> In actuality, the Latino population is overrepresented in counties where they are not residing by choice.<sup>22</sup> In turn, they are underrepresented in their actual place of "usual residence" and communities of origin.<sup>23</sup> This creates a high risk for inaccuracies and increases the risk of a distinctively racially discriminatory impact on the representation of African American and Latino communities.<sup>24</sup>

**Second, the current method of counting incarcerated people in communities where a prison facility is located is untenable because it contributes to possible unlawful gerrymandering in violation of the Equal Protection Clause under the Fourteenth Amendment, as well as potential vote dilution.**

These outcomes do not appear to comport with the Supreme Court's Fourteenth Amendment equal protection jurisprudence "one person one vote" standard.<sup>25</sup> In *Gray v. Sanders*, the Supreme Court held that Georgia's county-unit system was in violation of the Equal Protection Clause because the method of counting votes diluted a person's vote as the county population increased, therefore, rural votes weighed far more than the urban vote.<sup>26</sup>

The U.S. Supreme Court made clear in *Reynolds v. Sims*, 337 U.S. 533 (1964), that the "one person one vote" standard requires that voting districts contain relatively equal population numbers, so that individual voting power is equalized in accordance to the Fourteenth Amendment.<sup>27</sup> In *Wesberry v. Sanders*, the Court established that equal representation for the

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<sup>18</sup> *Id.*

<sup>19</sup> Heyer & Wagner, *supra* note 4.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Persily, *supra* note 13, at 787 ("[i]n several states, such as New York and Illinois, the prison population is heavily minority and from urban centers, while prisons are located in rural, largely white counties.").

<sup>25</sup> See, e.g., *Gray v. Sanders*, 372 U.S. 368, 379 (1963) ("How then can one person be given twice or ten times the voting power of another person in a state-wide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote [ . . . ]. This is required by the Equal Protection Clause of the Fourteenth Amendment"); *Reynolds v. Sims*, 377 U.S. 533, 566 (1964).

<sup>26</sup> *Gray*, 372 U.S. at 379.

<sup>27</sup> *Reynolds*, 377 U.S. at 566.

number of people is a fundamental principal of our government.<sup>28</sup> Race, sex, economic, status, or place of residence must not undermine this fundamental principle.<sup>29</sup>

Given that state and local governments use Census data to redistrict for voting purposes, the current method of counting prisons as a “usual residence” may contribute to the potential violation of the equipopulous “one person, one vote”<sup>30</sup> standard, which may also lead to unlawful vote dilution.<sup>31</sup>

Unlawful vote dilution occurs whenever a State minimizes or cancels out the true voting strength of a racial or language minority under the Federal Voting Rights Act of 1965. What triggers the protections of the Act is the existence of disproportionality in the execution of what may otherwise be race-neutral policies. The combination of the Census Bureau’s usual residence rule as it exists today along with the racially skewed disproportionate outcomes of many criminal justice systems in the United States could result in minimizing the collective voting strength of Latino and African American communities. For example, on a national scale, 1 out of every 15 African American men are incarcerated, and 1 out of every 36 Latino men in the U.S. are incarcerated.<sup>32</sup> Compared to the ratio of 1 of every 106 white men<sup>33</sup> incarcerated, the outcomes of the criminal justice system exacerbate the loss of concomitant political power in minority communities, and therefore dilute minority voting strength.

In New York, this was evident before the state legislature corrected the usual residence policy for state and local redistricting. Latinos in New York State were 18 % of the general population<sup>34</sup> but were overrepresented at 22% of the state prison population.<sup>35</sup> This raises direct concerns over potential vote dilution of Latino voting strength. Study after study<sup>36</sup> has shown

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<sup>28</sup> *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526 (1964).

<sup>29</sup> *Id.*

<sup>30</sup> U.S. Const. amend. XIV § 1; U.S. Const. amend. XV § 1; *Reynolds*, 372 U.S. at 566.

<sup>31</sup> See Peter Wagner, *Breaking the Census: Redistricting in an Era of Mass Incarceration*, 38 Wm. Mitchell L. Rev. 1241, 1244 (2012), <http://web.wmitchell.edu/law-review/wp-content/uploads/Volume38/documents/2.Wagner.pdf>; see also Davis, *supra* note 6, at 38 (citing Dale E. Ho, *Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle*, 22 Stan. L. & Pol’y Rev. 355, 388 (2011)).

<sup>32</sup> This data pertains to African American, Latino and white men of ages 18 and older. African American men ages 20-34 have a much higher rate of 1 in 9. The PEW Center on the States, *One in 100: Behind Bars in America 2008*, 6, 40 (February 2008),

[http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2008/one20in100pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2008/one20in100pdf.pdf).

<sup>33</sup> *Id.*

<sup>34</sup> Sharon R. Ennis, Merays Rios-Vargas, & Nora C. Albert, *The Hispanic Population: 2010*, 2010 Census Briefs, 1, 6 (May 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

<sup>35</sup> These numbers reference the percentage of Latinos in prisons and jails. See Leah Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, Prison Policy Initiative (May 28, 2014), [http://www.prisonpolicy.org/graphs/2010percent/NY\\_Hispanics\\_2010.html](http://www.prisonpolicy.org/graphs/2010percent/NY_Hispanics_2010.html).

<sup>36</sup> Several major studies recognize the growing Latino population affected by disenfranchisement, approaching the rates suffered by African American communities. See Christopher Uggen, Sarah Shannon & Jeff Manza, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, The Sentencing Project, 1, 10 (July 2012), [http://sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf); see also Nancy E. Walker, Francisco A. Villarruel, J. Michael Senger, & Angela M. Arboleda, *Los Opportunities: The Reality of Latinos in the U.S. Criminal Justice System*, National Council of La Raza, (2004), [http://www.nclr.org/images/uploads/publications/file\\_Lost\\_Opportunities\\_PDF.pdf](http://www.nclr.org/images/uploads/publications/file_Lost_Opportunities_PDF.pdf); Marisa J. Demeo & Steven A. Ochoa, *Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States*, MALDEF (December, 2003), <http://maldef.org/assets/pdf/FEB18-LatinoVotingRightsReport.pdf>.



that state criminal justice systems in fact carry a racially discriminatory effect where they disproportionately disenfranchise people of color, whether or not such disenfranchisement is intentional. This creates unlawful racial gerrymandering and vote dilution where prison populations reflect the systemic over-incarceration of African American and Latino communities. This practice not only mischaracterizes the demographics of the community and constituents represented, it also reinforces systemic ethnic and racial inequality.<sup>37</sup>

In addition, nine of the state house districts in Connecticut were able to meet the federal minimum population in Connecticut's 2011 statewide redistricting process by including the prison populations in those areas.<sup>38</sup> Connecticut's Enfield District reported 3,300 African American and Latinos residing in their district, when in reality, 72% of the African American and 60% of the Latino populations of that district were incarcerated in the local correctional facilities.<sup>39</sup> Hence, African American and Latino voting power was not only potentially diluted, it was largely displaced in these largely rural, white communities from largely African American and Latino communities.<sup>40</sup>

In at least seven state house districts in Connecticut, white residents gained significantly more power because of the minimum 1,000 incarcerated African American and Latino people that were counted in their districts.<sup>41</sup> This in effect gave the largely white population who lived near the prisons extra electoral clout compared to the largely African American and Latino neighborhoods in urban areas of Connecticut that are the home districts of these prisoners. In addition, by counting the incarcerated population in the town's general population, the prison population remains physically and forcefully segregated from the surrounding community.

Prison gerrymandering could also lead to a potential vote dilution claim under Section 2 of the Voting Rights Act of 1965 (VRA).<sup>42</sup> Voting rights advocates have suggested that in order to bring a Section 2 claim, the plaintiff must specifically indicate a remedy to their claim, and reallocating incarcerated people to their place of prior permanent residence could serve as a Section 2 remedy.<sup>43</sup> This could equalize voting in both communities with and without prison facilities because incarcerated people will no longer be misplaced in the location of the prison where they are held. Despite the Ninth Circuit's opinion in *Farrakhan v. Gregoire* that a Section 2 vote dilution challenge under the VRA based on felony disenfranchisement required a showing of intentional discrimination by the state criminal justice system itself,<sup>44</sup> the U.S. Supreme Court has upheld the Section 2 VRA vote dilution standard to address discriminatory effect as well as discriminatory intent.<sup>45</sup>

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<sup>37</sup> See sources cited *supra* note 36.

<sup>38</sup> *Prison Gerrymandering in Connecticut*, Prison Policy Initiative & Common Cause Connecticut (April 9, 2014), <http://www.prisonersofthecensus.org/factsheets/ct/ct.pdf> (hereinafter "*Prison Gerrymandering*").

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Davis, *supra* note 6 at 38 (citing Ho, *Captive Constituents*, at 388).

<sup>43</sup> *Id.*

<sup>44</sup> *Farrakhan v. Gregoire*, 623 F.3d 990, 992 (9th Cir. 2010).

<sup>45</sup> See *Thornburg v. Gingles*, 478 U.S. 30, 44. (1986) (citing S. REP. NO. 97-417 at 2, 27-29, 36); see also *White v. Regester*, 412 U.S. 755, 767-70 (1973) (establishing the "results"-based standard Congress intended to follow in establishing the civil VRA cause of action); S. REP. NO. 97-417, 97TH CONG. 2ND SESS. at 28 (1982) (repudiating the Court's intent requirement in *Mobile v. Bolden*, 446 U.S. 55, 60-61 (1980)).

**Third, it is imperative for the Bureau to change its current method of counting incarcerated people in communities where the prison facility is located, because over 200 counties and municipalities in a majority of states do not count or consider prisons as a “usual residence” in redistricting.**

Over 200 counties and cities in a majority of states avoid prison-based gerrymandering through state constitutional provisions and/or state and local legislation.<sup>46</sup> At last count, 225 of these cities and counties do not count prisons as a “usual residence” for local and state based redistricting and apportionment counts, and instead rely on detained people’s usual residence prior to incarceration.<sup>47</sup>

Municipalities in states with the largest Latino populations are amongst the majority, and include municipalities in Arizona, California, Colorado, Connecticut, Florida, Illinois, New Mexico, Nevada, New Jersey, New York, and Texas.<sup>48</sup> Of these states, Arizona, California, Connecticut, Florida, New York and Texas contain explicit language in their state laws that an incarcerated person’s domicile does not change when they are in a state or public prison.<sup>49</sup> Colorado, Nevada and New York include similar language in their state constitutions.<sup>50</sup>

In New York, in particular, after the 2000 Census, seven state senate districts only met population requirements in state apportionment because the Census counted detained people as if they were upstate residents.<sup>51</sup> The New York State Constitution makes clear that “For the purpose of voting, no person shall be deemed to have gained or lost a residence... while confined in any public prison.”<sup>52</sup> For this reason, New York State passed legislation to adjust the population data after the 2010 Census, to count incarcerated people at their home addresses in state legislative apportionment and redistricting.<sup>53</sup>

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<sup>46</sup> See A.R.S. § 16-593 (2015) (Arizona law); Cal. Elec. Code § 21003 (2015) (California law); Conn. Gen. Stat. § 9-14 (2014) (Connecticut law); Fla. Stat. § 101.045 (2015) (Florida law); N.M. Stat. Ann. § 1-1-7 (West 2015) (New Mexico law); Nev. Rev. Stat. Ann. § 293.487 (2013) (Nevada law); N.Y. Const. art. II, § 4 (New York Constitution); N.Y. Elec. Law § 5-104 (McKinney 2015); N.Y. Correct. Law § 71(8) (McKinney 2015) (New York laws); N.C. Gen. Stat. § 163-57 (2014) (North Carolina law); Tex. Elec. Code Ann. § 1.015 (West 2013) (Texas law); *Local Governments that Avoid Prison-based Gerrymandering* Prison Policy Initiative, May 29, 2015, <http://www.prisonersofthecensus.org/local/> (hereinafter “*Local Governments*”).

<sup>47</sup> *Local Governments*, *supra* note 46.

<sup>48</sup> Ennis et. al, *supra* note 34.

<sup>49</sup> See A.R.S. § 16-593 (2015) (Arizona law); Cal. Elec. Code § 21003 (2015) (California law); Conn. Gen. Stat. § 9-14 (2014) (Connecticut law); Fla. Stat. § 101.045 (2015) (Florida law); N.M. Stat. Ann. § 1-1-7 (West 2015) (New Mexico law); Nev. Rev. Stat. Ann. § 293.487 (2013) (Nevada law); N.Y. Elec. Law § 5-104 (McKinney 2015); N.Y. Correct. Law § 71(8) (McKinney 2015) (New York laws); N.C. Gen. Stat. § 163-57 (2014) (North Carolina law); Tex. Elec. Code Ann. § 1.015 (West 2013) (Texas law).

<sup>50</sup> Colo. Const. art. VII, § 4 (Colorado constitution); Nev. Const. art. II § 2 (Nevada Constitution); N.Y. Const. art. II, § 4 (New York Constitution).

<sup>51</sup> Peter Wagner, Aleks Kajstura, Elena Lavarreda, Christian de Ocejo & Sheila Vennell O'Rourke, *50 State Guide: Fixing prison-based gerrymandering after the 2010 Census: New York*, Prison Policy Initiative (March 2010) (hereinafter “*50 State Guide*”), <http://www.prisonersofthecensus.org/50states/NY.html>.

<sup>52</sup> N.Y. Const., *Art. II, § 4*.

<sup>53</sup> Wagner et al., *50 State Guide*, *supra* note 51.

In *Little v. LATFOR*, the Supreme Court of the State of New York in Albany upheld this state law that requires incarcerated people to be reported under their address prior to incarceration.<sup>54</sup> The Court reasoned that there was nothing in the record that indicated that the incarcerated people had any permanency in the locations of the facilities or that they intended to remain there after their release.<sup>55</sup> The Court found that the Department of Corrections and Community Supervision decided when and where incarcerated people would be transferred, not the incarcerated people themselves.<sup>56</sup> There were no records that indicated that the incarcerated people had ties to the communities where they were incarcerated, where they were “involuntarily and temporarily located.”<sup>57</sup>

Following the ruling in *Little*, it would be incongruous at best, and erroneous at worst, for the U.S. Census Bureau to count incarcerated people living in the communities where prison and criminal detention facilities are located, because incarcerated people are both *de jure* and *de facto* excluded from participating in the civic life of these communities. People incarcerated for felony convictions, for example, cannot vote in virtually every state in the country due to felony disenfranchisement laws.<sup>58</sup> California, Florida, Texas, and New York are among the states that disenfranchise people who are serving time in state prisons for felony convictions.<sup>59</sup> Furthermore, people so detained cannot purchase homes, become employed, or make a living while they are incarcerated.<sup>60</sup>

California and New York, two states with the largest Latino populations,<sup>61</sup> are joined by Delaware and Maryland in taking a statewide approach to avoiding prison gerrymandering, modifying the Census Bureau data to count detained people in their residence prior to their incarceration.<sup>62</sup> Counting detained people in their prior residence serves not only the ideals of equity and equal protection in democracy, but is also rooted in the understanding that people who are detained are transferred often and incarcerated in distinctly different jurisdictions temporarily.

Most incarcerated people do not choose the location of the facility where they will be incarcerated, nor the length of time they will be incarcerated at that facility.<sup>63</sup> The average state prison term is 34 months, and during their sentence, detained people may be transferred to a different facility numerous times, at the state custodial agency’s discretion.<sup>64</sup> In New York, for

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<sup>54</sup> *Little v. LATFOR*, No. 2310/2011 at 7 (N.Y. Sup. Ct., Albany Cnty. Dec. 1, 2011).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Maine and Vermont are the only two states that do not allow incarcerated people to vote. The Sentencing Project, *Felony Disenfranchisement Laws in the United States*, 4,4 (April, 2014),

[http://sentencingproject.org/doc/publications/fd\\_Felony%20Disenfranchisement%20Laws%20in%20the%20US.pdf](http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Laws%20in%20the%20US.pdf).

<sup>59</sup> *Id.*

<sup>60</sup> Wagner et al., *Why the Census*, *supra* note 2.

<sup>61</sup> Ennis et. al, *supra* note 35.

<sup>62</sup> *Local Governments*, *supra* note 46.

<sup>63</sup> Wagner et al., *Why the Census*, *supra* note 2.

<sup>64</sup> *Id.*



example, the median time served in a facility for 2007 was seven months.<sup>65</sup> When the Census Bureau counts detained people where they are temporarily incarcerated, it appears to contradict the Bureau's goal of accuracy in enumeration, because the Bureau is recognizing a temporary, involuntary stay as a "usual residence".<sup>66</sup> Once detained people complete their sentence, they are not allowed to remain in the facility; they are more likely than not to return to the community where they lived prior to being forcibly removed.<sup>67</sup>

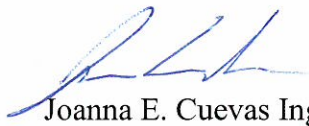
As the most comprehensive data collection system in the United States, the U.S. Census Bureau can improve its accuracy and efficacy by counting incarcerated people in their last primary residence rather than in their facility where they are temporarily detained. Because it is a resource that government agencies at all levels rely on to make vital decisions for all of its communities, it is imperative that the U.S. Census Bureau report all incarcerated persons in their "usual residence" as defined by the persons themselves, or based on the last residence the incarcerated person resided prior to incarceration.<sup>68</sup> A majority of the states have at least one city or county that favors this change.<sup>69</sup> The U.S. Census Bureau should follow suit to achieve a more accurate and fair count of the U.S. population by changing its policy.<sup>70</sup>

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 in keeping with changes in society and population realities. Because LatinoJustice PRLDEF believes in a population count that accurately and equitably represents the demographics of diverse communities, we urge the U.S. Census Bureau to count incarcerated and detained people as "usual residents" at their regular or permanent home addresses.<sup>71</sup>

Sincerely,



Juan Cartagena  
President and General Counsel



Joanna E. Cuevas Ingram  
California Attorney Working as a J.D. Under Attorney  
Supervision While New York Bar Application is Pending

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<sup>65</sup> Dan Bernstein, *HUB SYSTEM: Profile of Inmate Population Under Custody on January 1, 2008*, New York State Department of Correctional Services, 1, 11 (March, 2008), [http://www.doccs.ny.gov/Research/Reports/2008/Hub\\_Report\\_2008.pdf](http://www.doccs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf).

<sup>66</sup> Wagner et al., *Why the Census*, *supra* note 2.

<sup>67</sup> *Id.*

<sup>68</sup> *Prison Gerrymandering*, *supra* note 38.

<sup>69</sup> *Local Governments*, *supra* note 46.

<sup>70</sup> *Id.*

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