

Voting Rights & Civic Participation Project  
Racial Justice Project  
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July 16, 2015

By Email

Karen Humes, Chief  
Population Division  
U.S. Census Bureau, Room 5H174  
Washington, DC 20233

Re: 2010 Census Residence Rule and Residence Situations

Dear Ms. Humes:

The Voting Rights and Civic Participation Project and the Racial Justice Project at New York Law School submit this comment in response to the Census Bureau's Federal Register notice regarding the Residence Rule and Residence Situations, 80 Fed. Reg. 28950 (May 20, 2015). We urge the Bureau to change the "usual residency" rule to count incarcerated people at their home address, rather than at the correctional facility where they are located on Census Day.

Under the current rule, the Bureau counts people in prison as residents of their prison cells rather than their home communities. Based on this census data, incarcerated individuals are grouped with non-incarcerated individuals living in the surrounding community to form legislative districts. However, the vast majority of people in prison cannot vote and they have no ties to the local community beyond being sent there by the Department of Corrections.<sup>1</sup> Consequently, people in prison become "ghost constituents" to whom the legislator from the district has no connection or accountability, but whose presence in the prison allows the legislator's district to exist. The voting strength of the actual constituents who live adjacent to the prison is unfairly inflated simply because of their proximity to a correctional facility.

The inverse to this skew in the prison districts is the erosion of voting strength in the home communities – often located many miles away – to which most incarcerated individuals return.<sup>2</sup> Every person counted in prison on Census Day is one fewer resident counted in the home

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<sup>1</sup> Only Maine and Vermont allow people to vote while in prison. See Erika Wood, Brennan Center for Justice, *Restoring the Right to Vote* 3 (May 11, 2009), available at <http://www.brennancenter.org/publication/restoring-right-vote>. In those two states, incarcerated people maintain residency in their home communities for voting purposes and vote in their home district by absentee ballot; they do not vote in the district where they are incarcerated. See Vt. Stat. Ann. tit. 17, § 2122(a); Me. Rev. Stat. Ann. tit. 21-A, § 112(14).

<sup>2</sup> See *Fletcher v. Lamone*, No. 1:11-cv-03220, at 18 (D. Md. Dec. 23, 2011), *aff'd* 133 S. Ct. 29 (2012) (mem.) (citing Nancy G. La Vigne *et al.*, *A Portrait of Prisoner Reentry in Maryland* 33 (Urban Institute 2003) available at [http://www.urban.org/UploadedPDF/410655\\_MDPortraitReentry.pdf](http://www.urban.org/UploadedPDF/410655_MDPortraitReentry.pdf) which found that most Maryland prisoners returned to Baltimore after their release from prison).

community. The result is fewer voices and fewer votes to demand accountability and representation by local officials. As the prison districts artificially inflate, the representation of home communities diminishes and declines. A similar imbalance occurs between neighboring districts. A district that contains a prison will have inflated voting strength compared to a neighboring district without a prison, creating inequalities between residents of neighboring communities.

The home communities that are disproportionately impacted by the current usual residency rule are largely urban communities of color. Aggressive policing tactics in recent decades have targeted minority neighborhoods across the country. Because of high incarceration rates, these neighborhoods lose significantly more residents than other neighboring districts, the impact of which is felt for decades. Losing residents means losing political power.<sup>3</sup>

In 2010, New York and Maryland were the first states in the country to pass laws to correct the skew caused by the Bureau's current "usual residency" rule. Under the 2010 laws, officials in New York and Maryland undertook the process to remove each individual who was incarcerated in state prison on April 1, 2010 from their prison district and reallocate that person back to his home address for purposes of drawing new legislative districts.

Professor Erika Wood's recent analysis of how Maryland and New York implemented their new laws explains in detail the process each state undertook to reallocate each incarcerated person back to his or her home community, and provides detailed information about the specific steps each state took to implement these new laws.<sup>4</sup> The report details the challenges each state faced, including legal disputes and data deficiencies, and the steps taken to meet and overcome those challenges.

While Maryland and New York were successful in correcting the imbalance caused by the current policy, doing so was required significant effort, hours and dollars. Passing and implementing the Maryland and New York laws involved multiple agencies and actors, including legislators and their staff, government agencies, the Attorneys General's offices, private software companies and consultants, and outside advocacy organizations. In researching this process, including interviews with dozens of officials in each state, it became clear that there was widespread consensus among officials in both states that the most effective way to correct the imbalance caused by the current practice, is for the Bureau to change its usual residence rule to count people in prison as residents of their home communities rather than their prison cells.

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<sup>3</sup> See Erika L. Wood, *One Significant Step: How Reforms to Prison Districts Begin to Address Political Inequality*, 49 U. MICH. J. LAW REF. 101 (2015) (forthcoming).

<sup>4</sup> See Erika L. Wood, *Implementing Reform: How Maryland and New York Ended Prison Gerrymandering* (Demos 2014), available at <http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>.

Professor Wood’s analysis resulted in the following specific recommendations for the Bureau:

1. Update the interpretation of the Usual Residency rule to ensure that incarcerated persons are allocated to their home residence rather than at the location of a correctional facility. The Bureau should consult with stakeholders, including redistricting experts, elections officials, corrections officials, criminal justice advocates, and others to develop the best strategies and data choices for meeting this goal.
2. Consider using “self-enumeration” data wherever possible to tabulate incarcerated people. Allowing incarcerated individuals to complete and submit their own Census forms would allow them to identify their race and ethnicity as well as enable them to directly list their current home address.
  - Conduct a self-enumeration pilot study in select correctional facilities to develop protocols and test the utility of inmate-completed forms, as suggested by the Bureau’s 2013 Ethnographic Study.
  - Where administrative records are to be used to tabulate incarcerated people, rely on agency-level administrative records collected by the Federal Bureau of Prisons and state correctional agencies – as suggested by the Bureau’s 2013 *Ethnographic Study of the Group Quarters Population in the 2010 Census: Jails and Prisons*<sup>5</sup> – rather than collecting this data on the individual facility level.
  - Consult with the Bureau of Justice Statistics to identify best practices for designing effective systems for collecting accurate and reliable state corrections data.<sup>6</sup>
  - Assure that state correctional agencies are aware of the Office of Management and Budget’s (OMB) Standards for the Classification of Federal Data on Race and Ethnicity, and advise state correctional agencies on how data systems can be structured to facilitate data collection consistent with these standards. Encouraging states to use the OMB standards would eliminate inconsistencies in how race and ethnicity data are recorded.<sup>7</sup>
3. Conduct experiments using existing state corrections data to evaluate how these administrative records, in their current form, would impact Census Bureau workflow and

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<sup>5</sup> Barbara Owen and Anna Chan, *Ethnographic Study of the Group Quarters Population in the 2010 Census: Jails and Prisons* 2-3 (2013), available at <http://www.census.gov/srd/papers/pdf/ssm2013-06.pdf>.

<sup>6</sup> The Bureau of Justice Statistics conducted a survey of state correctional data systems in 1998, finding that the majority of state prison systems had mostly complete electronic records of home addresses. See Bureau of Justice Statistics et al., *State and Federal Corrections Information Systems: An Inventory of Data Elements and an Assessment of Reporting Capabilities*, Bureau of Justice Statistics (Aug. 1998), available at <http://www.bjs.gov/content/pub/pdf/sfcisq.pdf>. The Census Bureau should determine how these data collections have improved in the last sixteen years, and consider how the Bureau can help these systems continue to improve as 2020 approaches. Further, the Census Bureau may wish to explore the state of data collection in the nation’s largest jail systems; the fifty largest jail systems in the U.S. hold more than a third of the nation’s jail population.

<sup>7</sup> The OMB standards provide a common language to promote uniformity and comparability for data on race and ethnicity and were developed in cooperation with federal agencies, including the Census Bureau, to provide consistent data on race and ethnicity throughout the federal government. For an explanation of OMB standards, see Office of Mgmt. & Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity* (Oct. 30, 1997), available at [http://www.whitehouse.gov/omb/fedreg\\_1997standards/](http://www.whitehouse.gov/omb/fedreg_1997standards/).

quality standards, as well as to develop protocols for addresses that cannot be successfully geocoded.

4. Consider how to allocate persons in the limited circumstances where an individual's home address is unknown or nonexistent. For example, the Bureau may have to tabulate a limited number of people at the correctional facility where there is insufficient home address information.
5. Explore whether the recommendation of the 2013 *Ethnographic Study of the Group Quarters Population in the 2010 Census: Jails and Prisons* to establish "correctional specialists" to coordinate the Bureau's enumeration of people confined in correctional facilities will improve efficiency and standardization.<sup>8</sup>

As long as the Bureau continues to count incarcerated individuals as residents of their prison cells, the demographic data of their home communities will continue to be skewed and incomplete, resulting in long-term disenfranchisement and disempowerment. To correct this injustice, we urge the Bureau to amend its usual residency rule to count incarcerated individuals as residents of their home communities.

Respectfully submitted,

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<sup>8</sup> Owen and Chan, *supra* note 5, at 37.