

July 20, 2015

Karen Humes, Chief
Population Division
U.S. Census Bureau
Washington, DC 20233
VIA EMAIL (POP.2020.Residence.Rule@census.gov)

Dear Ms. Humes:

Please accept these comments in response to the Census Bureau's notice regarding the 2020 Decennial Census Residence Rule and Residence Situations.¹ I write to respectfully ask that the Bureau count incarcerated people at their home address, rather than at the particular facility in which they happen to be confined on census day.

I urge the Bureau to revise its methodology regarding the residency of incarcerated people for two reasons: one practical, and one historical. From a practical perspective, the Bureau's decision to deem prison cells as residences had the effect—in the 2010 Census—of concentrating 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. When this data is used for redistricting, prisons inflate the political power of those people who live near them.

I know this dynamic from personal experience: during the 2000 Census, I lived in Colorado's Fifth Congressional District, which benefits substantially from the Bureau's method of counting incarcerated populations. The Fifth District is comprised of many rural communities including Fremont and Chaffee Counties, which currently house roughly one-third of Colorado's adult prison population.² An additional 47% of Colorado prisoners are held in facilities in the Fourth Congressional District, which covers the eastern plains.³ All of this despite the fact that half of the state's adult inmates come from the urban counties of Denver, Jefferson, Adams, and Arapahoe⁴ (all of which are located outside of the prison-laden Fourth and Fifth Districts). I currently live in Oregon, where I am on the opposite side of this dynamic: I live in the Willamette Valley, which houses the majority of the state's population (and, by extension, is home to the majority of people sent to prison). Yet over half of Oregon's prisons are located in rural areas outside the Willamette Valley. This unfortunate dynamic is replicated in most states, and the problematic distortions that arise from the Bureau's methodology are widely acknowledged.⁵ The Bureau's current methodology (which the Bureau proposes to continue during the 2020 Decennial Census) exacerbates these problems and should be revised.

There are also historical reasons in support of revising the Bureau's methodology. The first Census-related policy in the country's history consisted of the notorious three-fifths clause in article I, section 2 of the U.S. Constitution. The history behind this provision provides additional support for revising the Bureau's current methodology. The original draft language of the Constitution called for

¹ 80 Fed. Reg. 28950 (May 20, 2015)

² Colo. Dept. of Corr., Monthly Population and Capacity Report (Jun. 30, 2015).

³ *Id.*

⁴ Colo Dept. of Corr., *Statistical Report: FY 2013*, fig. 35.

⁵ See e.g., Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (2015), 251-256; Peter Wagner & Daniel Kopf, *The Racial Geography of Mass Incarceration* (Jul. 2015), available at <http://www.prisonpolicy.org/racialgeography/report.html>.

Congressional apportionment according to principles of “wealth” and the number of inhabitants.⁶ This original language was designed to protect the power of agricultural, slave-holding states. The reference to wealth was removed after delegates argued it would lead to political manipulations that would protect entrenched interests at the expense of democratic representation.⁷ Arguing successfully in favor of removing the reference to wealth, delegate James Wilson of Pennsylvania noted that concerns about population growth and concomitant increases in political power had led to the separation of the colonies from Britain, and that similar problems would beset the new nation if it did not allocate power based on straightforward population counts: “if numbers be not a proper rule,” argued Wilson, “why is not some better rule pointed out.”⁸

Although the Constitutional Convention removed the reference to wealth, the three-fifths provision remained in force until it was vitiated by the ratification of the Fourteenth Amendment in 1868. It is now time to erase all historical vestiges of inequality by ensuring fair and equitable enumeration of incarcerated people. The debates of the Constitutional Convention show that the framers desired political representation that was based on an accurate enumeration of population; the three-fifths provision was added as a political compromise to appease regional powers that ultimately lost this long-running argument in the Civil War. Today, mass incarceration has replaced slavery as a preeminent method of social, political, and economic control. Prisoners are increasingly commoditized and treated as economic units rather than people—a troubling dynamic that is exacerbated by the Bureau’s current methodology regarding correctional facilities.⁹ Incarcerated people are involuntarily confined and have no choice in selecting the location of their incarceration; further, unless someone happens to be incarcerated in their community of origin, they have no real economic, political, or emotional connection to the place of their confinement. Accordingly, the Bureau should count incarcerated people as members of the communities where they maintain ties: namely, the community in which they resided prior to 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 in keeping with changes in society and population realities. I believe that history and sound principles of public policy demand a population count that accurately represents communities; accordingly, I urge you to count incarcerated people as residents of their home address.

Sincerely,



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⁶ See James Madison, *Notes of Debates in the Federal Convention of 1787*(1966), 285.

⁷ *Id.* at 285-287.

⁸ *Id.* at 287.

⁹ See e.g., Stephen Rahe, *The Business of Punishing: Impediments to Accountability in the Private Corrections Industry*, 13 *Richmond J. of L. and the Public Interest* 209, 220-228 (2010).