

retain the proposed residence situation guidance for overseas military personnel (Sections C.4.a–b and C.13.f–g). This guidance makes a distinction between personnel who are *deployed* overseas and those who are *stationed or assigned* overseas. Deployments are typically short in duration, and the deployed personnel will be returning to their usual residence where they are stationed or assigned in the United States after their temporary deployment ends. Personnel stationed or assigned overseas generally remain overseas for longer periods of time and often do not return to the previous stateside location from which they left. Therefore, counting deployed personnel at their usual residence in the United States follows the standard interpretation of the residence criteria to count people at their usual residence if they are temporarily away for work purposes.

The Census Bureau will use administrative data from the Department of Defense to count deployed personnel at their usual residence in the United States for apportionment purposes and for inclusion in the resident population counts. The Census Bureau will count military and civilian employees of the U.S. government who are stationed or assigned outside the United States, and their dependents living with them, in their home state, for apportionment purposes only, using administrative data provided by the Department of Defense and the other federal agencies that employ them.

The Census Bureau has been communicating with stakeholders from various military communities and plans to work closely with military stakeholders to plan and carry out the enumeration of military personnel. As the planning process moves forward, there will be continued testing of our process for integrating DOD data on deployed personnel into the resident population counts.

3. Comments on Health Care Facilities

Four comments were related to health care facilities. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people in health care facilities. One commenter suggested that the Census Bureau add residence guidance specifically regarding memory care centers as a separate category from nursing facilities because the nature of Alzheimer's disease and Dementia necessitates that these patients be enumerated through administrative records in order to ensure the accuracy of the data. One commenter suggested that people in psychiatric facilities

should be counted at the residence where they were living before they entered the facility because they will most likely return to their prior community, which is where they would normally vote. This commenter also stated that these people should be counted in their prior communities in order to ensure that those communities receive the proper allocation of representatives and resources.

One commenter similarly suggested that people living in psychiatric hospitals on Census Day should be counted at the residence where they sleep most of the time, and only counted at the facility if they do not have a usual home elsewhere. They stated that the Census Bureau misunderstands the functioning of state and private psychiatric hospitals, which today provide primarily acute and short term treatment (e.g., less than two weeks, in most cases). They also stated that most patients in these facilities are likely to have a permanent residence elsewhere. The same commenter also stated that the Census Bureau's proposal for how to count people in nursing/skilled-nursing facilities does not best capture the experience of people with disabilities who are in the process of transitioning from group housing to more independent housing. Therefore, the commenter suggested that the Census Bureau should alter the proposed guidance in order to allow people in nursing/skilled-nursing facilities to be counted at a residence to which they are actively preparing to transition.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for health care facilities (Section C.11). Separate residence guidance was not added for memory care centers because these types of facilities would be considered subcategories of assisted living facilities and nursing facilities/skilled nursing facilities (Section C.11), and the guidance provided for these types of facilities is sufficient. Patients in mental (psychiatric) hospitals and psychiatric units in other hospitals (where the primary function is for long-term non-acute care) will be counted at the facility because the facilities or units within the facilities are primarily serving long-term non-acute patients who live and sleep at the facility most of time. Because people must be counted at their current usual residence, rather than a future usual residence, the residence guidance for patients in nursing/skilled-nursing facilities will not be revised to allow some people to be counted at a residence to which they

are actively preparing to transition. Comments on health care facilities not addressed in this section were considered out of scope for this document.

4. Comments on Foreign Citizens in the United States

Three comments were related to foreign citizens in the United States. One commenter simply stated that they agree with the Census Bureau's proposal regarding how foreign citizens are counted. One commenter suggested that the Census Bureau should add wording to clarify whether foreign "snowbirds" (i.e., foreign citizens who stay in a seasonal residence in the United States for multiple months) are considered to be "living" in the United States or only "visiting" the United States. In order to more accurately reflect the impact of foreign snowbirds on local jurisdictions in the United States, this commenter suggested defining those who are "living" in the United States as those who are "living or staying in the United States for an extended period of time exceeding ___ months." One commenter expressed concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote, and they stated that this practice encourages gerrymandering. This commenter suggested collecting data to identify the citizen voting age population (CVAP), so that the data could be used to prevent gerrymandering in gateway communities during the redistricting process.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for foreign citizens in the United States (Section C.3). Foreign citizens are considered to be "living" in the United States if, at the time of the census, they are living and sleeping most of the time at a residence in the United States. Section C.3 provides sufficient guidance for foreign citizens either living in or visiting the United States. Section C.5 provides additional guidance regarding "snowbirds." Comments on foreign citizens in the United States not addressed in this section were considered out of scope for this document.

5. Comments on Juvenile Facilities

Three comments were related to juvenile facilities. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count juveniles in non-correctional residential treatment centers. One commenter stated that

juveniles in all three types of juvenile facilities (*i.e.*, correctional facilities, non-correctional group homes, and non-correctional residential treatment centers) should be counted at their usual residence. One commenter similarly stated that people in juvenile facilities should be counted at their usual residence outside the facility, but the context of the comment showed that this commenter was referring mostly to correctional facilities for juveniles (rather than non-correctional group homes and non-correctional residential treatment centers).

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for juvenile facilities (Section C.17). People in correctional facilities for juveniles and non-correctional group homes for juveniles will be counted at the facility because the majority of people in these types of facilities live and sleep there most of the time. People in non-correctional residential treatment centers for juveniles will be counted at the residence where they live and sleep most of the time (or at the facility if they do not have a usual home elsewhere) because these people typically stay at the facility temporarily and often have a usual home elsewhere to return to after treatment is completed.

6. Comments on People in Shelters and People Experiencing Homelessness

Three comments were related to people in shelters and people experiencing homelessness. One expressed agreement with the Census Bureau's proposal regarding how to count people in all of the subcategories of this residence situation except for the subcategory of people in domestic violence shelters. This commenter suggested that people in domestic violence shelters should be allowed to be counted at their last residence address prior to the shelter, due to the temporary nature of their stay and the confidentiality of that shelter's location. One commenter suggested that the Census Bureau add residence guidance specifically regarding "temporarily moved persons due to emergencies" (*e.g.*, displaced from their home by a hurricane or earthquake). This commenter stated that these people should be counted "in their normal prior residential locations" (if they state the intention to return to that prior location after their home is repaired/rebuilt) so that accurate decisions can be made regarding funding for rebuilding and infrastructure restoration in those locations. One commenter requested that the Census Bureau publish national and/or state level population counts for

the subcategory of people in emergency and transitional shelters with sleeping facilities for people experiencing homelessness. This commenter stated that these data are important to both housing advocates trying to assess the housing needs of people with disabilities, and to legal advocates working to enforce the community integration mandates of the Americans with Disabilities Act.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people in shelters and people experiencing homelessness (Section C.21).

The proposed residence guidance already allows people who are temporarily displaced by natural disasters to be counted at their usual residence to which they intend to return. People in temporary group living quarters established for victims of natural disasters will be counted where they live and sleep most of the time (or at the facility if they do not report a usual home elsewhere). In addition, people who are temporarily displaced or experiencing homelessness, and are staying in a residence for a short or indefinite period of time, will be counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they will be counted where they are staying on Census Day.

7. Comments on College Students and Boarding School Students

Two comments were related to boarding school students, and two comments were related to college students. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count boarding school students and college students. One commenter suggested that they agree with counting college students at their college residence because that would better ensure that all college students are counted in the census. One commenter suggested that boarding school students should be counted at the school because that is where they live and sleep most of the time, and they participate in (and consume the resources of) the community where the school is located. This commenter also stated that counting boarding school students at their parental home is inconsistent with the fact that college students are counted at their college residence, considering that college students are often just as dependent on their parents as boarding school students.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for college students (Section C.10.a-e) and boarding school students (Section C.9.a). The Census Bureau has historically counted boarding school students at their parental home, and will continue doing so because of the students' age and dependency on their parents, and the likelihood that they will return to their parents' residence when they are not attending their boarding school (*e.g.*, weekends, summer/winter breaks, and when they stop attending the school).

8. Comments on Non-Correctional Adult Group Homes and Residential Treatment Centers

Two comments were related to adult group homes and residential treatment centers. One commenter suggested that all people in adult group homes and adult residential treatment centers should be counted at their usual residence other than the facility, because counting them at the facility is not consistent with their state's definition of residence. One commenter stated that the Census Bureau's proposal for how to count people in adult group homes does not best capture the experience of people with disabilities who are in the process of transitioning from group housing to more independent housing. Therefore, the commenter suggested that the Census Bureau should alter the proposed guidance in order to allow people in adult group homes to be counted at a residence to which they are actively preparing to transition. The same commenter also requested that the Census Bureau publish national and/or state level population counts for the subcategories of people in adult group homes and adult residential treatment centers. This commenter stated that these data are important to both housing advocates trying to assess the housing needs of people with disabilities, and to legal advocates working to enforce the community integration mandates of the Americans with Disabilities Act.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people in non-correctional adult group homes and residential treatment centers (Section C.16). People in non-correctional group homes for adults will be counted at the facility because the majority of people in these types of facilities live and sleep there most of the time. People in non-correctional residential treatment centers for adults will be counted at the residence where they live and sleep

most of the time (or at the facility if they do not have a usual home elsewhere) because these people typically stay at the facility temporarily and often have a usual home elsewhere to return to after treatment is completed.

The residence guidance for people in adult group homes will not be revised to allow some people to be counted at a residence to which they are actively preparing to transition because people must be counted at their current usual residence, rather than a future usual residence. Comments on non-correctional adult group homes and residential treatment centers not addressed in this section were considered out of scope for this document.

9. Comments on Transitory Locations

Two comments were related to transitory locations. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people in transitory locations. One commenter stated that the proposed residence guidance for transitory locations is acceptable because it is consistent with the concept of usual residence. However, they were concerned that the procedures used in the 2010 Census may have caused certain types of people to not be counted in the census because these people typically move seasonally from one transitory location (e.g., RV park) to another throughout the year, but the location where they are staying on Census Day may not be the location where they spend most of the year. This commenter stated that, during the 2010 Census, if the transitory location where a person was staying on Census Day was not where they stayed most of the time, then they were not enumerated at that location because the assumption was that they would be enumerated at their usual residence. Therefore, the commenter was concerned that people who stayed in one RV park for a few months around Census Day were not counted at that RV park if they indicated that they usually lived elsewhere (e.g., another RV park), and they would also not have been counted at that other RV park when they are there later that year (after the census enumeration period ends). The commenter suggested that we add procedures to account for people who spend most of their time in a combination of multiple transitory locations.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people in transitory locations (Section C.18). Sufficient

guidance for people in transitory locations, including those living in recreational vehicles, is provided in Section C.18. Comments on transitory locations not addressed in this section were considered out of scope for this document.

10. Comments on Visitors on Census Day

Two comments were related to visitors on Census Day. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count visitors on Census Day. One commenter asked whether the Census Bureau would count all vacationers in a specific state as residents of that state.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for visitors on Census Day (Section C.2). People who are temporarily visiting a location on Census Day will be counted where they live and sleep most of the time. If they do not have a usual residence to return to, they will be counted where they are staying on Census Day.

11. Comments on People Who Live or Stay in More Than One Place

Two comments were related to people who live or stay in more than one place. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people who live or stay in more than one place. One commenter suggested that the Census Bureau add more clarification to the residence guidance regarding where "snowbirds" (i.e., seasonal residents) are counted.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people who live or stay in more than one place (Section C.5). People who travel seasonally between residences (e.g., snowbirds) will be counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they will be counted where they are staying on Census Day.

12. Comments on Merchant Marine Personnel

Two comments were related to merchant marine personnel, and both commenters simply stated that they agree with the Census Bureau's proposal regarding how to count merchant marine personnel.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation

guidance for merchant marine personnel (Section C.14).

13. Comments on Religious Group Quarters

Two comments were related to religious group quarters. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people in religious group quarters. One commenter expressed agreement with the proposal because most religious group quarters are long-term residences that align with the concept of usual residence.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for religious group quarters (Section C.20).

14. Comments on Other Residence Situations

There was one letter that included a comment on every residence situation, and each of those topic-specific comments was included as appropriate among the comments regarding the corresponding residence situations discussed above. However, for each of the other residence situations not already discussed above, the commenter stated that they agreed with how the Census Bureau proposed to count people in the following residence situations.

- People away from their usual residence on Census Day (e.g., on vacation or business trip) (Section C.1).
- People living outside the United States (Section C.4).
- People moving into or out of a residence around Census Day (Section C.6).
- People who are born or who die around Census Day (Section C.7).
- Relatives and nonrelatives (Section C.8).
- Residential schools for people with disabilities (Section C.9.b–c).
- Housing for older adults (Section C.12).
- Stateside military personnel (Section C.13.a–e).
- Workers' residential facilities (Section C.19).

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed guidance for the residence situations listed in this section (B.14).

15. Comments on the Concept of Usual Residence or the General Residence Criteria

There was one comment on the concept of usual residence, in which the commenter expressed agreement with

the definition of "usual residence" as being the place where a person lives and sleeps most of the time.

There were seven comments on the general residence criteria. One commenter simply supported the entire residence criteria and residence situations documentation. Two commenters stated that they specifically agree with the three main principles of the residence criteria. One commenter disagreed with "this method of tallying the U.S. population," but did not refer to any specific residence situation. One commenter stated that every resident should be counted in the census. One commenter stated that every citizen should be counted in the census. One commenter suggested that the Census Bureau count people who are away from their home at the time of the census using a code to indicate the reason why they are away (e.g., travel, work, incarceration, etc.).

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the three main principles of the residence criteria (see introduction portion of section C). The goal of the decennial census is to count all people who are living in the United States on Census Day at their usual residence. Comments on the concept of usual residence or general residence criteria not addressed in this section were considered out of scope for this document.

16. Other Comments

There were 18 comments that did not directly address the residence criteria or any particular residence situation.

Census Bureau Response: Comments that did not directly address the residence criteria or any particular residence situation are out of scope for this document.

C. The Final 2020 Census Residence Criteria and Residence Situations

The Residence Criteria are used to determine where people are counted during the 2020 Census. The Criteria say:

- Count people at their usual residence, which is the place where they live and sleep most of the time.
- People in certain types of group facilities on Census Day are counted at the group facility.
- People who do not have a usual residence, or who cannot determine a usual residence, are counted where they are on Census Day.

The following sections describe how the Residence Criteria apply to certain living situations for which people commonly request clarification.

1. People Away From Their Usual Residence on Census Day

People away from their usual residence on Census Day, such as on a vacation or a business trip, visiting, traveling outside the United States, or working elsewhere without a usual residence there (for example, as a truck driver or traveling salesperson)—Counted at the residence where they live and sleep most of the time.

2. Visitors on Census Day

Visitors on Census Day—Counted at the residence where they live and sleep most of the time. If they do not have a usual residence to return to, they are counted where they are staying on Census Day.

3. Foreign Citizens in the United States

(a) Citizens of foreign countries living in the United States—Counted at the U.S. residence where they live and sleep most of the time.

(b) Citizens of foreign countries living in the United States who are members of the diplomatic community—Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

(c) Citizens of foreign countries visiting the United States, such as on a vacation or business trip—Not counted in the census.

4. People Living Outside the United States

(a) People deployed outside the United States⁹ on Census Day (while stationed or assigned in the United States) who are military or civilian employees of the U.S. government—Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by federal agencies.¹⁰

⁹ In this document, "Outside the United States" and "foreign port" are defined as being anywhere outside the geographical area of the 50 United States and the District of Columbia. Therefore, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Pacific Island Areas (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands), and all foreign countries are considered to be "outside the United States." Conversely, "stateside," "U.S. homeport," and "U.S. port" are defined as being anywhere in the 50 United States and the District of Columbia.

¹⁰ Military and civilian employees of the U.S. government who are deployed or stationed/assigned outside the United States (and their dependents living with them outside the United States) are counted using administrative data provided by the Department of Defense and the other federal agencies that employ them. If they are deployed outside the United States (while stationed/assigned in the United States), the administrative data are used to count them at their usual residence in the United States. Otherwise, if they are stationed/assigned outside the United States, the administrative data are used to count them (and

(b) People stationed or assigned outside the United States on Census Day who are military or civilian employees of the U.S. government, as well as their dependents living with them outside the United States—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by federal agencies.

(c) People living outside the United States on Census Day who are not military or civilian employees of the U.S. government and are not dependents living with military or civilian employees of the U.S. government—Not counted in the stateside census.

5. People Who Live or Stay in More Than One Place

(a) People living away most of the time while working, such as people who live at a residence close to where they work and return regularly to another residence—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(b) People who live or stay at two or more residences (during the week, month, or year), such as people who travel seasonally between residences (for example, snowbirds)—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(c) Children in shared custody or other arrangements who live at more than one residence—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

6. People Moving Into or Out of a Residence Around Census Day

(a) People who move into a new residence on or before Census Day—Counted at the new residence where they are living on Census Day.

(b) People who move out of a residence on Census Day and do not move into a new residence until after Census Day—Counted at the old residence where they were living on Census Day.

(c) People who move out of a residence before Census Day and do not move into a new residence until after Census Day—Counted at the residence where they are staying on Census Day.

their dependents living with them outside the United States) in their home state for apportionment purposes only.

7. People Who Are Born or Who Die Around Census Day

(a) *Babies born on or before Census Day*—Counted at the residence where they will live and sleep most of the time, even if they are still in a hospital on Census Day.

(b) *Babies born after Census Day*—Not counted in the census.

(c) *People who die before Census Day*—Not counted in the census.

(d) *People who die on or after Census Day*—Counted at the residence where they were living and sleeping most of the time as of Census Day.

8. Relatives and Nonrelatives

(a) *Babies and children of all ages, including biological, step, and adopted children, as well as grandchildren*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day. (Only count babies born on or before Census Day.)

(b) *Foster children*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(c) *Spouses and close relatives, such as parents or siblings*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(d) *Extended relatives, such as grandparents, nieces/nephews, aunts/uncles, cousins, or in-laws*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(e) *Unmarried partners*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(f) *Housemates or roommates*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(g) *Roomers or boarders*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(h) *Live-in employees, such as caregivers or domestic workers*—

Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(i) *Other nonrelatives, such as friends*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

9. People in Residential School-Related Facilities

(a) *Boarding school students living away from their parents' or guardians' home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools*—Counted at their parents' or guardians' home.

(b) *Students in residential schools for people with disabilities on Census Day*—Counted at the school.

(c) *Staff members living at boarding schools or residential schools for people with disabilities on Census Day*—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the school.

10. College Students (and Staff Living in College Housing)

(a) *College students living at their parents' or guardians' home while attending college in the United States*—Counted at their parents' or guardians' home.

(b) *College students living away from their parents' or guardians' home while attending college in the United States (living either on-campus or off-campus)*—Counted at the on-campus or off-campus residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

(c) *College students living away from their parents' or guardians' home while attending college in the United States (living either on-campus or off-campus) but staying at their parents' or guardians' home while on break or vacation*—Counted at the on-campus or off-campus residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

(d) *College students who are U.S. citizens living outside the United States while attending college outside the*

United States—Not counted in the stateside census.

(e) *College students who are foreign citizens living in the United States while attending college in the United States (living either on-campus or off-campus)*—Counted at the on-campus or off-campus U.S. residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

(f) *Staff members living in college/university student housing (such as dormitories or residence halls) on Census Day*—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the college/university student housing.

11. People in Health Care Facilities

(a) *People in general or Veterans Affairs hospitals (except psychiatric units) on Census Day, including newborn babies still in the hospital on Census Day*—Counted at the residence where they live and sleep most of the time. Newborn babies are counted at the residence where they will live and sleep most of the time. If patients or staff members do not have a usual home elsewhere, they are counted at the hospital.

(b) *People in mental (psychiatric) hospitals and psychiatric units in other hospitals (where the primary function is for long-term non-acute care) on Census Day*—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in assisted living facilities¹¹ where care is provided for individuals who need help with the activities of daily living but do not need the skilled medical care that is provided in a nursing home*—Residents and staff members are counted at the residence where they live and sleep most of the time.

(d) *People in nursing facilities/skilled-nursing facilities (which provide long-term non-acute care) on Census Day*—

¹¹ Nursing facilities/skilled-nursing facilities, inpatient hospice facilities, assisted living facilities, and housing intended for older adults may coexist within the same entity or organization in some cases. For example, an assisted living facility may have a skilled-nursing floor or wing that meets the nursing facility criteria, which means that specific floor or wing is counted according to the guidelines for nursing facilities/skilled-nursing facilities, while the rest of the living quarters in that facility are counted according to the guidelines for assisted living facilities.

Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(e) *People staying at in-patient hospice facilities on Census Day*—Counted at the residence where they live and sleep most of the time. If patients or staff members do not have a usual home elsewhere, they are counted at the facility.

12. People in Housing for Older Adults

People in housing intended for older adults, such as active adult communities, independent living, senior apartments, or retirement communities—Residents and staff members are counted at the residence where they live and sleep most of the time.

13. U.S. Military Personnel

(a) *U.S. military personnel assigned to military barracks/dormitories in the United States on Census Day*—Counted at the military barracks/dormitories.

(b) *U.S. military personnel (and dependents living with them) living in the United States (living either on base or off base) who are not assigned to barracks/dormitories on Census Day*—Counted at the residence where they live and sleep most of the time.

(c) *U.S. military personnel assigned to U.S. military vessels with a U.S. homeport on Census Day*—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport.

(d) *People who are active duty patients assigned to a military treatment facility in the United States on Census Day*—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(e) *People in military disciplinary barracks and jails in the United States on Census Day*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(f) *U.S. military personnel who are deployed outside the United States (while stationed in the United States) and are living on or off a military installation outside the United States on Census Day*—Counted at the U.S. residence where they live and sleep most of the time, using administrative

data provided by the Department of Defense.

(g) *U.S. military personnel who are stationed outside the United States and are living on or off a military installation outside the United States on Census Day, as well as their dependents living with them outside the United States*—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of Defense.

(h) *U.S. military personnel assigned to U.S. military vessels with a homeport outside the United States on Census Day*—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of Defense.

14. Merchant Marine Personnel on U.S. Flag Maritime/Merchant Vessels

(a) *Crews of U.S. flag maritime/merchant vessels docked in a U.S. port, sailing from one U.S. port to another U.S. port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port on Census Day*—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel. If the vessel is docked in a U.S. port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port, crewmembers with no onshore U.S. residence are counted at the U.S. port. If the vessel is sailing from one U.S. port to another U.S. port, crewmembers with no onshore U.S. residence are counted at the port of departure.

(b) *Crews of U.S. flag maritime/merchant vessels engaged in U.S. inland waterway transportation on Census Day*—Counted at the onshore U.S. residence where they live and sleep most of the time.

(c) *Crews of U.S. flag maritime/merchant vessels docked in a foreign port or sailing from one foreign port to another foreign port on Census Day*—Not counted in the stateside census.

15. People in Correctional Facilities for Adults

(a) *People in federal and state prisons on Census Day*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) *People in local jails and other municipal confinement facilities on Census Day*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and

sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in federal detention centers on Census Day, such as Metropolitan Correctional Centers, Metropolitan Detention Centers, Bureau of Indian Affairs Detention Centers, Immigration and Customs Enforcement (ICE) Service Processing Centers, and ICE contract detention facilities*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(d) *People in correctional residential facilities on Census Day, such as halfway houses, restitution centers, and prerelease, work release, and study centers*—Residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

16. People in Group Homes and Residential Treatment Centers for Adults

(a) *People in group homes intended for adults (non-correctional) on Census Day*—Residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) *People in residential treatment centers for adults (non-correctional) on Census Day*—Counted at the residence where they live and sleep most of the time. If residents or staff members do not have a usual home elsewhere, they are counted at the facility.

17. People in Juvenile Facilities

(a) *People in correctional facilities intended for juveniles on Census Day*—Juvenile residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) *People in group homes for juveniles (non-correctional) on Census Day*—Juvenile residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in residential treatment centers for juveniles (non-correctional) on Census Day*—Counted at the residence where they live and sleep most of the time. If juvenile residents or

staff members do not have a usual home elsewhere, they are counted at the facility.

18. People in Transitory Locations

People at transitory locations such as recreational vehicle (RV) parks, campgrounds, hotels and motels, hostels, marinas, racetracks, circuses, or carnivals—Anyone, including staff members, staying at the transitory location is counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, or they cannot determine a place where they live most of the time, they are counted at the transitory location.

19. People in Workers' Residential Facilities

People in workers' group living quarters and Job Corps Centers on Census Day—Counted at the residence where they live and sleep most of the time. If residents or staff members do not have a usual home elsewhere, they are counted at the facility.

20. People in Religious-Related Residential Facilities

People in religious group quarters, such as convents and monasteries, on Census Day—Counted at the facility.

21. People in Shelters and People Experiencing Homelessness

(a) *People in domestic violence shelters on Census Day*—People staying at the shelter (who are not staff) are counted at the shelter. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the shelter.

(b) *People who, on Census Day, are in temporary group living quarters established for victims of natural disasters*—Anyone, including staff members, staying at the facility is counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the facility.

(c) *People who, on Census Day, are in emergency and transitional shelters with sleeping facilities for people experiencing homelessness*—People staying at the shelter (who are not staff) are counted at the shelter. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the shelter.

(d) *People who, on Census Day, are at soup kitchens and regularly scheduled mobile food vans that provide food to*

people experiencing homelessness—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the soup kitchen or mobile food van location where they are on Census Day.

(e) *People who, on Census Day, are at targeted non-sheltered outdoor locations where people experiencing homelessness stay without paying*—Counted at the outdoor location where they are on Census Day.

(f) *People who, on Census Day, are temporarily displaced or experiencing homelessness and are staying in a residence for a short or indefinite period of time*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

Dated: February 1, 2018.

Ren S. Jarmia,

Associate Director for Economic Programs, Performing the Non-Exclusive Functions and Duties of the Director, Bureau of the Census.

(FR Doc. 2018-02370 Filed 2-7-18; 8:45 am)

BILLING CODE 3510-07-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.
ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS THOMAS HUDNER (DDG 116) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective February 8, 2018 and is applicable beginning January 25, 2018.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kyle Fralick, (Admiralty and Maritime Law), Office of

the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the secretary of the Navy, has certified that USS THOMAS HUDNER (DDG 116) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Rule 23(a), the requirement to display a forward and aft masthead light underway, and Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

From: Olson, Stephanie (Federal); [redacted] b(6)
[redacted] b(6)
Sent: 8/14/2020 3:25:31 PM
To: Keller, Catherine (Federal) [CKeller@doc.gov]
CC: Kourkouvelis, Aristidis (Federal) [AKourkouvelis@doc.gov]
Subject: FW: Meeting
Attachments: [redacted] **b(5) - WP**

Catherine,

Please see attached: [redacted] **b(5) - AC/WP**

From: Kourkouvelis, Aristidis (Federal)
Sent: Friday, August 14, 2020 1:20 PM
To: Olson, Stephanie (Federal) <SOlson@doc.gov>
Subject: RE: Meeting

AWP/PRIV

Edits attached.

Aristidis (Aris) Kourkouvelis | Senior Counsel
Office of the General Counsel
U.S. Department of Commerce
M: [redacted] **b(6)**

From: Olson, Stephanie (Federal) <SOlson@doc.gov>
Sent: Friday, August 14, 2020 12:26 PM
To: Kourkouvelis, Aristidis (Federal) <AKourkouvelis@doc.gov>
Subject: FW: Meeting

Please send me your revisions, I'll take a look, and we can get to Catherine. Thanks!

From: Heller, Megan (Federal)
Sent: Friday, August 14, 2020 12:24 PM
To: Olson, Stephanie (Federal) <SOlson@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiacoco@doc.gov>; Kourkouvelis, Aristidis (Federal) <AKourkouvelis@doc.gov>
Subject: Re: Meeting

My attempt to revise

Megan Heller
Acting Chief, General Litigation Division
Associate Chief Counsel, Office of Appellate Services
Office of the Assistant General Counsel for Employment, Litigation, & Information
Office of the General Counsel
U.S. Dept. of Commerce

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From: Olson, Stephanie (Federal)

Sent: Thursday, August 13, 2020 4:48 PM

To: Olson, Stephanie (Federal) <SOlson@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiacoco@doc.gov>; Kourkoumelis, Aristidis (Federal) <AKourkoumelis@doc.gov>

Subject: Meeting

When: Friday, August 14, 2020 11:00 AM-12:00 PM.

Where:

Line 1:

b(6)

Passcodes:

Leader **b(6)**

Participant: **b(6)**

**UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY
OF PATERSON, PARTNERSHIP FOR THE
ADVANCEMENT OF NEW AMERICANS,
ROBERTO AGUIRRE, SHEILA AGUIRRE,
PAULA AGUIRRE, ANDREA M.
ALEXANDER, DEBRA DE OLIVEIRA, SARA
PAVON, JONATHAN ALLAN REISS, and
MYRNA YOUNG,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States,

UNITED STATES DEPARTMENT OF
COMMERCE,

WILBUR L. ROSS, JR., in his official capacity as
Secretary of Commerce,

CHERYL L. JOHNSON, in her official capacity as
the Clerk of the United States House of
Representatives,

Defendants.

Case No. _____

COMPLAINT

INTRODUCTION

1. This is a complaint for declaratory judgment and injunctive relief against implementation of the Memorandum issued by President Donald J. Trump on July 21, 2020, titled “Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census” (the “Memorandum”), on the grounds that the Memorandum violates Article I, § 2 of the U.S. Constitution as amended by § 2 of the Fourteenth Amendment; the Equal Protection guarantees of the Fifth and Fourteenth Amendments; and 2 U.S.C. § 2a(a) and 13 U.S.C. § 141.

2. The Memorandum purports to break with almost 250 years of past practice by excluding undocumented immigrants when calculating the number of seats to which each State is entitled in the House of Representatives. This new policy flouts the Constitution’s plain language, which states that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting *the whole number of persons in each state*,” excluding only “Indians not taxed.” U.S. Const., amend. XIV, § 2 (emphasis added). It also flies in the face of the statutory scheme governing apportionment, which requires the President to include “the *whole number of persons in each State*” in the apportionment base—again, excluding only “Indians not taxed.” 2 U.S.C. § 2a(a) (emphasis added).

3. Since the founding, the three branches of government have agreed that “the whole number of persons in each state” includes non-citizens, whether documented or undocumented. Now, for the first time in our nation’s history, the President has purported to declare the opposite. As the Department of Justice observed in 1980, such a change would be “a radical revision of the constitutionally mandated system for allocation of Representatives to the States of the Union and an equally radical revision of the historic mission of the decennial census.”

4. President Trump’s Memorandum is not an isolated event. Rather, it is the culmination of a concerted effort, stretching back at least five years, to shift the apportionment base from *total* population to *citizen* population—a strategy intended, in the words of its chief architect, to enhance the political power of “Republicans and non-Hispanic whites” at the expense of people of color, chiefly Latinos. The Memorandum is, in this respect, consistent with the Administration’s attempt to add a citizenship question to the 2020 census—a ploy that the U.S. Supreme Court rejected as pretextual and unlawful. The Administration’s latest effort should meet the same end.

5. Plaintiffs bring this action for declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) to halt Defendants' violations of the Constitution and laws of the United States and to protect the right of all of this country's inhabitants to the equal protection of its laws.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, and relief is authorized under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Defendants are United States agencies or officers acting in their official capacities or under color of legal authority, and Defendants reside in this District, or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District, or one or more Plaintiffs resides in this District.

8. This Court has personal jurisdiction over Defendants because Defendants are located within this District and Defendants' actions and omissions giving rise to Plaintiffs' claims occurred in this District.

PARTIES

9. Plaintiff Common Cause is a nonprofit organization organized and existing under the laws of the District of Columbia, with its principal place of business in the District of Columbia. Common Cause is a nonpartisan democracy organization with over 1.2 million members, 22 state offices, and a presence in all 50 states. It has members in all 50 states and in every congressional district. Since its founding by John Gardner fifty years ago, Common Cause

has been dedicated to making government at all levels more representative, open, and responsive to the interests of ordinary people. It sues herein on behalf of its members.

10. Plaintiff City of Atlanta is the capital and most populous city in the State of Georgia, with a population of over half a million people. People of color constitute the majority of its population. It has a notably large population of immigrants, including Latino immigrants, as well as immigrants from East and South Asia, Africa, and the Caribbean.

11. Plaintiff City of Paterson is the county seat of Passaic County, New Jersey, with a population of approximately 150,000 people. It has a notably large population of immigrants, including Latino immigrants, as well as immigrants from Bangladesh, India, South Asia, and the Arab and Muslim world.

12. Plaintiff Partnership for the Advancement of New Americans (PANA) is a 501(c)(3) nonprofit based in San Diego, California with over 400 members. PANA is dedicated to advancing the full economic, social, and civic inclusion of refugees. It advocates for public policy solutions that will ensure local governments invest in the long-term economic self-sufficiency of newcomers and refugee families, including effective resettlement strategies and equitable allocation of federal resources. PANA provides support to communities directly affected by unjust immigration policies, including nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen who have resettled and continue to seek refuge in the San Diego region. In addition to its public policy advocacy, PANA engages more than 40,000 former refugee, African immigrant, Muslim, and Southeast Asian voters in elections throughout the San Diego region to ensure the fair representation of these historically underrepresented communities. It sues herein both on its own behalf and on behalf of its members.

13. Plaintiff Roberto Aguirre is a naturalized U.S. citizen and a resident of Queens, New York City, New York. He is of Latino ethnicity and Ecuadorean national origin. He is a registered voter and regularly exercises his right to vote.

14. Plaintiff Sheila Aguirre is a natural-born U.S. citizen and a resident of Queens, New York City, New York. She is of Latina ethnicity and Ecuadorean heritage. She is a registered voter and regularly exercises her right to vote.

15. Plaintiff Paula Aguirre is a natural-born U.S. citizen and a resident of Queens, New York City, New York. She is of Latina ethnicity and Ecuadorean heritage. She is a registered voter and regularly exercises her right to vote.

16. Plaintiff Andrea M. Alexander is a natural-born citizen and a resident of Brooklyn, New York City, New York. Her racial identity is Black. She is a registered voter and regularly exercises her right to vote.

17. Plaintiff Debra de Oliveira is a naturalized U.S. citizen and a resident of Margate, Florida. Her racial identity is Black and her national origin is Guyanese. She is a registered voter and regularly exercises her right to vote.

18. Plaintiff Sara Pavon is a naturalized U.S. citizen and a resident of Queens, New York City, New York. She is of Latina ethnicity and Ecuadorean national origin. She is a registered voter and regularly exercises her right to vote.

19. Plaintiff Jonathan Allan Reiss is a naturalized U.S. citizen and a resident of Manhattan, New York City, New York. He is of Caucasian ethnicity and Canadian national origin. He is a registered voter and regularly exercises his right to vote.

20. Plaintiff Myrna Young is a naturalized U.S. citizen and a resident of Fort Myers, Florida. Her racial identity is Black and her national origin is Guyanese. She is a registered voter and regularly exercises her right to vote.

21. Defendant Donald J. Trump is the current President of the United States of America. He is sued herein in his official capacity. Pursuant to statute, the President is responsible for transmitting the results of the decennial census, and the resulting congressional apportionment figures, to Congress.

22. Defendant United States Department of Commerce is a cabinet agency within the executive branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). Pursuant to statute, the Commerce Department is responsible for, among other things, implementing and administering the decennial census and transmitting the resulting tabulations to the President for further transmittal to Congress.

23. Defendant Wilbur L. Ross, Jr., is the Secretary of Commerce of the United States and a member of the President's Cabinet. He is responsible for conducting the decennial census and oversees the Census Bureau. He is sued herein in his official capacity.

24. Defendant Cheryl L. Johnson is the Clerk of the United States House of Representatives. Pursuant to statute, she is responsible for "send[ing] to the executive of each State a certificate of the number of Representatives to which such State is entitled" following a decennial reapportionment. 2 U.S.C. § 2a(b). She is sued herein in her official capacity.

FACTUAL ALLEGATIONS

A. Statutory Law Requires the President to Include All Persons in the Congressional Apportionment Base, Irrespective of Citizenship or Immigration Status

25. From the founding, the federal Constitution has required a decennial census (that is, an "actual Enumeration") to determine the apportionment of members of the U.S. House of

Representatives among the States. The Constitution tasks Congress with passing legislation to “direct” the “manner” in which the census shall occur, subject to the requirements set forth in the Constitution itself. *See* U.S. Const., art. I, § 2, cl. 3; *Franklin v. Massachusetts*, 505 U.S. 788, 791 (1992).

26. By statute, Congress has assigned the responsibility of conducting the census to the Secretary of Commerce, and empowered the Secretary of Commerce to delegate authority for establishing procedures to conduct the census to the Census Bureau. 13 U.S.C. §§ 2, 4, 141; *Franklin*, 505 U.S. at 792.

27. To that end, the Census Bureau sends a questionnaire to every household in the United States, to which every resident in the United States (documented or otherwise) is legally required to respond. 13 U.S.C. § 221. The Census Bureau then counts responses from every household to determine the population count in the various states.

28. The Census Bureau’s rules state that its enumeration procedures “are guided by the constitutional and statutory mandates to count *all residents* of the several states,” including “[c]itizens of foreign countries living in the United States.”¹

29. Within nine months of the census date (in this case, by January 1, 2021), the Secretary of Commerce is required by statute to report to the President “the tabulation of *total population* by States . . . as required for the apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 141(b) (emphasis added).

30. Thereafter, the President is required by statute to transmit to Congress two sets of numbers. First, the President must provide “a statement showing the *whole number of persons*

¹ U.S. Census Bureau, *Residence Criteria and Residence Situations for the 2020 Census of the United States* at 1-2 (emphasis added), available at <https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf> (last accessed July 22, 2020).

in each State, excluding Indians not taxed, as ascertained under the . . . decennial census of the population.” 2 U.S.C. § 2a(a) (emphasis added).

31. Second, based on the census count of the “whole number of persons in each State,” the President must specify “the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.” *Id.*

32. “Each State” shall thereupon “be entitled” to the number of representatives “shown in” the President’s statement to Congress, “until the taking effect of a reapportionment under this section or subsequent statute.” 2 U.S.C. § 2a(b). It is “the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of [the President’s] statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled” *Id.*; see *Franklin*, 505 U.S. at 792.

33. The governing statute does not authorize the Secretary of Commerce to transmit to the President a number *other than* “the whole number of persons in each State,” as determined by the census. Nor does it vest the President with discretion to base the apportionment calculation that he or she transmits to Congress on something *other than* “the whole number of persons in each State.”

34. Indeed, in enacting this statute, members of Congress noted repeatedly that the President’s role in calculating apportionment figures is ministerial—*i.e.*, that the statute directs the President “to report ‘upon a problem in mathematics . . . for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.’” *Franklin*, 505 U.S. at 799 (quoting S. Rep. No. 2, 71st Cong., 1st Sess. at 4-5 (1929)); see also S. Rep. No. 2, 71st Cong., 1st Sess. at 4 (1929) (stating that the President shall report “apportionment tables”

to Congress “pursuant to a purely ministerial and mathematical formula”); 71 Cong. Rec. 1858 (1929) (statement of Sen. Vandenberg) (stating that the “function served by the President [under this statute] is as purely and completely a ministerial function as any function on earth could be”).

35. The Supreme Court, too, has recognized that “the President *exercises no discretion* in calculating the numbers of Representatives,” and that his or her role in the apportionment calculation is therefore “*admittedly ministerial.*” *Franklin*, 505 U.S. at 799 (emphasis added).

36. The Executive Branch has similarly conceded the exclusively ministerial nature of the President’s role in translating the census data to an apportionment determination. *See* Reply Br. for the Federal Appellants at 24, *Franklin v. Massachusetts*, No. 91-1502 (U.S. Apr. 20, 1992), 1992 U.S. S. Ct. Briefs LEXIS 390 (“[I]t is true that the method [prescribed by 2 U.S.C. § 2a] calls for application of a set mathematical formula to the state population totals produced by the census”); Transcript of Oral Argument at 12-13, *Franklin v. Massachusetts*, No. 91-1502 (U.S. Apr. 21, 1992) (argument of Deputy Solicitor General Roberts) (“The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives [from the Secretary of Commerce] . . . It would be unlawful [for the President] . . . just to say, ‘these are the figures, they are right, but I am going to submit a different statement.’”).

B. The Constitution Requires the President to Include All Persons in the Congressional Apportionment Base, Irrespective of Citizenship or Immigration Status

37. From the founding of our nation, all three branches of government have agreed that, independent of statutory law, the Constitution itself requires that the census count *all* “persons” residing in each State, irrespective of citizenship or immigration status, and that *all* such “persons” be included in the congressional apportionment base.

38. As originally ratified, Article I, Section 2 of the Constitution provided that “Representatives . . . shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to *the whole number of free persons*, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons [*i.e.*, slaves]” (emphasis added). This infamous “Three-Fifths Compromise” did not exclude free non-citizens, who as a matter of plain meaning are “persons,” from the apportionment base.

39. The Fourteenth Amendment was ratified following the Civil War. That amendment eliminated the “three-fifths” clause, but otherwise “retained total population as the congressional apportionment base.” *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128 (2016). Specifically, Section 2 of the Fourteenth Amendment provides that “Representatives shall be apportioned among the several states according to their respective numbers, counting *the whole number of persons in each state*, excluding Indians not taxed” (emphasis added).

40. During the debates over the Fourteenth Amendment, Congress considered revising the apportionment formula to exclude persons ineligible to vote—a category which, Congress expressly recognized, included the “unnaturalized foreign-born.” Cong. Globe, 39th Cong., 1st Sess., 1256 (1866) (remarks of Sen. Wilson). This proposal was soundly rejected, on the ground that “non-voting classes”—including unnaturalized immigrants—“have as vital an interest in the legislation of the country as those who actually deposit the ballot.” *Evenwel*, 136 S. Ct. at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess., 141 (1866) (remarks of Rep. Blaine)).

41. On several occasions since the Fourteenth Amendment’s passage, Congress has considered measures to exclude “aliens,” including undocumented immigrants, from the census count and/or apportionment base. “[I]t appears to have been generally accepted that such a result

would require a constitutional amendment.” *Fed. For Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576-77 (D.D.C.) (three-judge court), *appeal dismissed*, 447 U.S. 916 (1980).

42. In 1929, for example, the Senate Legislative Counsel concluded that, absent such an amendment, “statutory exclusion of aliens from the apportionment base would be unconstitutional.” *Id.* (citing 71 Cong. Rec. 1821 (1929)).

43. Again in 1940, Congress considered whether “aliens who are in this country in violation of law have the right to be counted and represented.” *Id.* (quoting 86 Cong. Rec. 4372 (1940)). Representative Celler of New York explained:

The Constitution says that all persons shall be counted. I cannot quarrel with the founding fathers. They said that all should be counted. We count the convicts who are just as dangerous and just as bad as the Communists or as the Nazis, *as those aliens here illegally*, and I would not come here and have the temerity to say that the convicts shall be excluded, if the founding fathers say they shall be included. The only way we can exclude them would be to pass a constitutional amendment.

Id. (emphasis added). On this basis, Congress rejected a proposal to exclude “aliens” from the apportionment base. *See id.*

44. The Executive Branch, too, has repeatedly recognized—under Presidents of both parties—that the Constitution requires that congressional apportionment take place on the basis of total population, irrespective of citizenship or immigration status.

45. For example, in 1980, under President Jimmy Carter, private plaintiffs filed a lawsuit in this District seeking to exclude “illegal aliens” from the census and the congressional apportionment base. *Klutznick*, 486 F. Supp. at 565. Opposing the suit, the U.S. Department of Justice (“DOJ”) told this Court that the plaintiffs “s[ought] a radical revision of the constitutionally mandated system for allocation of Representatives to the States of the Union and

an equally radical revision of the historic mission of the decennial census.” Federal Defendants’ Post-Argument Mem. at 1, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. filed Feb. 15, 1980).

46. “[F]or 200 years,” the DOJ told this Court, “the decennial census has counted all residents of the states irrespective of their citizenship or immigration status,” and those counts had been employed in apportionment. *Id.* Given “the clear and unequivocal language of Section 2 of the Fourteenth Amendment,” the DOJ urged, the “radical revision” that the plaintiffs sought could come only from “a constitutional amendment.” *Id.* What is more, the DOJ explained, such a revision would be “patently unfair” to residents of communities in which undocumented immigrants live, as undocumented immigrants “demand[] precisely the same level of the services from the municipalities and states in which [they] reside as do all other citizens.” *Id.* at 12.

47. In 1988, under President Ronald Reagan, the Director of the Office of Management and Budget sought the views of the DOJ on yet another proposal to exclude “illegal aliens” from congressional apportionment base. The DOJ concluded that the proposed legislation was “unconstitutional.” Letter from Thomas M. Boyd, Acting Assistant Attorney General, dated June 29, 1988, at 5.² In the DOJ’s view, it was “clear” that, under the Fourteenth Amendment, “all persons, *including aliens residing in this country*, [must] be included” in the congressional apportionment base. *Id.* at 2 (emphasis added). In fact, the DOJ noted, the Reconstruction Congress “rejected arguments that representation should be based on people with permanent ties to the country” and “consciously chose to include aliens.” *Id.* at 2-3.

48. In its 1988 opinion, the DOJ went on to explain that, for apportionment purposes, the Fourteenth Amendment makes no distinction between “aliens” who are and are not lawfully

² *Included in* 1990 Census Procedures and Demographic Impact on the State of Michigan: Hearing Before the Committee on Post Office and Civil Service, House of Representatives, One Hundredth Congress, Second Session, June 24, 1988 at 240 (United States: U.S. Government Printing Office 1988).

present in the United States. Furthermore, DOJ explained, in analyzing the Fourteenth Amendment, “the Supreme Court . . . has read the word ‘person’ to include illegal aliens.” *Id.* at 3-4 (citing *Plyler v. Doe*, 457 U.S. 202, 210 (1982)).

49. In 1989, under President George H. W. Bush, the DOJ issued a similar opinion. Once again, a Senator had “requested the views of the Department of Justice concerning the constitutionality of proposed legislation excluding illegal or deportable aliens from the decennial census count.” Letter from Carol T. Crawford, Assistant Attorney General, dated Sept. 22, 1989, at 1, 135 Cong. Rec. S12235 (1989). The DOJ responded that “section two of the Fourteenth Amendment which provides for ‘counting the whole number of persons in each state’ and the original Apportionment and Census Clauses of Article I section two of the Constitution **require that inhabitants of States who are illegal aliens be included** in the census count.” *Id.* (emphasis added). At that time, current Attorney General William Barr was the head of DOJ’s Office of Legal Counsel. In that position, he would be expected to have reviewed and approved the DOJ opinion.

50. In 2015, under President Barack Obama, the DOJ once again took the position—this time in briefing to the Supreme Court—that Article I, § 2 and the Fourteenth Amendment “were purposely drafted to refer to ‘persons,’ rather than to voters, and to include people who could not vote”—specifically including “aliens.” Brief for the United States as *Amicus Curiae*, *Evenwel v. Abbott*, No. 14-940, at 18 (quoting Cong. Globe, 39th Cong., 1st Sess. 141, 359), 2015 U.S. S. Ct. Briefs LEXIS 3387. In the DOJ’s words, this is because “the federal government act[s] in the name of (and thereby represent[s]) all people, whether they [are] voters or not, and whether they [are] citizens or not.” *Id.* at 19.

51. The judiciary, too, has long echoed this consensus. For over fifty years, the U.S. Supreme Court has found it “abundantly clear . . . that in allocating Congressmen the number assigned to each state should be determined solely by the number of the State’s inhabitants.” *Wesberry v. Sanders*, 376 U.S. 1, 13 (1964).

52. Just four years ago, the Supreme Court unanimously reaffirmed that the Constitution “select[s] . . . total population as the basis for allocating congressional seats, . . . *whether or not [individuals] qualify as voters.*” *Evenwel*, 136 S. Ct. at 1129. Because immigration was at the center of the controversy in *Evenwel*,³ it is beyond question that the Supreme Court had non-citizen immigrants in mind when it made this declaration.

53. Lower courts, too, have determined that “illegal aliens . . . are clearly ‘persons’” for purposes of congressional apportionment, and that “the population base for purposes of apportionment” must therefore “include[] all persons, *including aliens both lawfully and unlawfully within our borders.*” *Klutznick*, 486 F. Supp. at 576 (emphasis added).

54. To Plaintiffs’ knowledge, no court has ever held otherwise.

C. In Violation of Statute and the Constitution, The President Has Purported to Exclude Undocumented Immigrants from Congressional Apportionment

55. On July 21, 2020, without any advance notice to the public, the President issued a proclamation titled “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census” (the “Memorandum”).⁴ Breaking with almost 250 years of

³ See, e.g., Brief of Eagle Forum as *Amicus Curiae* for Appellants, *Evenwel v. Abbott*, No. 14-940, at 2, 2015 U.S. S. Ct. Briefs LEXIS 2687 (complaining of the “influx of non-citizens in[to] urban areas”); Brief of Immigration Reform Law Institute as *Amicus Curiae* for Appellants, *Evenwel v. Abbott*, No. 14-940, at 1, 2015 U.S. S. Ct. Briefs LEXIS 2724 (complaining of the “harms . . . posed by mass migration to the United States, both lawful and unlawful”).

⁴ Available at <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/> (last accessed July 23, 2020).

precedent, the Memorandum declares that it is now “the policy of the United States to exclude from the [congressional] apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible” Memorandum § 2.

56. To implement that purported “policy,” the Memorandum states that, when the President “transmits . . . to the Congress” his report “regarding the ‘whole number of persons in each State’” and the consequent “number of Representatives to be apportioned to each State,” he will unilaterally “exclude . . . aliens who are not in a lawful immigration status” from the figures that he transmits. *Id.* §§ 1, 2. The Memorandum further asserts that these manipulated figures created at the President’s direction, and not the actual “whole number of persons in each State,” as provided in the governing statute, shall then “‘settle[] the apportionment’ of Representatives among the States.” *Id.* § 1.

57. To enable the President to prepare this manipulated apportionment, the Memorandum orders the Secretary of Commerce to “take all appropriate action . . . to provide information permitting the President . . . to carry out the policy set forth in . . . this memorandum.” *Id.* § 3. Presumably, this includes providing the President with “data on the number of citizens, non-citizens, and illegal aliens in the country,” which the President had earlier commanded the Department of Commerce to collect to permit the President to accomplish this purpose. *Id.* § 1 (citing Executive Order 13880, July 11, 2019).

58. The Memorandum makes no serious attempt to square the President’s new “policy” with the governing statutory and constitutional provisions described above or with over two centuries of contrary practice. Instead, the Memorandum purports to justify this “policy” based on the President’s own view that “[e]xcluding . . . illegal aliens from the apportionment

base is more consonant with the principles of representative democracy underpinning our system of Government.” *Id.* § 2. The Memorandum also relies on the unexceptional premise that transient *visitors* to a State are not included in census numbers to argue that *inhabitants* of a state can be excluded based on their immigration status.

59. The President is not free to substitute his own personal judgment for those that have already been made by the Congress that enacted 2 U.S.C. § 2a and by the framers and ratifiers of Article I, § 2 and the Fourteenth Amendment. As explained above, the President’s duty in preparing and transmitting the apportionment calculations to Congress is purely ministerial. There is no room under the statutory scheme for his exercise of judgment concerning what is most “consonant with the principles of representative democracy.” And even if the statutory scheme permitted the President to exercise such judgment, he would of course be restrained by the Constitution’s clear command.

D. The Memorandum is the Latest in a Series of Unlawful Attempts to Manipulate Apportionment to Deprive Minorities of Political Power

60. The Memorandum is not the first time that this Administration has sought to manipulate the census and apportionment process to deprive immigrants and racial and ethnic minorities of political power. To the contrary, it is the latest in an interconnected series of unlawful actions that this Administration has taken for that purpose.

61. The planning for these actions predated the start of this Administration. In August 2015, the now-deceased Republican redistricting guru Thomas B. Hofeller prepared a secret study for a major Republican donor titled “The Use of Citizen Voting Age Population in

Redistricting” (the “Hofeller Study”).⁵ According to the New York Times, Hofeller had already “achieved near-mythic status in the Republican party as the Michelangelo of gerrymandering, the architect of partisan political maps that cemented the party’s dominance across the country.”⁶ The Hofeller Study fortuitously came to light only after he died and his estranged daughter made his personal storage devices available to Plaintiff Common Cause.

62. In his study, Hofeller concluded that “[a] switch to the use of citizen voting age population as the redistricting population base”—in lieu of total population, as presently used—“would be *advantageous to Republicans and non-Hispanic whites*” and would dilute the political power of Hispanics. Hofeller Study at 9 (emphasis added). The problem, Hofeller explained, was that insufficient information was available to accurately determine the States’ citizen voting-age population for purposes of reapportionment. Without “add[ing] a citizenship question to the 2020 Decennial Census form,” he concluded, such a switch would be “functionally unworkable.” *Id.* at 4.

63. Notably, the Hofeller Study addressed only the possibility of changing the population base for *state*-level redistricting. This is because Hofeller knew that the Constitution and federal law expressly require use of total population as an apportionment base at the *federal* level. Even in his most ambitious private scheming, Hofeller did not imagine that the apportionment base for the U.S. Congress could be changed.

64. When Defendant Trump was elected to the presidency in 2016, Hofeller “urg[ed] [his] transition team to tack the [citizenship] question onto the census.” The transition staffer

⁵ Available at <https://www.commoncause.org/wp-content/uploads/2019/05/2015-Hofeller-Study.pdf> (last accessed July 23, 2020).

⁶ Michael Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, New York Times, May 30, 2019, available at <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html> (last accessed July 23, 2020).

with whom Hofeller spoke then discussed the issue with Defendant Ross and his advisors several times in the early days of the Administration. Soon thereafter, Hofeller ghostwrote “the key portion of a draft Justice Department letter” that claimed—falsely, and with no small amount of irony—that “the [citizenship] question was needed to enforce the 1965 Voting Rights Act,” a statute intended to protect the political power of racial and ethnic minorities.⁷

65. The rest is already well-known. *See generally Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019). In March 2018, Defendant Ross, in his capacity as Secretary of Commerce, announced his intent “to reinstate a question about citizenship on the 2020 decennial census questionnaire.” *Id.* at 2562. Ross “stated that he was acting at the request of the [DOJ], which sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act” *Id.*

66. Of course, this rationale was pretextual. The real reason for Ross’s decision was that stated by Hofeller in his 2015 study: to provide the data necessary to enable the change in apportionment base from total population to citizen voting-age population, and thereby maximize the political power of “Republicans and non-Hispanic whites.”

67. Shortly after Ross announced his decision, two groups of plaintiffs filed suit to block the citizenship question. After a bench trial, a federal district court in New York ruled (among other things) “that the Secretary’s action was arbitrary and capricious” and “based on a pretextual rationale.” *Id.* at 2564. The Supreme Court granted certiorari before judgment and affirmed, agreeing with the district court that “the Secretary’s decision must be set aside because it rested on a pretextual basis.” *Id.* at 2573.

⁷ Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, *supra*.

68. In particular, the Supreme Court found that “the [Voting Rights Act] played an insignificant role in the decisionmaking process.” *Id.* at 2574. Instead, “the Secretary was determined to reinstate a citizenship question from the time he entered office; instructed his staff to make it happen; waited while Commerce officials explored whether another agency would request census-based citizenship data; subsequently contacted the Attorney General himself to ask if DOJ would make the request; and adopted the Voting Rights Act rationale late in the process” as a “distraction” from his true, invidious motive. *Id.* at 2575-76.

69. On July 5, 2019, just days after the Supreme Court rendered its decision, President Trump admitted what the true reason for the citizenship question had always been. At a press conference, he was asked: “What’s the reason . . . for trying to get a citizenship question on the census?” Contrary to what the Administration had maintained in the census litigation, the President answered: “Congress. You need it for Congress, for districting.”⁸

70. With the citizenship question now quashed, however, the Administration sought another way to implement their goal of changing the apportionment base to shift political power to “Republicans and non-Hispanic whites.” Thus, on July 11, 2019—six days after his press-conference remarks—the President issued Executive Order 13880, titled “Collecting Information About Citizenship Status in Connection with the Decennial Census.” 84 Fed. Reg. 33821.

71. In that Executive Order, the President recognized that it was now “impossible . . . to include a citizenship question on the 2020 decennial census questionnaire.” *Id.* Instead, as a backup plan, the President “determined that it is imperative that all executive departments and agencies . . . provide the [Commerce] Department the maximum assistance permissible . . . in

⁸ Remarks by President Trump Before Marine One Departure, July 5, 2019, *available at* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/> (last accessed July 23, 2020).

determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective.” *Id.* To that end, the President “order[ed] all agencies to share information requested by the [Commerce] Department.” *Id.* at 33822. He also “direct[ed] the Department to strengthen its efforts . . . to obtain State administrative records concerning citizenship.” *Id.*

72. For the first time, the President specifically called out the importance of “generat[ing] an estimate of the aggregate number of aliens *unlawfully* present in each State.” *Id.* at 33823 (emphasis added). In addition, the President once again openly acknowledged the true reason why, from the outset, his Administration had been so intently set on collecting citizenship data: not improving enforcement of the Voting Rights Act, but rather, enabling Hofeller’s plan to “design . . . legislative districts based on the population of voter-eligible citizens,” rather than total population. *Id.* at 33823-24.

73. There is a clear through-line running through all of the above actions and decisions: from Hofeller’s original 2015 plan to change the basis of apportionment, which required new citizenship data; to Ross’s decision—at Hofeller’s urging—to place a citizenship question on the census, while giving a pretextual reason to mask his true motive; to the President’s Executive Order instructing the Commerce Department to collect citizenship data through alternate means; to the President’s recent Memorandum purporting to unilaterally shift the basis of congressional apportionment. All of these actions are part of an unconstitutional concerted effort to shift political power away from racial and ethnic minorities, chiefly Latinos, to “Republicans and non-Hispanic whites.”

E. Plaintiffs’ Injuries as a Result of the Challenged Conduct

74. The unlawful conduct alleged herein has caused, is causing, and unless enjoined, will cause Plaintiffs to suffer various injuries in fact.

75. As recognized in the Hofeller Study, removing undocumented immigrants from the apportionment base “alienat[es] Latino voters” and other voters of color, who “perceive [such] a switch . . . as an attempt to diminish their voting strength.” Hofeller Study at 4. In addition to inflicting alienation, it does, in fact, diminish the voting strength of these groups. *See id.* at 6-7.

76. As alleged above, many of the individual Plaintiffs are voters of color, as are many members of the organizational Plaintiffs and many residents of the city Plaintiffs. These include Latinos, African-Americans, Asian-Americans, and voters of other racial and ethnic backgrounds. These voters have suffered dignitary harm as a result of Defendants’ challenged actions. They are also certain to suffer diminished voting strength if those actions are not enjoined.

77. Removing undocumented immigrants from the apportionment base also dilutes the votes and diminishes the representational rights of *citizens*—of all races and ethnicities—who live in jurisdictions with an above-average number of undocumented immigrants. *See* Hofeller Study at 6. As the Department of Justice has previously argued, “[i]t would be patently unfair to penalize” these citizens “by depriving them of fair representation in Congress” and diluting their voting strength merely because “a certain number of members of their community are . . . in the class of potentially deportable aliens.” Federal Defendants’ Post-Argument Mem. at 12, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. filed Feb. 15, 1980).

78. Many of the individual Plaintiffs, many members of the organizational Plaintiffs, and many residents of the city Plaintiffs live in areas with an above-average number of undocumented immigrants. These persons are certain to suffer vote dilution and diminished representational rights if Defendants' challenged actions are not enjoined.

79. The President has already acknowledged as much. The Memorandum expressly notes that one state—California—has “more than 2.2 million illegal aliens” and that the exclusion of those undocumented immigrants from the apportionment base could cost California “two or three . . . congressional seats.” Memorandum § 2. Plaintiffs Common Cause and PANA have members residing in California whose votes would be diluted and who would lose representation under the Memorandum's apportionment regime.

80. By the same token, the State of New York had approximately 725,000 undocumented immigrants in 2016, a number that has likely increased since then.⁹ If implemented, the Memorandum's apportionment regime would likely result in the loss of one of New York's congressional seats, as each seat in New York presently corresponds to approximately 719,000 people.¹⁰ As alleged above, a number of the individual Plaintiffs reside in New York, as do many members of Plaintiff Common Cause. Their votes would be diluted, and they would lose representation, under the Memorandum's apportionment regime.

81. Similarly, the State of Georgia has approximately 400,000 undocumented immigrants—enough to potentially cost the State one congressional seat if they were not

⁹ American Immigration Council, *Fact Sheet: Immigrants in New York*, <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-york> (last accessed July 23, 2020).

¹⁰ *2012 – 2020 Federal Representation by People per House Seat, Senate Seat, and Electors*, The Green Papers, <https://www.thegreenpapers.com/Census10/FedRep.phtml> (last accessed July 23, 2020).

counted.¹¹ Plaintiff City of Atlanta is located in Georgia, as are many members of Plaintiff Common Cause. The votes of their residents and members would be diluted, and they would lose representation, under the Memorandum’s apportionment regime.

82. In addition, as the Department of Justice has recognized, removing undocumented immigrants from the apportionment base “require[s]” residents of areas with an above-average number of undocumented immigrants—including residents who are U.S. citizens—“to assume a greater burden of the cost of state and municipal services” merely because the President has now “determined that a certain percentage of the residents of their community do not exist for purposes of allocation of federal census-based fiscal assistance.” Federal Defendants’ Post-Argument Mem. at 12, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. filed Feb. 15, 1980).

83. Again, many of the individual Plaintiffs, many members of the organizational Plaintiffs, and many residents of the city Plaintiffs live in areas with an above-average number of undocumented immigrants. These persons are certain to suffer fiscal burdens, including increased costs of state and municipal services, if the challenged actions are not enjoined.

84. These increased costs would be felt especially acutely by the city Plaintiffs, which must necessarily provide municipal services to citizens, documented immigrants, and undocumented immigrants on an equal basis. *See, e.g., Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 74 (1978) (noting that “police, fire, and health protection” are “basic municipal services” whose delivery to all residents is a “city’s responsibility”); *Plyler*, 457 U.S. 202 (holding that the right to a free public education extends to minor undocumented immigrants).

¹¹ American Immigration Council, *Fact Sheet: Immigrants in Georgia*, <https://www.americanimmigrationcouncil.org/research/immigrants-in-georgia> (last accessed July 23, 2020).

85. For example, the State of Georgia reportedly has the seventh-largest number of undocumented immigrants in the United States, many of them concentrated in the city of Atlanta. If undocumented immigrants were removed from the apportionment base, Plaintiff City of Atlanta would have to continue to provide these municipal services to those residents without receiving federal resources and representation commensurate with their numbers.

86. Plaintiff PANA, moreover, would suffer certain harm to its organizational mission if the challenged actions are not enjoined. Again, PANA's mission centers around providing support to immigrant communities, including foreign nationals who have resettled and continue to seek refuge in the San Diego region. Because the San Diego region has a higher-than-average number of undocumented immigrants, removing undocumented immigrants from the apportionment base would reduce the federal resettlement resources directed to that region—resources on which PANA depends to carry out its mission.

87. Importantly, whatever figures the President transmits to Congress in January 2021, the issuance of the Memorandum is *already* inflicting irreparable injury on Plaintiffs. The census count is ongoing and is not expected to conclude until the end of October.¹² At this moment, the Memorandum is causing fear and confusion among the immigrant population and reducing the likelihood that immigrants (both documented and undocumented) will respond to the census survey.¹³ Unless Defendants' actions are declared unlawful and void now, before the

¹² *Important Dates*, United States Census 2020, <https://2020census.gov/en/important-dates.html> (last accessed July 23, 2020).

¹³ See, e.g., *Exclusion of undocumented immigrants from the Census is unconstitutional*, El Sol Latino, July 22, 2020, <https://elsolnewsmedia.com/jim-kenney-exclusion/> (last accessed July 23, 2020) (reporting statement of the mayor of Philadelphia that the Memorandum “appears targeted to suppress census participation and create fear and confusion among undocumented immigrant communities”); Kendall Ashman, *President's memo to exclude undocumented immigrants from 2020 census apportionment count*, ABC 40/29 News, July 22, 2020, <https://www.4029tv.com/article/presidents-memo-to-exclude-undocumented-immigrants-from-2020-census-apportionment-count/33397647#> (last accessed July 23,

conclusion of the count, the results of the census—and the consequent impact on congressional apportionment—will be irretrievably altered. It will be too late to remedy these harms in January 2021, when President is scheduled to transmit the results of the count to Congress.

COUNT I

Violation of U.S. Const., Art. I, § 2, cl. 3 and U.S. Const., amend. XIV, § 2

88. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

89. As set forth above, Art. I, § 2, cl. 3, as modified by Section 2 of the Fourteenth Amendment, provides that “Representatives shall be apportioned among the several states according to their respective numbers, counting *the whole number of persons in each state*, excluding Indians not taxed.” U.S. Const., amend. XIV, § 2.

90. Since the Founding, all three branches of the federal government have consistently agreed that “the whole number of persons in each state” includes non-citizens, irrespective of their immigration status—and, consequently, that non-citizens must be counted in the census and included in the basis for congressional apportionment.

2020) (reporting view of Arkansas immigrant organization that “the president’s memo will potentially scare immigrant communities from taking part” in the census count); Alexandra Watts, *Charlotte Reacts to Trump’s Proposed Census Changes*, WFAE, July 22, 2020 <https://www.wfae.org/post/charlotte-reacts-trumps-proposed-census-changes-0#stream/0> (last accessed July 23, 2020) (reporting that “[m]embers of North Carolina’s Latino community say those who are in the country illegally will be even more fearful of filling out the 2020 census after President Trump released [the Memorandum]”); *Trump excluding those in US illegally from reapportionment*, Adirondack Daily Enterprise, July 22, 2020, <https://www.adirondackdailyenterprise.com/news/politics/2020/07/trump-excluding-those-in-us-illegally-from-reapportionment/> (last accessed July 23, 2020) (reporting that the Memorandum has “dr[awn] fury and backlash from critics who alleged that it was intended to discourage participation in the [census] survey, not only by people living in the country illegally but also by citizens who fear that participating would expose noncitizen family members to repercussions”); Micah Danney, *SPLC calls Trump census memo unlawful and unconstitutional*, Alabama Reporter, July 22, 2020, <https://www.alreporter.com/2020/07/22/splc-calls-trump-census-memo-unlawful-and-unconstitutional/> (last accessed July 23, 2020) (reporting statement of the Southern Poverty Law Center that “the memo will cause widespread confusion and deter people from participating in the census”).

91. By purporting to exclude undocumented immigrants from the basis for congressional apportionment, the President has violated Art. I, § 2, cl. 3 of the U.S. Constitution and Section 2 of the Fourteenth Amendment to the U.S. Constitution.

92. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

COUNT II

Violation of Equal Protection Clause – Vote Dilution and Representational Injury

93. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

94. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, made applicable to the federal government via the Due Process Clause of the Fifth Amendment, provides that the government may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1, cl. 2.

95. In particular, the Equal Protection clause prohibits the government from taking action in the apportionment process that dilutes or debases the weight of a voter’s vote based on the happenstance of where that voter lives. *See Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964).

96. By purporting to exclude undocumented immigrants from the congressional apportionment base, Defendants have unlawfully diluted Plaintiffs’ votes (or the votes of their members and/or residents) by requiring them to live and vote in congressional districts with a population that is higher than an equal proportion of persons as determined by the census and as required by the Constitution. Similarly, Defendants have caused Plaintiffs (or their members and/or residents) to suffer representational injury by forcing them to compete for their

Representative's limited attention and resources with an artificially high number of fellow-constituents.

97. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

COUNT III
Violation of Equal Protection Clause – Invidious Discrimination

98. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

99. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, made applicable to the federal government via the Due Process Clause of the Fifth Amendment, provides that the government may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1, cl. 2.

100. In particular, the Equal Protection Clause prohibits the government from taking adverse action against any person on the basis of race, ethnicity, or national origin. *See Flowers v. Mississippi*, 139 S. Ct. 2228 (2019). This prohibition extends to the apportionment process, and encompasses not only “explicit racial classifications, but also . . . laws neutral on their face but ‘unexplainable on grounds other than race.’” *Miller v. Johnson*, 515 U.S. 900, 905 (1995).

101. As alleged above, the President's Memorandum is the culmination of a years-long effort to transfer political power *en masse* from voters of color—chiefly, but not exclusively, Latino voters—to “Republicans and non-Hispanic whites.” In other words, the Memorandum, and the policy changes embodied therein, was motivated by intentional invidious discrimination on the basis of race, ethnicity, and/or national origin.

102. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

COUNT IV
Violation of 2 U.S.C. § 2a and 13 U.S.C. § 141

103. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

104. As set forth above, 13 U.S.C. § 141(b) requires the Secretary of Commerce to transmit to the President “the tabulation of *total population* by States . . . as required for the apportionment of Representatives in Congress.”

105. Thereafter, 2 U.S.C. § 2a(a) requires the President to transmit to Congress “a statement showing the *whole number of persons* in each State . . . as ascertained under the . . . decennial census” and “the number of Representatives to which each State would be entitled” applying the so-called “method of equal proportions” to *that* “whole number of persons.”

106. These statutes do not authorize the Secretary of Commerce to transmit to the President any number *other* than the “total population by States.” Nor do they authorize the President to transmit to Congress, or to calculate apportionment based on, any number *other* than the “whole number of persons in each State . . . as ascertained under the . . . decennial census.”

107. The President’s statutory role in this calculating the apportionment figures is purely ministerial and neither calls for, nor permits, the President’s exercise of discretion with regard to the proper apportionment basis or the proper underlying theory of democratic representation.

108. By purporting to require the Secretary of Commerce to transmit to the President population figures concerning or adjusted to exclude undocumented immigrants, and by purporting to exclude undocumented immigrants in the apportionment of congressional representatives, the President has violated 2 U.S.C. § 2a(a) and has commanded the Secretary of Commerce to violate 13 U.S.C. § 141(b).

109. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for injunctive and declaratory relief as requested above under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a), and more specifically pray for:

A. A declaration that the Memorandum, and the other actions challenged herein, are unauthorized by and contrary to the Constitution and laws of the United States, and therefore are null, void, and without force;

B. A preliminary injunction and permanent injunction halting and restraining Defendants' violations of the U.S. Constitution and laws of the United States alleged herein, by ordering, among other things:

1. That Defendant Ross, Defendant U.S. Department of Commerce, and their employees and agents (a) not transmit to the President any data regarding citizenship or immigration status; (b) not transmit to the President any census-related data or calculation other than the whole number of persons residing in each State, excluding Indians not taxed; and (c) provide no support or assistance of any kind to the President in carrying out his stated intent to exclude persons from his enumeration and apportionment determinations on the basis of citizenship or immigration status;

2. That Defendant Trump include all of the inhabitants of each State, excluding Indians not taxed, without respect to such inhabitants' citizenship or immigration status, in the enumeration and apportionment calculations that he prepares and transmits to Congress; and

3. That Defendant Johnson neither certify nor transmit to the States any purported apportionment determination by the President that excludes persons from the apportionment base on the basis of their citizenship or immigration status.

C. An award of Plaintiffs' reasonable fees, costs, and expenses, including attorney's fees, pursuant to 28 U.S.C. § 2412; and

D. Such other and further relief as the Court may deem just and proper.

DATED: July 23, 2020

/s/ Daniel S. Ruzumna

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, DISTRICT OF
COLUMBIA, STATE OF HAWAI'I,
STATE OF ILLINOIS, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF NEW MEXICO, STATE OF
NORTH CAROLINA, STATE OF
OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH
OF VIRGINIA, STATE OF
WASHINGTON; CITY OF
CENTRAL FALLS, CITY OF
CHICAGO, CITY OF COLUMBUS,
CITY OF NEW YORK, CITY OF
PHILADELPHIA, CITY OF
PHOENIX, CITY OF PITTSBURGH,
CITY OF PROVIDENCE, CITY AND
COUNTY OF SAN FRANCISCO,
CITY OF SEATTLE; CAMERON
COUNTY, EL PASO COUNTY,
HIDALGO COUNTY, and
MONTEREY COUNTY,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*; UNITED STATES
DEPARTMENT OF COMMERCE;
WILBUR L. ROSS, JR., *in his official
capacity as Secretary of Commerce*;
BUREAU OF THE CENSUS; and

20 Civ. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

STEVEN DILLINGHAM, *in his
official capacity as Director of the
United States Census Bureau,*

Defendants.

INTRODUCTION

1. This lawsuit challenges President Donald J. Trump’s blatant disregard of an unambiguous constitutional command. The Fourteenth Amendment provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2. The Framers of the Fourteenth Amendment deliberately chose the phrase “whole number of persons” to refer to *all persons living* in each State—including the “entire immigrant population not naturalized.” Cong. Globe, 39th Cong., 1st Sess. 432 (1866) (Rep. John Bingham).

2. For 150 years—since the United States recognized the whole personhood of those formerly bound in slavery—the unambiguous requirement that all persons be counted for apportionment purposes, regardless of immigration status, has been respected by every executive official, every cabinet officer, and every President.

3. Until now. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.” 85 Fed. Reg. 44,679 (July 23, 2020) (attached as Ex. 1). For the first time in our history, the Memorandum announces a “policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status.” *Id.* at 44,680. It directs the Secretary of Commerce to provide the President with information to carry out this policy. And it declares the

President's intent to make a determination of the "whole number of persons in each State" that will in fact exclude the undocumented immigrants he has targeted throughout his administration.

4. The President's new policy and any actions Defendants take to implement it unequivocally violate the Fourteenth Amendment. The constitutional mandate to base apportionment on "the whole number of persons in each State" could hardly be clearer, and the Supreme Court has long recognized that undocumented immigrants are "persons" under the Fourteenth Amendment, *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Memorandum's open disregard of the Constitution's plain text is reason enough to invalidate it and to prevent Defendants from taking steps to carry out its unlawful policy.

5. But Defendants' decision to exclude undocumented immigrants from apportionment also violates the Constitution and federal statutes in multiple additional ways. Defendants' decision unlawfully discriminates against Hispanics and immigrant communities of color in violation of the Due Process Clause of the Fifth Amendment. By explicitly targeting and punishing States that refuse to assist in this administration's enforcement of federal immigration law, Defendants' decision violates the Tenth Amendment. And Defendants' decision to exclude undocumented immigrants from apportionment—as well as any action they take to implement or further that decision—is both contrary to law and arbitrary and capricious, in violation of the Administrative Procedure Act.

6. Defendants' decision harms Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests. If Defendants succeed in excluding undocumented immigrants from apportionment, some Plaintiffs will suffer severe injury to their most basic rights under our Constitution's representational form of government: they will improperly lose one or more Members in the House of Representatives and one or more corresponding electors in the

Electoral College. And removing undocumented immigrants from the apportionment base will further harm Plaintiffs by, for example, undermining their ability to conduct congressional and state-level redistricting, depriving them of critical federal funding, and eroding the quality of census data on which they rely to perform essential government functions.

7. Plaintiffs the State of New York, State of Colorado, State of Connecticut, State of Delaware, District of Columbia, State of Hawai‘i, State of Illinois, State of Maryland, Commonwealth of Massachusetts, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of North Carolina, State of Oregon, Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, Commonwealth of Virginia, State of Washington, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City and County of San Francisco, City of Seattle, Cameron County, El Paso County, Hidalgo County, and Monterey County therefore bring this action seeking declaratory and injunctive relief to hold Defendants to their obligation to base apportionment on “the whole number of persons in each State” and to forbid them from excluding undocumented immigrants—or any other person—from the apportionment base.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

9. Declaratory and injunctive relief is sought as authorized in 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiffs the State of New York and the City of New York are residents of this judicial district, and a

substantial part of the events or omissions giving rise to this Complaint occurred and are continuing to occur within the Southern District of New York.

PARTIES

11. Plaintiff the State of New York, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is New York State's chief law enforcement officer and is authorized under N.Y. Executive Law § 63 to pursue this action.

12. Plaintiff the State of Colorado is a sovereign state of the United States of America. The State of Colorado brings this action by and through its Attorney General, Philip J. Weiser. The Attorney General has authority to represent the state, its departments, and its agencies, and "shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party." Colo. Rev. Stat. § 24-31-101.

13. Plaintiff the State of Connecticut, represented by and through its Attorney General, William Tong, is a sovereign state of the United States of America. The Attorney General brings this action as the state's chief civil legal officer under Conn. Gen. Stat. § 3-124 *et seq.*

14. Plaintiff the State of Delaware is represented by and through its Attorney General Kathleen Jennings, and is a sovereign state of the United States of America. Attorney General Jennings is Delaware's chief law enforcement officer, *see* Del. Const., art. III, and is authorized to pursue this action under 29 Del. Code § 2504.

15. Plaintiff the District of Columbia is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District brings this case through the Attorney General for the District of Columbia, who is the chief legal officer for the District and possesses all powers afforded the

Attorney General by the common and statutory law of the District. The Attorney General is responsible for upholding the public interest and has the authority to file civil actions in order to protect the public interest. D.C. Code § 1-301.81.

16. Plaintiff the State of Hawai‘i, represented by and through its Attorney General, is a sovereign state of the United States of America. Attorney General Clare E. Connors is the chief legal officer of the State of Hawai‘i and is authorized to appear, personally or by deputy, on behalf of the state in all courts and in all cases in which the state is a party. Haw. Const. art. V, § 6; Haw. Rev. Stat. Chapter 28; Haw. Rev. Stat. § 26-7.

17. Plaintiff the State of Illinois, represented by and through its Attorney General, Kwame Raoul, is a sovereign state of the United States of America. The Attorney General is Illinois’s chief law enforcement officer and is authorized under 15 ILCS 205/4 to pursue this action.

18. Plaintiff the State of Maryland, by and through its Attorney General, Brian E. Frosh, is a sovereign state of the United States of America. The Attorney General is Maryland’s chief legal officer with general charge, supervision, and direction of the State’s legal business. The Attorney General’s powers and duties include acting on behalf of the State and the people of Maryland in the federal courts on matters of public concern. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws, Joint Resolution 1.

19. Plaintiff the Commonwealth of Massachusetts, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is authorized to pursue this action under Mass. Gen. Laws ch. 12, §§ 3 and 10.

20. Plaintiff the State of Michigan, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is Michigan's chief law enforcement officer and is authorized under Michigan law, Mich. Comp. Laws §§ 14.28 and 14.29, to pursue this action.

21. Plaintiff the State of Minnesota, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is Minnesota's chief legal officer and is authorized to pursue this action on behalf of the State. Minn. Stat. § 8.01.

22. Plaintiff the State of Nevada, represented by and through its Attorney General, is a sovereign state of the United States of America. Attorney General Aaron D. Ford is the chief legal officer of the State of Nevada and has the authority to commence actions in federal court to protect the interests of Nevada. Nev. Rev. Stat. § 228.170. Governor Stephen F. Sisolak is the chief executive officer of the State of Nevada. The Governor is responsible for overseeing the operations of the State and ensuring that its laws are faithfully executed. Nev. Const., art. 5, § 1.

23. Plaintiff the State of New Jersey, represented by and through its Attorney General Gurbir S. Grewal, is a sovereign state of the United States of America. The Attorney General is New Jersey's chief legal officer and is authorized to pursue this action on behalf of the State. *See* N.J. Stat. Ann. § 52:17A-4(e), (g).

24. Plaintiff the State of New Mexico, represented by and through its Attorney General Hector Balderas, is a sovereign state of the United States of America. The Attorney

General is authorized to bring an action on behalf of New Mexico in any court when, in his judgment, the interests of the State so require, N.M. Stat. Ann. § 8-5-2.

25. Plaintiff the State of North Carolina, represented by and through Attorney General Joshua H. Stein, is a sovereign state of the United States of America. The Attorney General is the State of North Carolina's chief law enforcement officer and brings this challenge pursuant to his independent constitutional, statutory, and common-law authority.

26. Plaintiff the State of Oregon, acting by and through the Attorney General of Oregon, Ellen F. Rosenblum, is a sovereign state of the United States of America. The Attorney General is the chief law officer of Oregon and is empowered to bring this action on behalf of the State of Oregon, the Governor, and the affected state agencies under Or. Rev. Stat. §§ 180.060, 180.210, and 180.220.

27. Plaintiff the Commonwealth of Pennsylvania is a sovereign state of the United States of America. This action is brought on behalf of the Commonwealth by Attorney General Josh Shapiro, the "chief law officer of the Commonwealth." Pa. Const. art. IV, § 4.1. Attorney General Shapiro brings this action on behalf of the Commonwealth pursuant to his statutory authority under 71 Pa. Stat. § 732-204.

28. Plaintiff the State of Rhode Island, represented by and through its Attorney General, is a sovereign state of the United States. Attorney General Peter F. Neronha is the chief legal advisor to the State of Rhode Island and is authorized to pursue this action pursuant to his constitutional, statutory, and common law authority. R.I. Const. art. IX § 12, R.I. Gen. Laws §§ 42-9-1 *et seq.*

29. Plaintiff the State of Vermont, represented by and through its Attorney General, Thomas J. Donovan, is a sovereign state in the United States of America. The Attorney General

is the state's chief law enforcement officer and is authorized to pursue this action pursuant to Vt. Stat. Ann. tit. 3, §§ 152 and 157.

30. Plaintiff the Commonwealth of Virginia brings this action by and through its Attorney General, Mark R. Herring. The Attorney General has the authority to represent the Commonwealth, its departments, and its agencies in "all civil litigation in which any of them are interested." Va. Code Ann. § 2.2-507(A).

31. Plaintiff the State of Washington, represented by and through its Attorney General, Robert W. Ferguson, is a sovereign state of the United States of America. The Attorney General is the chief legal adviser to the State of Washington and is authorized to pursue this action pursuant to RCW 43.10.030. The Attorney General's powers and duties include acting in federal court on matters of public concern.

32. Plaintiff the City of Central Falls is a municipal corporation organized pursuant to the laws of the State of Rhode Island.

33. Plaintiff the City of Chicago is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Illinois.

34. Plaintiff the City of Columbus is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Ohio and the City's Home Rule Charter.

35. Plaintiff the City of New York is a municipal corporation organized pursuant to the laws of the State of New York. New York City is a political subdivision of the State and derives its powers through the New York State Constitution, New York State laws, and the New York City Charter. New York City is the largest city in the United States by population.

36. Plaintiff the City of Philadelphia is a municipal corporation organized pursuant to the laws of the Commonwealth of Pennsylvania. The City is a political subdivision of the Commonwealth with powers derived from the Pennsylvania Constitution, Commonwealth law, and the City's Home Rule Charter.

37. Plaintiff the City of Phoenix is a municipal corporation organized pursuant to the laws of the State of Arizona.

38. Plaintiff the City of Pittsburgh is a municipal corporation organized pursuant to the laws of the Commonwealth of Pennsylvania. The City is a political subdivision of the Commonwealth with powers derived from the Pennsylvania Constitution, Commonwealth law, and the City's Home Rule Charter.

39. Plaintiff the City of Providence is a municipal corporation organized pursuant to the laws of the State of Rhode Island.

40. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.

41. Plaintiff the City of Seattle is a first-class charter city, incorporated under the laws of the State of Washington, empowered to sue and be sued, and represented by and through its elected City Attorney, Peter S. Holmes.

42. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas.

43. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas.

44. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas.

45. Plaintiff Monterey County, California is a political subdivision of the State of California.

46. Plaintiffs are aggrieved by Defendants' decision and conduct and have standing to bring this action because Defendants' decision and actions to exclude undocumented immigrants from the apportionment base harm Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests and will continue to cause injury unless and until the challenged decision and conduct are enjoined.

47. Defendant Donald J. Trump is the President of the United States. He is responsible for the actions and decisions that are being challenged by Plaintiffs in this action and is sued in his official capacity.

48. Defendant the United States Department of Commerce is a cabinet agency within the executive branch of the United States government. The Commerce Department is responsible for planning, designing, and implementing the 2020 Census. 13 U.S.C. § 4.

49. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He is responsible for overseeing the Census Bureau, conducting the decennial census of the population, and reporting to the President the tabulation of total population by States for the apportionment of Representatives in Congress. 13 U.S.C. § 141. He is sued in his official capacity.

50. Defendant Bureau of the Census is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for planning and administering the decennial census.

51. Defendant Steven Dillingham is Director of the Census Bureau. He is sued in his official capacity.

ALLEGATIONS

I. Constitutional and statutory background.

A. The Constitution requires apportioning Members of the House of Representatives among the States based on the total number of persons living in each State.

52. The Constitution requires that the Members of the House of Representatives “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2; *see id.* art. I, § 2, cl. 3.

53. The number of Representatives apportioned to each State, along with the two Senators given to each State, determines the allocation among the States of electors in the Electoral College. *Id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3.

54. To apportion Representatives among the States properly (and ultimately to allocate electors among the States properly) the Constitution requires an “actual Enumeration” of the total population every ten years, *id.* art. I, § 2, cl. 3.

55. “By its terms, therefore, the Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without,” and to use that enumeration of the total population “to apportion Representatives among the states.” *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019).

56. More than two hundred years of history, practice, and judicial and administrative precedents establish that the apportionment of Representatives must be based on *all persons living* in each State, regardless of their citizenship or immigration status.

57. During the country’s founding, the Framers debated the proper basis on which to apportion Representatives and declared that Representatives “shall be apportioned among the

several States which may be included within this Union, according to their *respective Numbers*.” U.S. Const. art. I, § 2, cl. 3 (emphasis added). The Framers repeatedly made clear that the basis for apportionment of Representatives was thus all persons. For example, as James Madison explained in 1788, the “fundamental principle of the proposed constitution” ensured that “the aggregate number of representatives allotted to the several states, is to be . . . founded on the aggregate number of inhabitants.” *The Federalist* No. 54, p. 284 (G. Carey & J. McClellan eds. 2001).

58. The original Apportionment Clause provided for only two exceptions to the use of total population for apportionment. First, “Indians not taxed” were excluded from the apportionment base. U.S. Const. art. I, § 2, cl. 1, § 3. Second, slaves were counted as only three-fifths of a person. *Id.* No other exceptions were provided, making clear that all other persons living in the United States needed to be counted by the decennial enumeration and included in the apportionment base.

59. When debating what is now the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats among the States and reaffirmed that apportionment must be based on *all persons living* in each State—citizens and noncitizens alike. The Framers of the Fourteenth Amendment rejected numerous proposals to change the basis of apportionment from total population to voter population. *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 10 (1865) (proposal to apportion representatives among the States “according to their respective legal voters”).

60. Instead, the Framers amended the Constitution to remove the provision that counted slaves as three-fifths of a person and declared that apportionment of Representatives must be based on the “whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

As the Fourteenth Amendment’s Framers explained, “numbers,” *i.e.*, all persons living in each State, is “the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such . . . is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.” Cong. Globe, 39th Cong., 1st Sess. 2767 (1866) (Jacob Howard).

61. Basing apportionment on all persons, the Framers further emphasized, ensured that each State’s representation in the House reflected all persons regardless of whether they could then vote, including women, children, and the “entire immigrant population not naturalized.” *Id.* at 432 (Rep. John Bingham); *see, e.g., id.* at 411 (representation based on number of voters improperly “takes from the basis of representation all unnaturalized foreigners” (Rep. Burton Cook)).

62. Since 1790, in accordance with the Constitution’s express requirement to base apportionment on all persons living in each State, the decennial actual enumeration has *always* counted all persons living in the United States based on where they “usually reside[.]” *See* Census Act of 1790, § 5, 1 Stat. 101 (1790); *2020 Decennial Census Residence Rule and Residence Situations*, 80 Fed. Reg. 28,950, 28,950 (May 20, 2015) (“The Census Act of 1790 established the concept of ‘usual residence’ as the main principle in determining where people are to be counted. This concept has been followed in all subsequent censuses.”).

63. Under the Census Bureau’s well-settled practice and a final rule that it promulgated pursuant to notice-and-comment rulemaking for the 2020 Census, usual residence means the place where a person lives and sleeps most of the time. *See Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525, 5533 (Feb. 8, 2018).

64. Accordingly, the decennial enumeration and apportionment base includes all noncitizens who live and sleep most of the time in the United States, regardless of their place of citizenship or immigration status. *See, e.g., id.* The enumeration likewise counts noncitizens who are “members of the diplomatic community” “at the embassy, consulate, United Nations’ facility, or other residences where diplomats live.” *Id.*

65. By contrast, noncitizens who are temporarily visiting the United States, such as on a vacation or business trip, are not included in the decennial enumeration and apportionment base because they do not live and sleep most of the time in the United States. *See, e.g., id.*

66. The millions of undocumented immigrants who do live in the United States have an established presence here. These immigrants have moved to the United States, and they are members of their state and local communities.

67. For example, the Migration Policy Institute has estimated, based on data from 2012 to 2016, that more than nine million undocumented immigrants have lived in the United States for five years or more. The Migration Policy Institute estimated that more than seven million undocumented immigrants have lived in this country for ten years or more, and that nearly four million undocumented immigrants have lived here for twenty years or more.¹

68. Undocumented immigrants residing here both contribute to and participate in their communities and in many public programs. For example, millions of undocumented immigrants

¹ Migration Policy Institute, *Profile of the Unauthorized Population: United States*, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.

work here and pay taxes.² Many undocumented immigrants live here with their family members, including children who are United States citizens.³

69. Based on the Constitution’s text, more than two centuries of history, and well-settled census practice, the Supreme Court and other courts have repeatedly made clear that the Fourteenth Amendment requires apportionment of Representatives based on the total number of all persons living in each State. *See, e.g., Wesberry v. Sanders*, 376 U.S. 1, 10-18 (1964); *Evenwel v. Abbott*, 136 S. Ct. 1120, 1127-29 (2016). Courts have also repeatedly determined that the “whole number of persons” used to apportion Representatives includes all noncitizens who are living in the United States regardless of their immigration status. *See, e.g., Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576-78 (D.D.C. 1980) (three-judge court).

70. The federal government, and several of the Defendants here, have conceded that the decennial enumeration that constitutes the apportionment base must count all persons living in the United States.

71. For example, on March 14, 2019, Secretary Ross testified under oath during a congressional committee hearing, stating “The constitutional mandate, sir, for the census is to try

² *See, e.g.,* Jens Manuel Krogstad et al., Pew Research Center, *5 facts about illegal immigration in the U.S.* (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s> (estimating that in 2017, the United States’ civilian workforce included 7.6 million undocumented immigrants); American Immigration Council, *Adding Up the Billions in Tax Dollars Paid by Undocumented Immigrants* 1, https://www.americanimmigrationcouncil.org/sites/default/files/research/adding_up_the_billions_in_tax_dollars_paid_by_undocumented_immigrants.pdf; Hunter Hallman, Bipartisan Policy Center, *How do Undocumented Immigrants Pay Federal Taxes? An Explainer* (Mar. 28, 2018), <https://bipartisanpolicy.org/blog/how-do-undocumented-immigrants-pay-federal-taxes-an-explainer/>.

³ Migration Policy Institute, *supra* (estimating that more than 3 million undocumented immigrants over the age of 15 resided with a citizen child under the age of 18).

to count *every person residing* in the U.S. at their place of residence on the dates when the census is conducted.” *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 31 (Mar. 14, 2019) (emphasis added). Secretary Ross further testified that “the Department of Commerce is fully committed to administering as complete and accurate decennial census as we can. We intend to try to *count every person* taking all necessary actions to do so.” *Id.* (emphasis added).

72. During a congressional committee hearing in February 2020, Census Bureau Director Dillingham stated that the Bureau will “*count everyone*, wherever they are living,” including undocumented immigrants. *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 12, 2020) (emphasis added).

73. The federal government has repeatedly argued that excluding undocumented immigrants from the decennial enumeration or the apportionment base violates the Constitution and applicable statutes. For example, in *Federation for American Immigration Reform v. Klutznick*, the government urged a district court to reject claims demanding exclusion of undocumented immigrants from the “whole number of persons” that constitutes the apportionment base. The government explained that “the plain language of the Constitution, as well as the intent of its framers, establishes that *all* inhabitants, including illegal aliens, must be enumerated for the purpose of apportioning Representatives.”⁴

74. Similarly, the Department of Justice’s Office of Legislative Affairs has opined that the Constitution requires inclusion of undocumented immigrants in the decennial

⁴ Defs.’ Mem. of Points & Authorities in Support of Mot. to Dismiss or for Summary Judgment, No. 79-3269 (D.D.C.), *reprinted in 1980 Census: Counting Illegal Aliens, Hr’gs Before the S. Subcomm. on Energy, Nuclear Proliferation and Federal Services*, 96th Cong. 125-156 (1980).

enumeration that constitutes the apportionment base. *See, e.g.*, Letter from Carol T. Crawford, Assistant Attorney General, to Senator Jeff Bingham (Sept. 22, 1989).

75. The population count derived from the census is used not only to apportion representatives and ultimately electors “but also to allocate federal funds to the States and to draw electoral districts.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2561 (2019).

76. For these reasons, the “decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs.” Pub. L. No. 105-119, § 209(a)(5), 111 Stat. 2440, 2481 (1997).

B. The Census Act requires that the total population count used for congressional apportionment include all persons living in the United States.

77. The Constitution provides that an “actual Enumeration shall be made” every ten years “in such manner as [Congress] shall direct by law.” U.S. Const. art. I, § 2. Congress has exercised its authority over the census by enacting various statutory provisions (“Census Act”).

78. Congress has assigned the responsibility of conducting the decennial enumeration to the Secretary of Commerce, and the Secretary may delegate authority for establishing procedures to conduct the census to the Census Bureau. 13 U.S.C. §§ 2, 4, 141.

79. The Census Act requires that the decennial census be taken on April 1, 2020, the “decennial census date.” 13 U.S.C. § 141(a). The Secretary of Commerce has no discretion to delay the decennial census date under the Census Act. *Id.*

80. Within nine months of the decennial census date, *i.e.*, by January 1, 2021, the Secretary of Commerce must report to the President “[t]he tabulation of total population by States” that is “required for the apportionment of Representatives in Congress among the several States.” *Id.* § 141(b).

81. Then, between January 3 and January 8, 2021, the President must transmit to Congress “a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.” 2 U.S.C. § 2a(a).

82. Within fifteen days of receiving the President’s statement, the Clerk of the House of Representatives must transmit “to the executive of each State a certificate of the number of Representatives to which such State is entitled.” *Id.* § 2a(b).

II. Defendants’ unlawful attempt to add a citizenship question to the decennial census.

83. Defendants’ decision and actions to exclude undocumented immigrants from the apportionment base are directly related to Secretary Ross’s earlier and unlawful attempt to alter the decennial census that provides the apportionment count by adding a question inquiring about citizenship status.

84. On March 26, 2018, Secretary Ross directed the Census Bureau to use the 2020 Census to demand information on the citizenship status of every resident in the country.⁵ Secretary Ross stated that he had decided to add the citizenship question because doing so was “necessary to provide complete and accurate data” that would aid enforcement of the Voting Rights Act (VRA) by the Department of Justice.

⁵ Memorandum from Sec’y of Commerce Wilbur Ross to Under Sec’y of Commerce for Econ. Affairs Karen Dunn Kelley, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire* 7 (Mar. 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf.

85. Many of the plaintiffs here filed a lawsuit challenging the addition of the citizenship question as, among other things, arbitrary and capricious and contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2). *See* Second Am. Compl., *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921, Doc. No. 210 (S.D.N.Y. filed July 23, 2018).

86. After an eight-day bench trial, the United States District Court for the Southern District of New York vacated Secretary Ross's decision to add a citizenship question to the 2020 census questionnaire. *New York*, 351 F. Supp. 3d at 679. In so ruling, the court concluded that the plaintiffs had standing to sue because the inclusion of a citizenship question would deter participation in the census by households with a noncitizen and lead to a differential undercount of noncitizens and Hispanics that would concretely harm plaintiffs in various ways. *Id.* at 578-593. For example, the court found that adding a citizenship question would cause some plaintiffs to lose congressional seats, impair state and local redistricting efforts that rely on census numbers, harm the quality and accuracy of census data, and reduce federal funding to plaintiffs' jurisdictions. *Id.* at 593-98, 607-15.

87. The court also determined that Secretary Ross's decision violated the Administrative Procedure Act for several reasons, including because his rationale for adding the citizenship question was pretextual. *Id.* at 660-64. As the court explained, the evidence was "clear that Secretary Ross's rationale was pretextual—that is, that the real reason for his decision [to add the citizenship question] was something other than the sole reason he put forward in his Memorandum, namely enhancement of DOJ's VRA enforcement efforts." *Id.* at 660. The court noted that it was "unable to determine—based on the existing record, at least—what Secretary Ross's real reasons for adding the citizenship question were." *Id.* at 569-70.

88. The Supreme Court granted certiorari before judgment and affirmed, in relevant part, the district court’s final judgment setting aside the Secretary’s decision to add a citizenship question. The Supreme Court held that “the Secretary’s decision must be set aside because it rested on a pretextual basis.” *Dep’t of Commerce*, 139 S. Ct. at 2573. The Court reasoned that the Secretary’s decision “cannot be adequately explained in terms of DOJ’s request for improved citizenship data to better enforce the VRA” because there was “a significant mismatch between the decision the Secretary made and the rationale he provided.” *Id.* at 2575. In short, Secretary Ross’s “VRA enforcement rationale—the sole stated reason—seems to have been contrived.” *Id.*

89. After the Supreme Court remanded the case to the district court, the court entered a permanent injunction that enjoined the defendants “from including a citizenship question on the 2020 decennial census questionnaire; from delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019 for the purpose of including a citizenship question; and from asking persons about citizenship status on the 2020 census questionnaire or otherwise asking a citizenship question as part of the 2020 decennial census.” Order, *New York v. Dep’t of Commerce*, No. 18-cv-2921, Doc. No. 634 (S.D.N.Y. July 16, 2019).

90. On July 11, 2019, President Trump issued an Executive Order to “ensure that accurate citizenship data is compiled in connection with the census” notwithstanding the Supreme Court’s decision and the district court’s order precluding the use of a citizenship question in the 2020 Census. *Collecting Information About Citizenship Status in Connection with the Decennial Census*, Exec. Order 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019).

91. To achieve that goal, President Trump directed all executive departments and agencies to provide to the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and noncitizens in the country.” *Id.*

92. In a public statement accompanying the issuance of the Executive Order, given from the White House’s Rose Garden, President Trump made clear that the federal government would not be “backing down on our effort to determine the citizenship status of the United States population.” President Donald Trump, *Remarks by President Trump on Citizenship and the Census* (July 19, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/>. President Trump stated that “[t]here used to be a time when you could proudly declare, ‘I am a citizen of the United States.’ Now they’re trying to erase the very existence of a very important word and a very important thing: citizenship.” *Id.*

93. President Trump further stated that, pursuant to the Executive Order, the federal government will be taking steps “to ensure that citizenship is counted so that we know how many citizens we have in the United States.” *Id.*

III. The July 21, 2020 Memorandum directing exclusion of undocumented immigrants from the apportionment count.

94. Recent events have now laid bare the real reasons driving Secretary Ross’s decision to add a citizenship question to the 2020 Census: to exclude undocumented persons from the “whole number of persons” that constitutes the apportionment base and to discriminate against Hispanics and noncitizens.

95. On July 21, 2020, President Trump issued a memorandum (i) declaring that undocumented immigrants will be excluded from the “whole number of persons in each State” enumerated by the 2020 Census and used to apportion the number of Representatives to each State, and (ii) directing the Secretary to take “all appropriate action” to provide the President

with information to exclude undocumented immigrants from the apportionment base.

Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679 (July 23, 2020) (attached as Ex. 1).

96. The Memorandum declares that “[f]or the purpose of the reapportionment of Representatives following the 2020 Census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible.” *Id.* at 44,680.

97. The Memorandum asserts that the Executive branch has purported “discretion” to exclude from the apportionment base all undocumented immigrants who reside in the United States, *id.* at 44,679—no matter how long they have been living here.

98. The Memorandum acknowledges that the Constitution explicitly requires apportionment of Representatives based on the “whole number of persons in each State.” *Id.* It states that not every person who is physically present on the decennial census date is living in the United States. *Id.* For example, the Memorandum states, noncitizens who are temporarily visiting on vacation or for business are not “inhabitants” of the United States and are thus not included in the apportionment base. *Id.* Without any plausible basis, the Memorandum then asserts that purported “discretion delegated to the executive branch to determine who qualifies as an ‘inhabitant’ includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status”—even if those persons have been living in the United States for many years. *Id.*

99. In the Memorandum, President Trump targets States (including some of the plaintiff States) that have many undocumented immigrants living in their jurisdictions or that have declined to affirmatively assist the federal government’s immigration enforcement efforts.

100. For example, President Trump stated that “[a]ffording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles.” *Id.* at 44,680. The Memorandum further stated that States that decline to adopt state laws or policies to assist federal efforts to enforce the immigration laws passed by Congress should essentially be stripped of any “representation in the House of Representatives” that is based on undocumented immigrants living in their jurisdictions. *Id.*

101. The Memorandum requires Secretary Ross, in preparing his § 141(b) report of the actual enumeration on which apportionment must be based, to take actions “to provide information” to the President to exclude undocumented immigrants from apportionment. *Id.* The Memorandum thus directs the Secretary (and by extension the Commerce Department and Census Bureau) to take actions to enable the President to exclude undocumented immigrants from his § 2a(a) report of both the “whole number of persons in each State” and the corresponding number of Representatives that each State receives. *Id.*

102. On the same day that he issued the Memorandum, President Trump issued a public statement making clear that Defendants’ decision and actions to exclude undocumented immigrants from the apportionment base are a continuation of the federal government’s prior unlawful attempt to add a citizenship question to the 2020 Census. President Donald Trump,

Statement from the President Regarding Apportionment (July 21, 2020),

<https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

103. As President Trump’s statement explained, he had previously asserted during his Rose Garden statements in July 2019 that he “would not back down in [his] effort to determine the citizenship status of the United States population.” *Id.* He further explained that he was now following “through on that commitment by directing the Secretary of Commerce to exclude illegal aliens from the apportionment base following the 2020 census.” *Id.* Echoing his earlier statements about the citizenship question, Trump further asserted that “[t]here used to be a time when you could proudly declare, ‘I am a citizen of the United States’” and that “the radical left is trying to erase the existence of this concept and conceal the number of illegal aliens in our country.” *Id.* He stated that his Memorandum directing exclusion of undocumented immigrants from the apportionment base responds to a purported “broader left-wing effort to erode the rights of Americans citizens.” *Id.*

104. Upon information and belief, following receipt of the Memorandum, the Secretary or Department of Commerce has issued (or will imminently issue) directives to the Census Bureau, constituting final agency action, to implement President Trump’s directive to exclude noncitizens from the enumeration and apportionment base.

IV. Defendants’ decision to exclude undocumented immigrants from the apportionment base is motivated by discriminatory animus toward Hispanics and immigrant communities of color.

105. The Memorandum explicitly states that its goal is to reduce political influence and congressional representation to jurisdictions with a larger share of undocumented immigrants. 85 Fed. Reg. at 44,680.

106. President Trump has repeatedly articulated concerns about the growth of immigrant communities and the impact of that growth on political power, and has sought to

minimize the power of Hispanic and immigrant communities to increase the power of non-Hispanic whites.

107. During the 2016 presidential campaign, for example, President Trump tweeted: “How crazy—7.5% of all births in U.S. are to illegal immigrants, over 300,000 babies per year. This must stop.”⁶

108. On April 5, 2018, when discussing his opposition to family-based immigration systems, President Trump claimed that Democrats favor “chain migration” because the party believes the immigrants will “vote Democratic.” Three weeks later, on April 28, President Trump revisited this topic, stating that Democrats favor undocumented immigration because “all of these people that are pouring across are going to vote for Democrats, they’re not going to vote for Republicans.”⁷

109. Defendants’ exclusion of undocumented immigrants from the apportionment base is of a piece with President Trump’s anti-immigrant and anti-Hispanic rhetoric and his Administration’s targeting of immigrant and Hispanic communities, which reflect animus towards those groups.

110. President Trump has long engaged in rhetoric that disparages Hispanics and immigrants of color. In statements stretching back to the beginning of his campaign, President Trump has repeatedly dehumanized, devalued, and vilified immigrants in general, and specifically immigrants from Latin America. For instance:

⁶ Donald Trump (@realDonaldTrump), Twitter (Aug. 21, 2015 6:56 AM), <https://twitter.com/realdonaldtrump/status/634725641972248576>.

⁷ Fox News (@FoxNews), Twitter (Apr. 28, 2018), <https://twitter.com/foxnews/status/990383288232620032>.

- a. During his campaign launch in June 2015, President Trump claimed that “[w]hen Mexico sends its people. . . . They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. . . . It’s coming from more than Mexico. It’s coming from all over South and Latin America.”⁸
- b. During a meeting about recent immigrants in the Oval Office in June 2017, President Trump stated that 15,000 immigrants from Haiti “all have AIDS” and that 40,000 immigrants from Nigeria would never “go back to their huts” in Africa after seeing the United States.⁹
- c. During a January 2018 meeting with lawmakers, while discussing protections for immigrants from Haiti, El Salvador and other African countries, President Trump asked why the United States is “having all these people from shithole countries come here” and suggested that the United States should have more immigrants from countries like Norway.¹⁰

⁸ *Full text: Donald Trump announces a presidential bid*, Wash. Post, June 16, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/>.

⁹ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times, Dec. 23, 2017, <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

¹⁰ Ali Vitali, Kasie Hunt & Frank Thorp V, *Trump referred to Haiti and African nations as ‘shithole’ countries*, Jan. 12, 2018, <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946>.

- d. In a May 16, 2018 speech, President Trump stated that “[w]e have people coming into the country, or trying to come in You wouldn’t believe how bad these people are. These aren’t people, these are animals.”¹¹
- e. Speaking on the topic of migrant groups travelling to the United States from Central America at a rally on May 8, 2019, President Trump, stated, “[W]hen you see these caravans starting out with 20,000 people, that’s an invasion.”¹²

111. President Trump has acted on this rhetoric by adopting policies that seek to isolate, exclude, and instill fear in Hispanic immigrants and other immigrants of color. For instance, the Trump Administration has:

- a. Attempted to rescind the Deferred Action for Childhood Arrivals program, which protected 800,000 individuals, 90% of whom were Hispanic and 80% of whom were Mexican-American;
- b. Banned travel from several majority-Muslim countries;
- c. Suspended refugee admissions to the United States;
- d. Terminated special protections from removal for migrants from nations experiencing war and natural disasters, including Nicaragua, Honduras, Haiti and El Salvador;

¹¹ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times, May 16, 2018, <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

¹² *President Trump Holds Rally in Panama City Beach, Florida*, C-SPAN (May 8, 2019) (video), <https://www.c-span.org/video/?460412-1/president-trump-holds-rally-panama-city-beach-florida>.

- e. Increased actual and threatened raids and deportations of undocumented migrants, including, as recently as June 17, 2019, when President Trump tweeted a threat that “[n]ext week ICE will begin the process of removing the millions of illegal aliens who have illicitly found their way into the United States. They will be removed as fast as they come in”;¹³
- f. Attempted to build a physical wall along the Mexico-U.S. border;
- g. Adopted policies of separating children from their families when entering the United States from Mexico, and detaining children separate from their parents and families thereafter; and
- h. Maintained children and other migrants across the U.S.-Mexico border in detention facilities that the United Nations Children’s Fund has described as “dire” and as causing “irreparable harm” to children housed in them.¹⁴

112. These public statements and actions from Defendant Trump establish that the rationale for excluding undocumented immigrants from the apportionment base is motivated by racial animus against immigrants of color, and a desire to curb the political power of immigrant communities of color.

¹³ Nick Miroff & Maria Sacchetti, *Trump vows mass immigration arrests, removals of ‘millions of illegal aliens’ starting next week*, Wash. Post, June 17, 2019, https://www.washingtonpost.com/immigration/trump-vows-mass-immigration-arrests-removals-of-millions-of-illegal-aliens-starting-next-week/2019/06/17/4e366f5e-916d-11e9-aadb-74e6b2b46f6a_story.html?utm_term=.ece5e6a6b7e6.

¹⁴ *After Rio Grande tragedy, UNICEF chief highlights “dire” detention centres on US-Mexico border*, UN News (June 27, 2019), <https://news.un.org/en/story/2019/06/1041421>.

V. Plaintiffs are harmed by Defendants' decision to exclude undocumented immigrants from the apportionment base.

113. Defendants' decision and actions to exclude undocumented immigrants from the apportionment base harm Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests because they will cause some Plaintiffs to lose congressional seats and decrease their share of presidential electors in the Electoral College; skew the division of electoral districts within Plaintiffs' jurisdictions by impairing state and local redistricting efforts that rely on the census count; reduce federal funds to Plaintiffs' jurisdictions by deterring immigrants from responding to the decennial census that is currently underway; and degrade the quality of census data that Plaintiffs rely on to perform critical governmental functions.

114. First, excluding undocumented immigrants from the apportionment count will likely cause several States to lose one or more Representatives in Congress, directly harming those Plaintiff States, as well as those Plaintiff counties and cities within affected States, by diluting their political power and undermining their interest in fair congressional representation.

115. For example, large numbers of undocumented immigrants reside in California, Texas, New York, New Jersey, and Illinois.¹⁵ Defendants' decision to exclude undocumented immigrants from the apportionment count is likely to directly reduce representation for those jurisdictions in Congress, injuring the representational interests of Plaintiffs the State of New York, State of New Jersey, State of Illinois, City of Chicago, City of New York, City and County of San Francisco, Cameron County, El Paso County, Hidalgo County, and Monterey County.

¹⁵ Pew Research Center, November 27, 2018, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2019/03/Pew-Research-Center_2018-11-27_U-S-Unauthorized-Immigrants-Total-Dips_Updated-2019-06-25.pdf.

Other Plaintiffs may also suffer direct representational harms if undocumented individuals are excluded from the apportionment count.

116. The Memorandum itself acknowledges and intends these harms. *See* 85 Fed. Reg. at 44,680 (recognizing that excluding undocumented immigrants will “result in the allocation” of fewer congressional seats “than would otherwise be allocated” to some states).

117. The loss of a congressional seat will also cause the affected Plaintiff States, counties, and cities to lose one or more votes in the Electoral College, impairing their ability to elect the President and Vice President and harming their political power.

118. Second, excluding undocumented immigrants from the apportionment base will harm Plaintiffs’ representational interests by directly impairing Plaintiffs’ ability to draw accurate districting lines for congressional, state, or local legislative districts.

119. To comply with the Fourteenth Amendment’s one-person, one-vote requirement, States must use total population as the population base for congressional redistricting. *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (describing “our Constitution’s plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives”); *see Evenwel*, 136 S. Ct. at 1129. Defendants’ decision to exclude undocumented immigrants from the apportionment base will undermine Plaintiff States’ ability to comply with this Constitutional mandate.

120. Certain Plaintiffs are required by state constitutional or statutory provisions to use the total population count from the decennial census as the basis for redistricting within their jurisdictions. New York state law provides, for example, that “each federal census taken decennially . . . shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of

senate and assembly districts.” N.Y. Const. art. III, § 4(a); *see also id.* §§ 3-5, 5-a. Many of the other Plaintiffs have comparable laws.¹⁶

121. Third, excluding undocumented immigrants from the apportionment base will deprive Plaintiffs of critical federal funding and inflict substantial financial harms on Plaintiffs.

122. Political science literature establishes that States that lose seats in Congress typically see a decrease in their share of federal outlays in subsequent years due to the reduction in their voting power in Congress. *See, e.g.,* Roy Elis, Neil Malhotra, & Marc Meredith, *Apportionment Cycles as Natural Experiments*, *Political Analysis* 358-76 (2009). Those Plaintiffs likely to lose representation in Congress therefore also stand to lose critical federal resources as a result.

123. All Plaintiffs will further suffer financial harm because Defendants’ decision to exclude undocumented immigrants from the apportionment base will deter participation in the ongoing decennial census, undermining the Census Bureau’s efforts to count immigrants and their families, and depriving Plaintiffs of their fair share of census-derived federal funds.

124. Plaintiffs are home to some of the hardest-to-count communities in the nation, including significant populations of authorized and undocumented immigrants.¹⁷ Many of these immigrants live in mixed-status families, with U.S. citizen children, siblings, or spouses. These

¹⁶ *See, e.g.,* Chicago Municipal code § 2-8-300; D.C. Code § 1-1011.01; Mass. Const. Amend. art. CI, §§ 1, 2, arts. CIX, CXVII, CXIX; Nev. Const. art. IV, § 5, art. XV, § 13; Tex. Const. art. 3, § 26; Va. Code Ann. § 30-265; Vt. Const. Ch. II, §§ 13, 18, 73; Vt. Stat. tit. 17, § 1902; Wash. Const. art. II, § 43; Wash. Rev. Code §§ 29A.76.010, 44.05.090.

¹⁷ Jeffrey S. Passel & D’Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Research Center (Nov. 27, 2018), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2019/03/Pew-Research-Center_2018-11-27_U-S-Unauthorized-Immigrants-Total-Dips_Updated-2019-06-25.pdf.

households are already less likely to respond to the census questionnaire; this Administration's ongoing efforts to target immigrants—including Defendants' failed efforts to add a citizenship question to the decennial census—have engendered substantial fear within these communities.¹⁸

125. The COVID-19 pandemic has further hampered efforts to ensure that all people—including hard-to-count populations—are counted. For example, the census relies upon non-response follow up operations (NRFU) to contact potential respondents and increase the census response rate. But NRFU operations were suspended and delayed during the pandemic, and the Government Accountability Office has raised concerns that even when resumed, these efforts will be less effective in light of the virus.¹⁹

126. Defendants' decision to exclude undocumented immigrants from the apportionment base was announced just weeks before Census Bureau enumerators were finally scheduled to go into the field to encourage households to respond to the census,²⁰ creating confusion and further increasing the risk of an undercount.

¹⁸ See, e.g., Alexandra Schmidt, *Citizenship question is gone. Michigan immigrants still distrust the Census*, (Mar. 2, 2020), <https://www.bridgemi.com/michigan-government/citizenship-question-gone-michigan-immigrants-still-distrust-census> (noting ongoing “fear among immigrants about what the government will do with information collected in the count”).

¹⁹ See U.S. Government Accountability Office, *2020 Census: COVID-19 Presents Delays and Risks to Census Count* <https://www.gao.gov/products/GAO-20-551R#summary>.

²⁰ U.S. Census Bureau, *2020 Census Operational Adjustments Due to COVID-19*, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (last visited July 24, 2020).

127. The announcement of Defendants' decision was intended to promote fear and deter participation in the census by immigrants and their families, including through the President's remarks that he "will not stand" for efforts to "conceal the number" of immigrants.²¹

128. The Census Bureau has repeatedly emphasized that "[e]veryone counts," citizens and noncitizens alike.²² But Defendants' decision and actions to exclude undocumented immigrants from the apportionment base do the opposite. Excluding undocumented immigrants from the apportionment count communicates to immigrants that their census responses are less valuable and less important than those of citizens.

129. Many federal programs rely on the population figures collected in the decennial census to distribute federal funds among states and local governments. At least 320 federal domestic financial assistance programs rely on census data to allocate money; in fiscal year 2016, these programs "allocated about \$900 billion using census-derived data." *New York*, 351 F. Supp. 3d at 596. These programs support essential services for Plaintiffs, including healthcare, public education, social services, and infrastructure development. The reduction in census participation caused by Defendants' announcement that they will exclude undocumented immigrants from the apportionment base will harm Plaintiffs by depriving them of their statutory fair share of federal funding and removing crucial resources for important government services.

130. Finally, by deterring immigrants and their families from responding to the decennial census, Defendants' decision to exclude undocumented immigrations from the apportionment base will degrade the quality of census data. As census self-response rates

²¹ President Donald Trump, *Statement from the President Regarding Apportionment* (July 21, 2020), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

²² See, e.g., Census Bureau, *Setting the Record Straight*, <https://2020census.gov/en/news-events/rumors.html>.

decline, the quality of the data—including information relating to population subgroups and their characteristics—worsens. But Plaintiffs “rely on accurate data to perform essential governmental functions,” including to draw school zones, deploy health care resources, and make infrastructure decisions. *Id.* at 600. Defendants’ decision will therefore undermine Plaintiffs’ interests in using accurate census data to perform critical governmental functions.

VI. Defendants have not identified any reliable method to accurately enumerate the population of undocumented immigrants.

131. Defendants cannot reliably exclude undocumented immigrants from the apportionment count. Just months ago, the Federal Government represented in separate litigation that there is a “lack of accurate estimates of the resident undocumented population” on a state-by-state basis.²³

132. Although a previous executive order suggests that the Census Bureau may rely on administrative records to identify *noncitizens*, *see* 84 Fed. Reg. at 33,821, many noncitizens are lawfully present; and administrative records cannot provide sufficiently reliable or accurate information about whether noncitizens are *undocumented*, particularly for actual enumeration and apportionment purposes. Indeed, administrative records are “weak in their coverage of undocumented aliens because programs typically require documentation that many undocumented aliens do not have.”²⁴ The limited administrative records available with respect to undocumented immigrants are incomplete, outdated, and often inaccurate.

²³ Decl. of Census Bureau Senior Advisor Enrique Lamas, Defs.’ Supp. Rule 26(a)(1) Disclosures and Rule 26(a)(2)(C) Disclosures, *Alabama v. Dep’t of Commerce*, No. 2:18-cv-00772-RDP (N.D. Ala. Mar. 13, 2020).

²⁴ John L. Czajka, *Can Administrative Records Be Used to Reduce Nonresponse Bias?*, 645 *Annals Am. Acad. Pol. & Social Sci.* 171, 175 (2013).

133. For example, the Department of Homeland Security (DHS) recently acknowledged that determining immigration status from their records is “challenging,” given the “the decentralized nature of admission and immigration information, as well as the lack of a nationwide departure control system.”²⁵ DHS has acknowledged that time lags between collecting and reporting data mean that “data accuracy issues may arise.”²⁶ Even when used in combination, existing administrative records are inadequate to ascertain reliably whether individuals are undocumented.

134. Although the federal government has already suggested that they may resort to “statistical modeling” to estimate the undocumented population in furtherance of the Presidential Memorandum, the Census Bureau has not yet “formulated a methodology,”²⁷ and Defendants have not articulated how such statistical modeling will comport with their constitutional obligation to conduct an “actual Enumeration.” U.S. Const. art. 1, § 2, cl. 3.

135. Despite Defendants’ failure to identify any reliable method to accurately enumerate the population of undocumented immigrants, Defendants have already decided to report that population to the President and to exclude that population from the tabulation of total population reported to Congress. Defendants’ commitment to proceeding on this course of action without regard to the unreliability or inaccuracy of their underlying enumeration demonstrates that they have prejudged the decision, violates their statutory obligations to report

²⁵ Department of Homeland Security, *Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau*, 2, 11 (Dec. 20, 2019), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-dhs079-sharingwithcensus-december2019.pdf>.

²⁶ *Id.* at 6.

²⁷ Hansi Lo Wang (@hansilowang), Twitter (July 22, 2020, 10:58 AM), <https://twitter.com/hansilowang/status/1285952274410409985>.

total population, and confirms the irrational and arbitrary nature of their decision and actions to exclude undocumented immigrants from the actual enumeration and apportionment base.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**(U.S. Constitution article I, section 2, clause 3;
U.S. Constitution amend. XIV, sec. 2)**

136. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

137. The Constitution requires that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2; *see id.* art. I, § 2, cl. 3.

138. Undocumented immigrants are persons. *Plyler*, 457 U.S. at 210 (“Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term.”).

139. Defendants’ decision to exclude undocumented immigrants from the apportionment base for the purpose of reapportionment of Representatives following the 2020 Census, as well as any action they take to implement or further that decision, violates the constitutional command to apportion Representatives “counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

140. Defendants’ violation causes ongoing harm to Plaintiffs and their residents.

SECOND CLAIM FOR RELIEF

(U.S. Constitution amend. V—Due Process Clause)

141. Plaintiff States incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

142. Under the equal protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution, the federal government cannot deny to any person the equal protection of its laws. The Due Process Clause specifically prohibits the federal government from discriminating against individuals on the basis of race, ethnicity, and national origin. U.S. Const. amend. V.

143. Defendants' decision to exclude undocumented immigrants from the apportionment base is motivated by discriminatory animus toward Hispanics and immigrant communities of color. This animus is reflected in Defendants' repeated statements vilifying these communities.

144. The highly unusual chronology of events, sharp departure from centuries of past practice, articulation of a pretextual reason for Defendants' now-enjoined efforts to demand citizenship information on the decennial census questionnaire, and disproportionate burden of Defendants' decision on Hispanics and immigrant communities of color further indicate that Defendants' decision is motivated by unconstitutional discriminatory purpose.

145. By excluding undocumented immigrants from the apportionment base, Defendants intend to reduce political power, influence, and funding resources among Hispanic and immigrant communities as compared to non-Hispanic whites.

146. Defendants' violation causes ongoing harm to Plaintiff States and their residents.

THIRD CLAIM FOR RELIEF

(U.S. Constitution amend. X)

147. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

148. The Tenth Amendment prohibits the federal government from coercing states and localities to legislate or promote policies that capitulate to federal interests.

149. Defendants' decision to exclude undocumented immigrants from the apportionment count punishes Plaintiffs for refusing to assist in the enforcement of federal immigration law, in an attempt to coerce Plaintiffs to change their policies. 85 Fed. Reg. at 44,680.

150. The Tenth Amendment requires the federal government to respect the equal sovereignty of the sovereign states.

151. Without adequate justification, Defendants' decision to exclude undocumented immigrants from the apportionment count impermissibly targets certain states for unfavorable treatment because of their refusal to assist in the enforcement of federal immigration law. 85 Fed. Reg. at 44,680.

152. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

FOURTH CLAIM FOR RELIEF

(Administrative Procedure Act, 5 U.S.C. § 706)

153. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

154. The Administrative Procedure Act provides that the Court "shall" "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

155. Defendants' decision to exclude undocumented immigrants from the apportionment base, as well as any action they take to implement or further that decision, is arbitrary and capricious because it is contrary to the evidence before the agency and fails to consider important aspects of the problem, including that Defendants lack data reliably to exclude undocumented immigrants from the apportionment base.

156. Defendants' decision and any implementing actions they undertake are also not in accordance with law because the Census Act requires the Secretary to tabulate and report to the President a tabulation of "total population by States . . . as required for apportionment of Representatives in Congress." 13 U.S.C. § 141(b).

157. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Declare that Defendants' decision to exclude undocumented immigrants from the apportionment base following the 2020 Census, as well as any action they take to implement or further that decision, is unauthorized by and contrary to the Constitution and laws of the United States;

2. Declare that Defendants' decision to exclude undocumented immigrants from the apportionment base following the 2020 Census is intentionally discriminatory in violation of the equal protection component of the Due Process Clause of the Fifth Amendment;

3. Declare that Defendants' decision and any implementing actions they take are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A);

4. Enjoin Defendants and all those acting on their behalf from excluding undocumented immigrants from the apportionment base following the 2020 Census, or taking any action to implement or further such a policy;

5. Issue an order holding unlawful, vacating, and setting aside the decision to exclude undocumented immigrants from the apportionment base, as well as any action taken to implement or further that decision;

6. Issue a writ of mandamus compelling the Secretary of Commerce to tabulate and report to the President the total population by States under 13 U.S.C § 141(b) based solely on the total number of persons in each State, including undocumented immigrants, without providing any information about the number of undocumented immigrants in each State.

7. Issue a writ of mandamus compelling the President to transmit to Congress pursuant to 2 U.S.C. § 2a(a) a statement of the whole number of persons in each State, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, based on the total number of residents of each state, including undocumented immigrants.

8. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees; and

9. Grant such other and further relief as the Court deems just and proper.

DATED: July 24, 2020

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Respectfully submitted,

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* Application for *pro hac vice* admission forthcoming

Exhibit 1

Federal Register

Vol. 85, No. 142

Thursday, July 23, 2020

Presidential Documents

Title 3—

Memorandum of July 21, 2020

The President

Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the “whole number of persons in each State,” which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is “the President’s personal transmittal of the report to Congress” that “settles the apportionment” of Representatives among the States, and the President’s discretion to settle the apportionment is more than “ceremonial or ministerial” and is essential “to the integrity of the process” (*Franklin v. Massachusetts*, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the “persons in each State, excluding Indians not taxed,” to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State’s boundaries at the time of the census. Instead, the term “persons in each State” has been interpreted to mean that only the “inhabitants” of each State should be included. Determining which persons should be considered “inhabitants” for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are “persons” who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically “in” a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an “inhabitant” includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

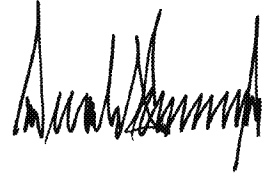
Sec. 3. Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 FR 5525 (Feb. 8, 2018).

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
Washington, July 21, 2020

[FR Doc. 2020-16216
Filed 7-22-20; 2:00 pm]
Billing code 3510-07-P

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NEW YORK IMMIGRATION
COALITION, MAKE THE ROAD NEW
YORK, CASA, AMERICAN-ARAB ANTI-
DISCRIMINATION COMMITTEE, ADC
RESEARCH INSTITUTE, FIEL HOUSTON
INC.

Civil Action No.

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United
States,

UNITED STATES DEPARTMENT OF
COMMERCE;

WILBUR L. ROSS, JR., in his official
capacity as Secretary of Commerce,

BUREAU OF THE CENSUS, an agency
within the United States Department of
Commerce; and

STEVEN DILLINGHAM, in his official
capacity as Director of the U.S. Census
Bureau,

Defendants.

COMPLAINT

1. This action challenges President Trump’s lawless attempt to exclude undocumented immigrants from the “persons” who must be counted in the Census for purposes of apportioning congressional seats to states. This xenophobic effort to deny the basic humanity of undocumented immigrants violates Article I’s mandate to count all “persons” in the Census, and the Fourteenth Amendment’s requirement that

“Representatives shall be apportioned among the several States according to their respective numbers, counting the *whole number of persons* in each State” (emphasis added). These words leave no room for doubt: they expressly mandate counting “the whole number of persons” living in the United States for purposes of congressional apportionment. As the Supreme Court held just four years ago, “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population,” including all non-citizens living in the United States, regardless of legal status. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1129 (2016).

2. Despite this exceedingly clear constitutional command and binding Supreme Court precedent, on July 21, 2020, Defendant Trump issued a Presidential Memorandum addressed to Defendant Commerce Secretary Wilbur Ross titled, “Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census” (the “Memorandum”). The Memorandum purports to declare—for the first time in our nation’s history—that it is “the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.).” In other words, the Memorandum directs Secretary Ross: do not count undocumented immigrants at all for purposes of congressional apportionment.¹

¹ The Memorandum appears to potentially exclude both those with no form of status whatsoever as well as those currently authorized to remain and work in the U.S., such as holders of Deferred Action for Childhood Arrivals, who are nonetheless not “in lawful status under the Immigration and Nationality Act.” See *Regents of the Univ. of California v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476, 487 (9th Cir. 2018) (“recipients of deferred action enjoy no formal immigration status”) (quotations omitted), *rev’d in part, vacated in part sub nom Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 412

3. Rarely does any government actor, much less the President of the United States, so openly and obviously violate the Constitution. The Fourteenth Amendment mandates “counting the whole number of persons” for congressional apportionment. As the Supreme Court reaffirmed nearly four decades ago, an undocumented individual living in the United States “is surely ‘a person’ in any ordinary sense of that term,” “[w]hatever his status under the immigration laws.” *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The President cannot change the fact that undocumented individuals are human beings.

4. The new “policy” also breaks an uninterrupted line of history: every Decennial Census in our nation’s history has included every person who lives in the United States, regardless of citizenship or immigration status, for purposes of apportioning congressional representation. Defendant Trump’s new policy set forth in the Memorandum therefore not only violates the plain and unequivocal text of Section 2 of the Fourteenth Amendment and related Supreme Court precedent, it also departs from hundreds of years of consistent Census practice.

5. In addition to contravening the plain text of the Constitution, Supreme Court precedent, and an unbroken line of historical practice, the policy conflicts with the Department of Justice’s own longstanding position—asserted repeatedly over decades in litigation in courts around this country, including to this Court in 2018—that undocumented immigrants are “persons” who must be counted in the Decennial Census

(E.D.N.Y. 2018) (“Deferred action does not . . . confer lawful immigration status”), *vacated and remanded sub nom. Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020). For the sake of consistency, Plaintiffs refer to all those excluded here as “undocumented.”

and apportionment calculations. The Administration's own lawyers have made clear that the policy is unconstitutional.

6. The new policy is a discriminatory attack on immigrants and immigrant communities, and particularly immigrant communities of color. It is intended to erase these individuals and communities, and to send the message that they do not count. Indeed, whereas the original Apportionment Clause in Article I, Section 2 infamously discounted enslaved Black Americans as three-fifths of a person for purposes of congressional apportionment, the Memorandum raises this numerical dehumanization to a new level: not three-fifths, but zero.

7. In practical terms, the policy will result in states such as California, Texas, and New York receiving fewer congressional districts and Electoral College votes, diluting the political power of the residents of these states. The policy will also deplete federal resources from states and localities with substantial immigrant populations. The policy is rank discrimination on the basis of national origin, race, and ethnicity in violation of the Equal Protection and Due Process guarantees of the Fifth Amendment.

8. The effects of the new policy will cascade beyond the exclusion of undocumented immigrants from the Census count. It is no coincidence that the Memorandum was unveiled shortly before the Census Bureau was scheduled to commence non-response follow up ("NRFU") field operations to identify persons who have not yet responded to the Census. The new policy of excluding undocumented immigrants from the Census conveys a xenophobic message aimed at suppressing Census participation from households containing immigrants and noncitizens. Unless enjoined, the policy undoubtedly will undermine the effectiveness of the Census Bureau's

operations and deter members of immigrant communities—including undocumented immigrants, noncitizen immigrants with legal status, and United States citizens—from participating in the Census.

9. The new policy also violates a panoply of other constitutional and statutory prohibitions, including constitutional separation of powers, the Census Act, and the Administrative Procedure Act.

10. This is not Defendant Trump’s first attempt to weaponize the Census to attack immigrant communities. Last year, the Supreme Court affirmed that the administration’s effort to add a citizenship question to the 2020 Decennial Census would reduce Census responses among non-citizen households, and held that Defendant Ross’s publicly-stated rationale—purportedly to help enforce the Voting Rights Act—was “contrived.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2565-66, 2575 (2019).

11. In issuing the Memorandum, Defendant Trump has now confessed the real reason behind that failed effort: to delete undocumented immigrants from the decennial enumeration altogether, and to exclude them categorically from the very concept of *personhood* in the Constitution. Among its many cynical motivations, the President’s new policy is an obvious attempt to evade the consequences of the Supreme Court’s decision and the permanent injunction issued by the district court in the citizenship question litigation. *See Dep’t of Commerce*, 139 S. Ct. 2551; Order, *New York v. Dep’t of Commerce*, No. 18-CV-2921, ECF No. 634 (S.D.N.Y. July 16, 2019).

12. Plaintiffs therefore request declaratory, injunctive, and/or mandamus relief to prohibit Defendants from excluding undocumented immigrants from the population count used to apportion the House of Representatives.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1346(a), and 28 U.S.C. § 1361.

14. Venue is proper in this judicial district under 28 U.S.C. § 1391(e).

15. This Court has the authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

PARTIES

A. Plaintiffs

1. The New York Immigration Coalition

16. The New York Immigration Coalition (“NYIC”) is an umbrella policy and advocacy organization for more than 200 groups in New York State, representing the collective interests of New York’s diverse immigrant communities and organizations. It has its principal place of business at 131 West 33rd St, New York, NY 10001.

17. NYIC’s mission is to unite immigrants, members, and allies so that all New Yorkers can thrive. It envisions a New York State that is stronger because all people are welcome, treated fairly, and given the chance to pursue their dreams. NYIC pursues solutions to advance the interests of New York’s diverse immigrant communities and advocates for laws, policies, and programs that lead to justice and opportunity for all immigrant groups. It seeks to build the power of immigrants and the organizations that serve them to ensure their sustainability, improve people’s lives, and strengthen New York State.

18. NYIC’s 200-plus members are dues-paying, 501(c)(3), nonprofit organizations that are committed to advancing work on immigrant justice, empowerment,

and integration. NYIC's members are located throughout New York State and beyond. These member groups include grassroots community groups, social services providers, large-scale labor and academic institutions, and organizations working in economic, social, and racial justice. A number of NYIC's member organizations receive funding from a variety of local, state, and federal government sources to carry out social service, health, and education programs. Many of these organizations receive governmental funding that is directly tied to the Decennial Census.

19. New York is likely to lose at least one House seat during the post-2020 Decennial Census apportionment process as a result of the exclusion of undocumented immigrants from the apportionment base. NYIC member organizations will lose political power because of New York's loss of at least one seat in the House of Representatives.

20. The exclusion of undocumented immigrants from the Census base count will very likely reduce the amount of federal funds that are distributed to the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population. This will injure a number of NYIC's member organizations that receive funding to carry out social service, health, and education programs in these areas.

21. As an organization, NYIC has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations. For the 2020 Decennial Census, NYIC has and will continue to invest resources in Get Out the Count efforts through robust advocacy, outreach, and mass educational forums.

22. The Census is ongoing, with the Census Bureau's NRFU just getting started.² NYIC plans to continue its Get Out the Count efforts during this NRFU. In its extensive Decennial Census outreach, NYIC will now face a much more difficult environment due to the perception among New York undocumented immigrants that they no longer need to complete the Census now that undocumented immigrants are being excluded from the apportionment, as well as immigrant communities' heightened fear of interacting with government workers that this new policy will cause. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants who will be concerned that participating might endanger their loved ones.

23. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment count, as well as confusion among undocumented communities about whether they need to or should fill out the Census in light of the Memorandum, NYIC will be forced to expend additional resources on their outreach efforts to try to reduce the negative impact of the Memorandum on the response rate in the immigrant communities they serve, particularly to undocumented immigrant communities. Staff time and other resources devoted to NYIC's Get Out the Count efforts will be diverted to communications to combat fear and disinformation resulting from the Memorandum. Moreover, NYIC has already, and will continue to, divert resources from its other organizational priorities, including its work on health care

² U.S. Census Bureau, *2020 Census: Nonresponse Followup*, <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html> (June 19, 2020).

and language access issues, to address these concerns about decreased Census participation.

2. *Make the Road New York*

24. Plaintiff Make the Road New York (“Make the Road New York”) is a nonprofit membership organization with offices and service centers in Brooklyn, Queens, Staten Island, Suffolk County, and White Plains.

25. Make the Road New York’s mission is to build the power of immigrant and working-class communities to achieve dignity and justice. To achieve this mission, they engage in four core strategies: Legal and Survival Services, Transformative Education, Community Organizing and Policy Innovation.

26. Make the Road New York has more than 22,000 members who reside in New York City, Long Island and Westchester County. These members lead multiple organizing committees across numerous issues and program areas of concern to the organization. Members take on leadership roles in the campaigns, determine priorities, and elect the representatives who comprise most of the Board of Directors.

27. The apportionment resulting from the exclusion of undocumented immigrants from the apportionment base will likely deprive New York of at least one seat in the House of Representatives, diminishing the political and voting power and influence, and thus injuring, Make the Road members who live in New York.

28. The exclusion of undocumented immigrants from the Census base count will very likely reduce the amount of federal funds that are distributed to states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population.

29. Make the Road New York members include individuals who do not have lawful immigration status and as a result of the Memorandum will not be counted for apportionment of Congressional seats. Make the Road New York members also reside in states and localities where immigrant communities of color constitute significant portions of the population, including New York City and suburban areas outside of New York City. Its members in these jurisdictions rely on a number of government services whose funding is allocated based on population and demographics determined by the Decennial Census. This includes parents with children enrolled in Title I schools, and drivers who use the roads on a daily basis and thus depend on federal highway funds to perform their jobs.

30. Make the Road New York members will be deprived of funding to which they would be entitled by a more complete Census count.

31. One of the many Make the Road members who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Perla Liberato. Ms. Liberato is a resident of Queens County, NY, where she works as a Youth Organizer. Because Ms. Liberato resides in New York State, she will lose political power because of her state's loss of representation in Congress.

32. Another Make the Road member who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Yatziri Tovar. Ms. Tovar is a resident of Bronx County, NY, and works as a media specialist. Because Ms. Tovar resides in New York State, she will lose political power because of her state's loss of representation in Congress.

33. Make the Road New York has an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. For the 2020 Decennial Census, Make the Road New York is engaged in outreach and education work and receiving outside funding to help support this work. This work includes, among other things, general education programs, workshops for members, and person-to-person outreach. Make the Road New York's Census outreach efforts have already contacted over 100,000 people and assisted over 7,500 people with completing the Census questionnaire.

34. Make the Road New York will now face a much more difficult environment due to its constituents' heightened fear of interacting with government workers, which will be increased by anti-immigrant actions such as the decision to exclude undocumented immigrants from the apportionment base. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants, who will be concerned that participating in the Decennial Census might endanger their loved ones.

35. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment base, as well as confusion among undocumented communities about whether they need to or should fill out the Census in light of the Memorandum, Make the Road New York will be forced to expend more resources on their Decennial Census outreach efforts to reduce the effect of this policy change on the response rate in the immigrant communities of color it serves.

36. Because of the need to increase the time and money spent on Decennial Census outreach due to the fear and confusion generated by the Administration's decision

to exclude undocumented immigrants from the apportionment base, Make the Road New York will need to divert resources from other areas critical to its mission including civic engagement and providing legal services.

3. *CASA*

37. Plaintiff CASA is a nonprofit membership organization headquartered in Langley Park, Maryland. It has offices in Maryland, Virginia and Pennsylvania. CASA is the largest membership-based immigrants' rights organization in the mid-Atlantic region, with more than 90,000 members.

38. CASA's mission is to create a more just society by increasing the power of and improving the quality of life in low-income immigrant communities. To advance this mission, CASA offers social, health, job training, employment, and legal services to immigrant communities. CASA serves nearly 20,000 people a year through its offices and provides support to additional clients over the phone and through email.

39. CASA as an organization receives governmental funding that is directly tied to the Decennial Census. Among other things, CASA receives Community Development Block Grant (CDBG) funds that are allocated based on population and demographics determined by the Decennial Census, including poverty levels. The exclusion of undocumented immigrants in the Census base count will very likely result in a lower percentage of CDBG funds allocated to the areas that CASA serves, and therefore CASA will receive fewer such funds.

40. CASA has an ongoing commitment to promote participation in the Decennial Census among its members and constituents. For the 2020 Decennial Census, CASA is participating in ongoing outreach and education work.

41. CASA plans to continue its Get Out the Count efforts during the NRFU. But CASA's efforts will be undermined by the decision to exclude undocumented immigrants from the congressional apportionment because this will decrease participation among undocumented immigrants who will believe that they no longer need to complete the Census, and it will heighten fear of interacting with government workers among immigrant communities of color. This fear extends not only to undocumented immigrants but also to family members of undocumented immigrants, who will be concerned that participating in the Decennial Census might endanger their loved ones.

42. Because of the difficulties created by the decision to exclude undocumented immigrants from the Census count base, CASA will be forced to expend more resources on its Decennial Census outreach efforts to reduce the effect of this change in policy on the response rates in the immigrant communities of color it serves.

43. Because of the need to increase the time and money spent on Decennial Census outreach due to the decision to exclude undocumented immigrants from the Census count base, CASA will need to divert resources from other areas critical to its mission, including job training and health outreach.

4. The American-Arab Anti-Discrimination Committee

44. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a civil rights organization committed to defending and promoting the rights and liberties of Arab-Americans and other persons of Arab heritage. ADC is the largest American-Arab grassroots civil rights organization in the United States.

45. Founded in 1980 by former Senator James Abourezk, ADC's objectives include combating stereotypes and discrimination against and affecting the Arab-

American community in the United States, serving as a public voice for the Arab-American community in the United States on domestic and foreign policy issues, and educating the American public in order to promote greater understanding of Arab history and culture. ADC advocates, educates, and organizes to defend and promote human rights and civil liberties of Arab-Americans and other persons of Arab heritage.

46. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California, New York, and Texas. Its members are also active through ADC's 28 local chapters and organizing committees, located in 20 states and the District of Columbia, including in Tucson and Phoenix, Arizona; Los Angeles and Orange County, California; Miami and Orlando, Florida; New York, New York; and Austin and Dallas, Texas.

47. ADC has members in states with significant populations of undocumented immigrants, such as Texas, New York, Florida, California, Arizona and Illinois. These states—particularly Arizona, California, New York, and Texas—are likely to lose at least one House seat (or not gain at least one House seat they would have gained) during the post-2020 Decennial Census apportionment process, as a result of the exclusion of undocumented immigrants from the apportionment base. Many but not all of ADC's members in these states are U.S. citizens. The loss of political representation and political power will injure ADC's members in these states.

48. The exclusion of undocumented immigrants in the Census base count will reduce the amount of federal funds that are distributed to the states and localities where Latinos, Asian Americans, Arab Americans, and other immigrant communities of color constitute significant portions of the population. This will injure ADC members who

reside in these areas, such as San Antonio and Houston, Texas and Miami-Dade, Broward, and Orange Counties, Florida, Kings County, New York, and Prince George's County, Maryland. For example, ADC has members in these jurisdictions with children enrolled in Title I schools and members who use the roads on a regular basis and thus depend in part on federal highway funds for their upkeep.

49. As an organization, ADC is committed to promoting participation in the Decennial Census among its members and constituents. For the 2020 Decennial Census, ADC has undertaken engagement work within the Arab-American community. For example, ADC is conducting training for Census enumerators, running advertisements encouraging participation, and holding a strategy symposium, among other activities. ADC plans to continue its Get Out the Count work through the Non-Response Follow-Up time period.

50. ADC faces a difficult environment due to increased fear of interacting with government workers among the Arab-American community, a fear that will be heightened now because of the decision to exclude undocumented immigrants from the apportionment. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants, who fear that participating in the Decennial Census might endanger their loved ones.

51. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment base, ADC will be forced to invest more resources in its Decennial Census outreach efforts to reduce the effect of this policy change on the response rates in the communities it serves.

52. Because of the need to increase the time and money spent on Decennial Census outreach caused by the decision to exclude undocumented immigrants from the apportionment base, ADC will need to divert resources from other areas critical to its mission, including organizing, issue advocacy efforts, and educational initiatives.

5. The ADC Research Institute

53. Plaintiff ADC Research Institute (“ADCRI”) is a 501(c)(3) corporation founded in 1982 by former Senator James Abourezk. ADCRI sponsors public programs and initiatives in support of the constitutional and First Amendment rights of Arab-Americans, as well as research studies, publications, seminars, and conferences that document discrimination faced by Arab-Americans in the workplace, schools, media and government agencies. These programs also promote a better understanding of Arab cultural heritage by the public and policy makers.

54. ADCRI is currently engaged in promoting Decennial Census participation among its constituents. ADCRI plans to continue this work through NRFU time period.

55. ADCRI is now facing a much more difficult environment due to increased fear in the Arab-American community of interacting with government workers, due in part to anti-immigrant actions such as the exclusion of undocumented immigrants from the apportionment base. Because of this heightened fear and suspicion, ADCRI will be forced to invest more resources in its outreach efforts to reduce the effect of this policy change on the response rates in the communities it serves.

56. Because of the need to increase the time and money spent on Decennial Census outreach due to the decision to exclude undocumented immigrants from the apportionment base, ADCRI will need to divert resources from other areas critical to its

mission, including its engagement with public school teachers and other educational issues

6. *FIEL Houton Inc.*

57. FIEL Houston Inc. (“FIEL”) is a membership-based not-for-profit organization based in Houston, Texas. FIEL is an immigrant-led organization who advocates for just laws for immigrant youth, their families, access to higher education for all people regardless of immigration status and access to justice for the community.

58. FIEL provides resources for undocumented students, understanding the path to college is unsteady for many first and even second-generation Americans. FIEL’s office is open to anyone seeking guidance in their process of obtaining a higher education, including assistance with applying to college and applying for scholarships and other financial aid. FIEL also provides a variety of immigration services for our community—from providing legal counsel for immigrants to begin their pathway to citizenship to handling most immigration cases.

59. FIEL was born out of the need for civic engagement in support of undocumented students seeking a higher education and conducts organizing for the betterment of the communities they serve, including outreach and campaigns related to the 2020 Decennial Census directed at immigrant communities in Texas.

60. Today, FIEL has approximately 11,000 members in the greater Houston area who help lead FIEL’s organizing. FIEL members reside in parts of Texas where immigrant communities of color constitute significant portions of the population, including Harris County.

61. Texas would lose at least one House seat (or not gain at least one House seat they would have gained) during the post-2020 Decennial Census apportionment process, as a result of the exclusion of undocumented immigrants from the apportionment base. The loss of political representation and political power will therefore injure FIEL's many members who live in Texas

62. FIEL members in Houston rely on a number of government services whose funding is allocated based on population and demographics determined by the decennial Census. This includes parents with children enrolled in Title I schools, drivers who use the roads on a daily basis and thus depend on federal highway funds to perform their jobs, and many other programs and facilities that receive Census-guided funding. FIEL members will be deprived of the benefits of census-guided funding to which they would be entitled by a more complete census count.

63. One of the many FIEL members who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Deyanira Palacios. Ms. Palacios is a lawful permanent resident and a resident of Montgomery County, Texas. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives.

64. Another FIEL member who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Karen Ramos. Ms. Ramos is a resident of Harris County, Texas, where she works as a realtor. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives. Ms. Ramos is entitled to remain and work lawfully in the United States through the Deferred Action for Childhood Arrivals ("DACA")

Program. She is entitled to be counted in the ongoing 2020 Decennial Census along with all other residents of Texas, regardless of their immigration status.

65. The exclusion of undocumented immigrants from the census base count will very likely reduce the amount of federal funds that are distributed to the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population, including Texas. This will injure FIEL and its members who benefit from census-guiding funding to carry out social service, health, and education programs in these areas.

66. As an organization, FIEL has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations. For the 2020 Decennial Census, FIEL has and will continue to invest resources in Get Out the Count efforts.

67. The Census is ongoing, with the Census Bureau's Non-Response Follow-Up just getting started. FIEL plans to continue its Get Out the Count efforts during this Non-Response Follow-Up. In its extensive Decennial Census outreach, FIEL will now face a more difficult environment due to the perception among undocumented immigrants in Texas that they no longer need to complete the Census now that undocumented immigrants are being excluded from the apportionment, as well as immigrant communities' heightened fear of interacting with government workers that this new policy will cause. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants who will be concerned that participating might endanger their loved ones.

68. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment count, as well as confusion among undocumented communities about whether they need to or should fill out the Census in light of the Memorandum, FIEL will be forced to expend additional resources on their outreach efforts to try to reduce the negative impact of the Memorandum on the response rate in the immigrant communities they serve, particularly to undocumented immigrant communities. Staff time and other resources devoted to FIEL's Get Out the Count efforts will be diverted to communications to combat fear and disinformation resulting from the Memorandum. Moreover, FIEL has already, and will continue to, divert resources from its other organizational priorities, including its work on access to education for students, to address these concerns about decreased census participation within immigrant communities.

69. Because of the need to increase the time and money spent on Decennial Census outreach due to the fear and confusion generated by the Administration's decision to exclude undocumented immigrants from the apportionment base, FIEL will need to divert resources from other areas critical to its mission such as other civic engagement activities.

B. Defendants

70. Defendant Donald J. Trump is the President of the United States. In that capacity, Defendant Trump issued a July 21, 2020 Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, described *infra*. As President, he has the statutory responsibility of transmitting to Congress "a statement showing *the whole number of persons* in each State, excluding Indians not taxed, as

ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.” 2 U.S.C. § 2a (emphasis added). He is sued in his official capacity.

71. Defendant United States Department of Commerce is a cabinet agency within the executive branch of the United States Government. The Commerce Department is responsible for planning, designing, and implementing the 2020 Decennial Census. 13 U.S.C. § 4.

72. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He oversees the Bureau of the Census (“Census Bureau”) and is thus responsible for conducting the Decennial Census of the population. 13 U.S.C. § 141(a). He has statutory responsibility to “take a decennial census of the population,” 13 U.S.C. § 141(a), and for reporting to the President by January 1, 2021, a “tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States,” 13 U.S.C. § 141(b). He is sued in his official capacity.

73. Defendant Census Bureau is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is the agency responsible for planning and administering the Decennial Census.

74. Defendant Steven Dillingham is the Director of the Census Bureau and thus has responsibility for administering a complete count of all persons residing in the United States, including for the purpose of providing that figure to the Secretary of Commerce for transmission to the President. He is sued in his official capacity.

FACTS

A. Background on the Decennial Census

1. *The Constitutional Command to Include All People in the Census for Purposes of Congressional Apportionment*

75. The Constitution requires a Decennial Census for the purpose of determining the number of Representatives to which each State is entitled. Article I, Section 2, Clause 3 provides that “Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers” (the Apportionment Clause). U.S. Const. art. I, § 2, cl. 3. It also directs that “[t]he actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct” (the Census Clause). *Id.*

76. Key here, Section 2 of the Fourteenth Amendment provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting *the whole number of persons* in each State, excluding Indians not taxed.” *Id.* amend. XIV, § 2 (emphasis added).

77. “By its terms, therefore, the Constitution mandates that every ten years the federal government endeavor to count *every single person* residing in the United States, whether citizen or noncitizen, *whether living here with legal status or without,*” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states.” *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019) (emphases added).

78. Consistent with this express constitutional mandate, the federal government has conducted a Census that includes all persons living in the United States, regardless of citizenship or legal status, every ten years since 1790.

79. This was historically subject to only two qualifications, both contained in the explicit text of the Constitution: “Indians not taxed,” and the Three-Fifths Clause for persons who were enslaved. The first exception has not been relevant for some time; the second, the Three-Fifths Clause, assumed that enslaved persons would be included in the Census, but provided that they would not be counted as full persons for the purposes of calculating population for congressional apportionment.

80. The explicit nature of these two qualifications, neither of which applies in modern times, reinforces that the Decennial Census and the resulting apportionment base must include every person physically living in the United States.

81. The Civil War and the abolition of slavery repudiated the Three-Fifths Clause, which the Fourteenth Amendment then repealed. During debates over the Reconstruction Amendments, Congress considered, and affirmatively rejected, proposals that would have altered Congressional apportionment to be based on the population of voters, rather than total population. Thaddeus Stevens introduced a constitutional amendment that would have apportioned House seats “according to their respective legal voters.” *Evenwel*, 136 S. Ct. at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess., 10 (1866)). Congress rejected that proposal. *Id.*

82. As ratified, Section 2 of the Fourteenth Amendment carried forward the basic total population mandate of the Apportionment Clause, providing, as stated, that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.”

83. In introducing this final language on the Senate Floor, Senator Jacob Howard explained the provision as follows:

[The] basis of representation is numbers . . . that is, the whole population except untaxed Indians and persons excluded by the State laws for rebellion or other crime The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.

Evenwel, 136 S. at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess., 2766-2767 (1866)).

84. In *Evenwel v. Abbott*, the Supreme Court held that Section 2 of the Fourteenth Amendment “retained total population as the congressional apportionment base.” *Evenwel*, 136 S. Ct. at 1128. The proposition that non-citizens must be included in the population base for apportioning the total number of U.S. House seats to each state was central to the Court’s holding that the Fourteenth Amendment does not prohibit states from including non-citizens in drawing legislative districts within a state. The Court explained: “It cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis.” *Id.* at 1129. The concurring Justices agreed that “House seats are apportioned based on total population.” *Id.* at 1148 (Alito, J., concurring in the judgment); *see also id.* at 1138 (Thomas, J., concurring in the judgment) (“[F]eatures of the apportionment for the House of Representatives reflected the idea that States should wield political power in approximate proportion to their number of inhabitants.”). *See also Wesberry v. Sanders*, 376 U.S. 1,

14 (1964) (noting that the “principle solemnly embodied in the Great Compromise” is “equal representation in the House for equal numbers of people”).

85. Lower courts have similarly recognized that the Constitution requires that all people be included in the population totals used for Congressional apportionment, regardless of citizenship status. As a three-judge panel of the District Court for the District of Columbia explained:

The language of the Constitution is not ambiguous. It requires the counting of the “whole number of persons” for apportionment purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly “persons.” By making express provision for Indians and slaves, the Framers demonstrated their awareness that without such provisions, the language chosen would be all- inclusive. . . We see little on which to base a conclusion that illegal aliens should now be excluded, simply because persons with their legal status were not an element of our population at the time our Constitution was written.

Fed’n for Am. Immigration Reform v. Klutznick, 486 F. Supp. 564, 576 (D.D.C. 1980);
see also, e.g., New York, 351 F. Supp. 3d at 514.

2. *The Government’s Repeated Acknowledgment of Its Constitutional Obligation to Include All People in the Census for Purposes of Congressional Apportionment*

86. The Justice Department has likewise not only conceded but forcefully argued that it has a constitutional obligation to count every person residing in the United States no matter their immigration status, and to use that data for apportionment purposes.

87. Facing a legal challenge in the early 1980s to the inclusion of undocumented immigrants in apportionment figures in *Federation for American Immigration Reform v. Klutznick*, the Government argued that the plaintiffs there sought “a radical revision of the constitutionally mandated system for allocation of Representatives to the States of the Union and an equally radical revision of the historic mission of the decennial census.”

Defs.’ Post-Arg. Memo. at 1, No. 79-3269 (D.D.C. Feb. 15, 1980). It explained that the “Constitution expressly requires the enumeration of the ‘whole number of persons in each State’ for purposes of apportionment of Representatives to the United States Congress and none of plaintiffs’ legal theories puts in doubt that the plain meaning of this language must be given effect,” and that the Census “has never . . . excluded from the apportionment base any inhabitant counted in the decennial census.” Defs.’ Reply Memo. & Opp’n to Pls.’ Mot. for Summ. J. at 1, No. 79-3269 (D.D.C. Jan. 30, 1980).

88. The Government also rejected any policy rationale for overriding the constitutional mandate to include all persons in the enumeration for purposes of congressional apportionment, noting that the “constitutionally mandated requirement to count states’ inhabitants for apportionment purposes is a matter separate from the need to solve the problems of illegal immigration.” *Id.*

89. Similarly, in a September 22, 1989 letter, Carol Crawford, the Assistant Attorney General for Legislative Affairs, advised Senator Jeff Bingaman that the Justice Department had “found no basis” for reversing its existing position that the Census Clause and Section 2 of the Fourteenth Amendment “require that inhabitants of States who are illegal aliens be included in the census count.”³

90. More recently, in *New York v. Department of Commerce*, the Government argued in its Motion to Dismiss that the “Constitution supplies a simple judicial standard for determining the constitutionality of [Census Bureau] practices—the Secretary must perform a person-by-person headcount, rather than an estimate of population.” Memo. of

³ Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), *in* 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).

Law in Support of Defs.’ Mot. to Dismiss at 25, No. 1:18-cv-02921, ECF No. 155 (S.D.N.Y. May 25, 2018). Similarly, it contended that “where, as here, there is no allegation that the Secretary failed to establish procedures for counting every person, a case ceases to implicate ‘actual Enumeration’” Reply Memo. of Law in Further Support of Defs.’ Mot. to Dismiss at 7, No. 1:18-cv-02921, ECF No. 190 (S.D.N.Y. July 13, 2018).

91. The Government embraced the requirement that every person living in the United States must be included in the Census even more directly in its Post-Trial Proposed Findings of Fact in *New York v. Department of Commerce*, writing that the “Constitution requires the federal government to conduct a Decennial Census counting the total number of ‘persons’—with no reference to citizenship status—residing in each state.” Defs.’ Post-Trial Proposed Findings of Fact and Conclusions of Law Regarding Pls.’ Claims at 1, No. 1:18-cv-02921, ECF No. 546 (S.D.N.Y. Nov. 21, 2018) (internal citations omitted).

92. Even more recently, in ongoing litigation in Alabama over the inclusion of undocumented immigrants in the Census, the Government argued that “[t]he very purpose of the census . . . is to count the number of people residing in each state.” Memo. of Law in Support of Defs.’ Mot. to Dismiss at 1, *Alabama v. Dep’t of Commerce*, No. 2:18-cv-00772, ECF No. 45-1 (N.D. Ala. Nov. 13, 2019).

3. The Statutory Requirements to Include All People in the Census for Purposes of Congressional Apportionment

93. Article I, Section 2 of the Constitution provides that the Census may be conducted “in such manner as [Congress] shall direct by law.” Congress has codified this

command in a statutory scheme primarily contained in Title 13 of the United States Code, also known as the Census Act.

94. Congress delegated to the Secretary of Commerce responsibility for conducting the Census, providing that he “shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the ‘decennial census date’” 13 U.S.C. § 141(a).

95. Congress has also created the Census Bureau within the Department of Commerce and authorized the Secretary of Commerce to delegate his duties under the Census Act to the Census Bureau. 13 U.S.C. §§ 2, 4.

96. The Secretary must report to the President a “tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States” within nine months of the Census date. 13 U.S.C. § 141(b).

97. The President then performs a “ministerial” calculation of the number of U.S. House seats to which each state is entitled. *Franklin v. Massachusetts*, 505 U.S. 788, 799 (1992). The President is “require[d]” to use only “data from the decennial census” to perform this calculation, *id.* at 797, and the calculation must use a specific formula with “rigid specifications . . . provided by Congress itself, and to which there can be but one mathematical answer.” *Id.* at 799 (quoting S. Rep. No. 2, 71st Cong., 1st Sess., at 4–5).

98. The President must then transmit to Congress, “[o]n the first day, or within one week thereafter, of the first regular session . . . a statement showing *the whole number of persons* in each State . . . as ascertained under the . . . decennial census of the population,” and “the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives *by the method*

known as the method of equal proportions.” 2 U.S.C. § 2a (emphases added). The “method of equal proportions” is the specific formula prescribed by Congress that calculates the number of House seats for each state based on the total population of each state as enumerated in the Decennial Census.

99. Though the primary purpose of the Census enumeration remains the apportionment of Congressional seats (as well as, by extension, Presidential electors), the population count from the Decennial Census is also used by the states for decennial redistricting of state legislative districts; helps to determine the distribution of hundreds of billions of dollars of federal funding; and informs the decisions of federal, state, and local policymakers and private businesses.

4. The Census Bureau’s Repeated Acknowledgments that All People Must Be Included in the 2020 Census for Purposes of Congressional Apportionment

100. After more than a decade of preparation, the 2020 Census is currently being conducted, with “Census Day” having occurred on April 1. Beginning in January in some places, and in March nationwide, Americans were asked to respond to the Census questionnaire online, by phone, or by mail. And while there have been some delays due to the COVID-19 pandemic, in-person NRFU is currently scheduled to take place between August 11 and October 31.⁴

101. Throughout the entire process of preparing for and conducting the 2020 Census, the Census Bureau has consistently represented that it would adhere to the

⁴ See Census Bureau, *Overall Timeline*, <https://2020census.gov/en/important-dates.html> (last visited July 21, 2020).

centuries-old practice of counting every person living in the United States—including undocumented immigrants—for apportionment and other purposes.

102. In fact, the Census Bureau has formally adopted a rule—pursuant to a notice-and-comment rulemaking process—that undocumented immigrants must be counted where they live and included in apportionment numbers. On February 8, 2018, the Census Bureau promulgated its “Residence Rule” for the 2020 Census, which lays out this requirement. 83 Fed. Reg. 5525 (Feb. 8, 2018) (formally titled “Final 2020 Census Residence Criteria and Residence Situations.”).

103. The Residence Rule explains that the “residence criteria” are “used to determine where people are counted during each decennial census.” *Id.* at 5526. The Residence Rule indicates that the criteria for determining residency set forth in the rule must then be used “to apportion the seats in the U.S. House of Representatives among the states” and that “[a]pportionment is based on the resident population, plus a count of overseas federal employees, for each of the 50 states.” *Id.* at 5526 n.1.

104. The Residence Rule provides that “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” *Id.* at 5533. The Census Bureau elaborated that the “Census Bureau is committed to counting every person in the 2020 Census,” including citizens of foreign countries living in the United States. *Id.* at 5526. The Census Bureau considered a comment which “expressed concern about the impact of including undocumented people

in the population counts for redistricting because these people cannot vote.”⁵ In response, the Census Bureau declined to make any changes to its residence criteria and indicated that it “will retain the proposed residence situation guidance for foreign citizens in the United States.” *Id.* at 5530.

105. As of July 21, 2020, a copy of these criteria was available unchanged on the Census Bureau website, including the provision for foreign citizens:⁶

3. FOREIGN CITIZENS IN THE UNITED STATES

- a) *Citizens of foreign countries living in the United States* - Counted at the U.S. residence where they live and sleep most of the time.
- b) *Citizens of foreign countries living in the United States who are members of the diplomatic community* - Counted at the embassy, consulate, United Nations’ facility, or other residences where diplomats live.
- c) *Citizens of foreign countries visiting the United States, such as on a vacation or business trip* - Not counted in the census.

106. As of July 21, 2020, a webpage maintained by the Census Bureau addressing “Frequently Asked Questions on Congressional Apportionment” noted that resident population counts “include all people (citizens and non-citizens) who are living in the United States at the time of the census,” and explicitly affirmed that undocumented residents must be included in the population totals used for Congressional apportionment:⁷

⁵ Final 2020 Census Residence Criteria and Residence Situations, Federal Register, Vol. 83, No. 27, Thursday, February 8, 2018, <https://www.govinfo.gov/content/pkg/FR-2018-02-08/pdf/2018-02370.pdf> (last visited July 21, 2020).

⁶ Census Bureau, *Residence Criteria and Residence Situations for the 2020 Census of the United States*, <https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf> (last visited July 21, 2020).

⁷ Census Bureau, *Frequently Asked Questions on Congressional Apportionment*, <https://www.census.gov/topics/public-sector/congressional-apportionment/about/faqs.html#Q6> (last visited July 21, 2020).

Who is included in the apportionment population counts?

The apportionment population count for each of the 50 states includes the state's total resident population (citizens and non-citizens) plus a count of the overseas federal employees (and dependents) who have that state listed as their home state in their employers' administrative records.

For details on who is counted (and where they are counted) in the 2020 Census, see the 2020 Census Residence Criteria and Residence Situations.

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Who is included in the resident population counts?

The resident population counts include all people (citizens and non-citizens) who are living in the United States at the time of the census. People are counted at their usual residence, which is the place where they live and sleep most of the time.

The resident population also includes military and civilian employees of the U.S. government who are deployed outside the United States (while stationed or assigned in the United States) and can be allocated to a usual residence address in the United States based on administrative records from the Department of Defense.

Are undocumented residents included in the apportionment population counts?

Yes, all people (citizens and noncitizens) with a usual residence in the 50 states are included in the resident population for the census, which means they are all included in the apportionment counts.

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107. Likewise, as of July 21, the “Census in the Constitution” page on the Census Bureau website noted that “[t]he plan [of the Founders] was to count every person living in the United States of America, and to use that count to determine representation in Congress:”⁸

⁸ Census Bureau, *Census in the Constitution*, <https://www.census.gov/programs-surveys/decennial-census/about/census-constitution.html> (last visited July 21, 2020).

Census in the Constitution

Why Jefferson, Madison and the Founders Enshrined the Census in our Constitution

The U.S. Constitution empowers the Congress to carry out the census in "such manner as they shall by Law direct" (Article I, Section 2). The Founders of our fledgling nation had a bold and ambitious plan to empower the people over their new government. The plan was to count every person living in the newly created United States of America, and to use that count to determine representation in the Congress.

108. Similarly, the Census Bureau's 2020 guide for Complete Count Committees, which are volunteer organizations designed to boost Census participation, advised that the Census "mandates a headcount every 10 years of everyone residing in the 50 states," including "citizens, and noncitizens:"⁹

WHY DO WE TAKE THE CENSUS?

The U.S. Constitution (Article I, Section 2) mandates a headcount every 10 years of everyone residing in the 50 states, Puerto Rico, and the Island Areas of the United States. This includes people of all ages, races, ethnic groups, citizens, and noncitizens. The first census was conducted in 1790 and one has been conducted every 10 years since then.

⁹ Census Bureau, *2020 Census Complete Count Committee Guide* at 1 (2018), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/ccc-guide-d-1280.pdf> (last visited July 21, 2020).

109. Similarly, on its webpage “Setting the Record Straight,” as of July 21, 2020, the Census Bureau assured readers that “[e]veryone counts” and that “everyone living” in the United States, including non-citizens, is counted in the 2020 Census:¹⁰

Setting the Record Straight

Does the 2020 Census ask about citizenship status?

NO. The 2020 Census does not ask whether you or anyone in your home is a U.S. citizen.

Are non-citizens counted in the census?

YES. Everyone counts. The 2020 Census counts everyone living in the country, including non-citizens. [Learn more about who should be counted when you complete the 2020 Census.](#)

110. As of July 21, the Bureau’s “Who to Count” page repeated the same information:¹¹

¹⁰ Census Bureau, *Setting the Record Straight*, <https://2020census.gov/en/news-events/rumors.html> (last visited July 21, 2020).

¹¹ Census Bureau, *Who to Count*, <https://2020census.gov/en/who-to-count.html> (last visited July 21, 2020).

⊕ Visitors on Census Day

⊖ Foreign Citizens in the United States

Citizens of foreign countries who are living in the United States, including members of the diplomatic community, should be counted at the U.S. residence where they live and sleep most of time.

Citizens of foreign countries who are temporarily visiting the United States on vacation or business on April 1, 2020, should not be counted.

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⊕ Living Outside the United States

111. And, as of July 21, the “Who Is Required to Respond” page on the Census Bureau’s website for the 2020 Census also specified that “[e]veryone living in the United States . . . is required by law to be counted in the 2020 Census.”¹²

Who Is Required To Respond?

Everyone living in the United States and its five territories is required by law to be counted in the 2020 Census.

112. The 2020 Census is in process, but at this point remains far from enumerating the entire population. As of July 23, 2020, 62.3% of households in the United States have responded to the 2020 Census, according to the Census Bureau’s estimates.¹³ Included within this figure are likely significant numbers of undocumented immigrants who acted in good faith according to the Bureau’s own instructions and

¹² Census Bureau, *Who Is Required to Respond*, <https://2020census.gov/en/am-i-required.html> (last visited July 21, 2020).

¹³ Census Bureau, *Response Rates*, <https://2020census.gov/en/response-rates.html> (last visited July 21, 2020).

responded to the census, with the understanding that they would be counted just like every other person living in the United States.

B. Defendants’ First Attempt to Exclude Noncitizens from the Census: The Citizenship Question Litigation

113. This is not the first effort by Defendants to exclude noncitizens from the 2020 Census. Most notably, following the Secretary’s March 2018 announcement that a citizenship question would be included on the Census, numerous plaintiffs, including Plaintiffs here, filed suit to block the question. After an eight-day bench trial, this Court issued a 277-page opinion and order including its findings of fact and conclusions of law. *See New York*, 351 F. Supp. 3d 502. The Court concluded that Plaintiffs had standing to sue because the inclusion of a citizenship question on the Census would deter participation in the Census by households with a noncitizen, leading to an undercount of such households, and that Defendants violated the Administrative Procedure Act in various ways, including by offering a “pretextual” rationale, *id.* at 516—Voting Rights Act (“VRA”) enforcement—for the Secretary’s decision. *Id.* at 516.

114. The Supreme Court affirmed, finding that the Secretary’s VRA rationale was “incongruent with what the record reveal[ed] about the agency’s priorities and decision-making process” and “contrived.” *Dep’t of Commerce*, 139 S. Ct. at 2575-76. The Secretary’s March 2018 decision thus failed the basic requirement that agencies “pursue their goals reasonably,” and was unlawful. *Id.* at 2576.

115. The Secretary’s “contrived” pretext was pierced during discovery in a separate state court lawsuit, *Common Cause v. Lewis*, No. 18-CVS-14001 (N.C. Super. Ct.), where information that had been wrongfully concealed in discovery before this

Court revealed the true genesis of the decision to add a citizenship question to the 2020 Census. The evidence was discovered on the hard drive of Dr. Thomas Hofeller, a North Carolina-based longtime Republican strategist and redistricting expert who died in August 2018.¹⁴

116. In late August 2015, Hofeller was commissioned by the Washington Free Beacon, a conservative website, to study the “practicality” and “political and demographic effects” of using citizen voting age population (“CVAP”) instead of total population (“TPOP”) to achieve equal population in redistricting.¹⁵ Hofeller advised that if a citizenship question were added to the 2020 Decennial Census so as to enable the exclusion of non-citizens from the population base in redistricting, the results “would be advantageous to Republicans and Non-Hispanic Whites.”¹⁶

117. Documents also revealed that Hofeller in 2015 communicated directly with Census Bureau official Christa Jones, using her private email address, and that Jones notified Hofeller of the Federal Register’s notice for comment regarding the Census Bureau’s Content Test for that year, suggesting that there was “an opportunity to mention citizenship.”¹⁷ Hofeller subsequently helped ghostwrite a draft DOJ letter to Commerce

¹⁴ Michael Wines, *Thomas Hofeller, Republican Master of Political Maps, Dies at 75*, N.Y. Times (Apr. 21, 2018) <https://www.nytimes.com/2018/08/21/obituaries/thomas-hofeller-republican-master-of-political-maps-dies-at-75.html>.

¹⁵ Pls.’ Mot. for Order to Show Cause Ex. C at 1-2, *New York v. Dep’t of Commerce*, No. 18-CV-2921, ECF No. 595-1 (S.D.N.Y. May 31, 2019).

¹⁶ Pls.’ Mot. for Order to Show Cause Ex. D at 9, *New York v. Dep’t of Commerce*, No. 18-CV-2921, ECF No. 595-1 (S.D.N.Y. May 31, 2019).

¹⁷ Tara Bahrapour, *GOP strategist and census official discussed citizenship question, new documents filed by lawyers suggest*, Wash. Post (June 16, 2019), <https://www.washingtonpost.com/dc-md-va/2019/06/15/new-documents-suggest-direct->

requesting a citizenship question that subsequently came into the possession of his “good friend[.]” Mark Neuman, Defendant Secretary Ross’s “trusted” and “expert adviser” on census issues, who “act[ed] analogously to an agency employee.”¹⁸ Following a call between then-North Carolina Congressman (and now Defendant Trump’s Chief of Staff) Mark Meadows and Defendant Secretary Ross, senior aides of Secretary Ross facilitated a meeting at which Neuman provided Hofeller’s draft to John Gore, the Acting Assistant Attorney General for Civil Rights, who ultimately “requested” that the Bureau include a citizenship question on the census.¹⁹ Meanwhile, Jones eventually came to serve as Chief of Staff to the Acting Director of the Census Bureau at the time of Defendant Secretary Ross’s March 2018 Decision Memorandum ordering the inclusion of a citizenship question on the census. Jones later testified that Hofeller favored adding a citizenship question to the census to aid “the Republican redistricting effort” and that Hofeller’s business partner, Dale Oldham, advocated for a citizenship question for redistricting and apportionment purposes “more times than I can remember.”²⁰

connection-between-republican-redistricting-strategist-census-bureau-official-over-citizenship-question/.

¹⁸ NYIC Pls.’ Mot for Sanctions, 1:18-cv-2921 (JMF), ECF No. 635-1 at 124-136; Def’s Opp. to Ltr. Mot. to Compel, *N.Y. Immigration Coalition v. U.S. Dep’t of Commerce*, 1:18-cv-2921-JMF, ECF No. 451 at 3 (S.D.N.Y. Oct. 30, 2018).

¹⁹ Pls.’ Joint Proposed Post-Trial Findings of Fact, *N.Y. Immigration Coalition v. U.S. Dep’t of Commerce*, 1:18-cv-2921-JMF, ECF No. 545 at 52-53 ¶¶ 364-69 (S.D.N.Y. Nov. 21, 2018) (citing trial exhibits).

²⁰ Memorandum from Acting Chairwoman Carolyn B. Maloney to Members of the United States House Committee on Oversight, *Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress*, 12 (Nov. 12, 2019) <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf>.

118. Subsequent statements by Defendant Trump and other Administration officials and advisors confirmed that a discriminatory intent to exclude noncitizens—and particularly, undocumented immigrants—from redistricting was the actual purpose of the effort to add a citizenship question to the Census.

119. For example, on July 1, 2020, Defendant Trump stated that a citizenship question was “very important to find out if someone is a citizen as opposed to an illegal,” and that “Democrats want to treat the illegals, with healthcare and other things, better than they treat the citizens of this country.”²¹

120. Defendant Trump himself has repeatedly admitted that his administration sought to add the citizenship question to harm immigrant communities by excluding them from the decennial enumeration and thus from redistricting and apportionment. About a week after the Supreme Court’s holding in *Department of Commerce*, Defendant Trump, asked why he was still trying to get a citizenship question on the census, said: “Number one, you need it for Congress. You need it for Congress, for districting. You need it for appropriations. Where are the funds going? How many people are there?”²²

121. Days later, at a press conference in the White House Rose Garden, Defendant Trump similarly stated that the citizenship information his administration sought is “relevant to administering our elections. Some states may want to draw state

²¹ *Remarks by President Trump at Signing of H.R. 3401*, White House (July 1, 2019) <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/>.

²² *Remarks by President Trump Before Marine One Departure*, White House (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>).

and local legislative districts based upon the voter-eligible population.”²³ In particular, Defendant Trump urged states to apportion and redistrict on the basis of citizen voting age population instead of total population, as Hofeller had advised, because he suggested that the move might be immune from judicial scrutiny: “Indeed, the same day the Supreme Court handed down the census decision, it also said it would not review certain types of districting decisions, which could encourage states to make such decisions based on voter eligibility.”²⁴

122. At the same press conference, Defendant Trump stated: “As shocking as it may be, far-left Democrats in our country are determined to conceal the number of illegal aliens in our midst. They probably know the number is far greater, much higher than anyone would have believed before. Maybe that’s why they fight so hard. This is part of a broader left-wing effort to erode the rights of the American citizen.”²⁵

123. Several of Defendant Trump’s associates and agents also stated—in the wake of the Supreme Court’s ruling in *Department of Commerce*—that excluding noncitizens from the census is necessary either to curtail immigration or limit the political power of immigrant communities of color.

124. Matt Schlapp, Chairman of the American Conservative Union and husband to Mercedes Schlapp, Defendant Trump’s Director of Strategic Communications, tweeted on June 27, 2019 that he wanted to “impeach[] the Chief

²³ *Remarks by President Trump on Citizenship and the Census*, White House (July 11, 2019) <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/>.

²⁴ *Id.*

²⁵ *Id.*

Justice [Roberts]” for “angling for vast numbers of illegal residents to help Dems hold Congress.”²⁶

125. Former Vice Chair of the President’s Commission on Electoral Integrity and anti-immigrant zealot Kris Kobach stated on July 8, 2019 that he “advised the President on putting the citizenship question back on the U.S. Census,” adding that he wanted to “make it a requirement in federal law that we must ask the question in every census going forward.”²⁷ A supplement to the Administrative Record in the citizenship question litigation revealed that Secretary Ross (at the behest of former White House senior advisor Steve Bannon) had discussed adding a citizenship question with Kobach, who advised that the question’s absence on the census “leads to the problem that aliens ... are still counted for congressional apportionment purposes.” In separate public statements, Kobach reiterated that the purpose of adding a citizenship question to the census was “so Congress [can] consider excluding illegal aliens from the apportionment process,”²⁸ because “citizens in a district with lots of illegal aliens have more voting power than citizens in districts with few illegal aliens.”²⁹

²⁶ Matt Schlapp (@mschlapp), Twitter (June 27, 2019, 8:29 AM), <https://twitter.com/mschlapp/status/1144266564935528449>.

²⁷ Pilar Pedraza (@PilarPedrazaTV), Twitter (July 8, 2019), <https://twitter.com/PilarPedrazaTV/status/1148296658943381508>.

²⁸ Kris Kobach, *Exclusive—Kobach: Bring the Citizenship Question Back to the Census*, Breitbart (Jan. 30, 2018), <http://www.breitbart.com/big-government/2018/01/30/exclusive-kobach-bring-citizenship-question-back-census/>.

²⁹ Kris Kobach, *Why the Citizenship Question is So Important*, Breitbart (June 27, 2019), <https://www.breitbart.com/politics/2019/06/27/kobach-why-the-citizenship-question-is-so-important/>.

126. Defendant Trump has also repeatedly denigrated and dehumanized non-white immigrants. He has stated that certain immigrants “aren’t people, these are animals,”³⁰ and his administration has housed immigrant children in cages and separated them from their families.³¹ Indeed, Defendant Trump has long complained about the growth of immigrant communities of color, tweeting in 2015: “How crazy - 7.5% of all births in U.S. are to illegal immigrants, over 300,000 babies per year. This must stop.”³²

127. Secretary Ross has publicly supported the Trump Administration’s anti-immigrant agenda, applauding Trump Administration programs to “swiftly return illegal entrants” and to “stop sanctuary cities, asylum abuse, and chain immigration.”³³

128. This slew of public statements and actions—from Defendant Trump and some of his highest-level advisers and administration officials—shows clearly that the true rationale for adding a citizenship question is driven by racial animus against immigrants of color and a desire to curb the political power of immigrant communities of color.

C. The Presidential Memorandum to Exclude Undocumented Immigrants from the Census

³⁰ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times, May 16, 2018, <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

³¹ BBC, *Trump migrant separation policy: Children ‘in cages’ in Texas*, June 18, 2018, BBC News, <https://www.bbc.com/news/world-us-canada-44518942>.

³² Donald Trump (@realDonaldTrump), Twitter (Aug. 21, 2015 6:56 AM), <https://twitter.com/realdonaldtrump/status/634725641972248576>.

³³ Press Release, Commerce Dep’t, Statement From U.S. Secretary of Commerce Wilbur Ross on the Release of President Trump’s Immigration Priorities (Oct. 9, 2017), <https://www.commerce.gov/news/press-releases/2017/10/statement-us-secretary-commerce-wilbur-ross-release-president-trumps>.

129. Where subterfuge has failed, Defendants have now turned to executive fiat. Barred from including a citizenship question on the 2020 Census, Defendants have now contrived a new scheme to identify and directly exclude undocumented immigrants from the Actual Enumeration required for apportionment. On July 21, 2020, Defendant Trump issued a presidential memorandum to the Secretary of Commerce entitled, “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.”³⁴

130. The Memorandum wrongly asserts that “[t]he Constitution does not specifically define which persons must be included in the apportionment base,” that “persons in each state” has been interpreted to mean “inhabitants,” that the scope of the term “inhabitants” requires “the exercise of judgment,” and that the President purportedly has discretion to exercise that judgment to exclude entire categories of persons who reside in the United States. *Id.*

131. On this asserted legal basis, the Memorandum declares that for reapportionment following the 2020 Census, “it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” *Id.* § 2.

132. The Memorandum states that the Secretary, in submitting his Census report under 13 U.S.C. § 141(b), “shall take all appropriate action, consistent with the

³⁴ Available at <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

Constitution and other applicable law” to provide information to the President to allow for the exclusion of undocumented immigrants. *Id.* § 3.

133. By its explicit and emphatic declaration of federal policy, the Memorandum directs the Commerce Department (and through the Commerce Department, the Census Bureau) to take steps to allow the President to exclude undocumented immigrants in his apportionment report to Congress issued under 2 U.S.C. § 2(a). *Id.* This includes, but is not limited to, “provid[ing] information” in the report that the Secretary must provide to the President under 13 U.S.C. § 141(b) that will “permit[] the President” to exclude undocumented immigrants in calculating the number of U.S. House seats to which each state is entitle. *Id.*

134. The Memorandum asserts that excluding undocumented immigrants is justified because “the principles of representative democracy” are undermined by tying the political influence of states to a population that includes undocumented immigrants. Memorandum, § 2.

135. In an accompanying statement, Defendant Trump declared that the Memorandum followed through on his commitment to determine the citizenship status of the population, and argued that “the radical left is trying to erase the existence of [the concept of American citizenship] and conceal the number of illegal aliens in our country” as “part of a broader left-wing effort to erode the rights of Americans [sic] citizens.”³⁵ The statement repeated the Memorandum’s argument that counting undocumented

³⁵ President Donald Trump, *Statement from the President Regarding Apportionment* (July 21, 2020), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

immigrants creates “perverse incentives,” and that “we should not give political power to people who should not be here at all.”³⁶

136. Upon information and belief, following receipt of the Memorandum, the Department of Commerce has issued directives to the Census Bureau, constituting final agency action, to implement the policy of excluding noncitizens from the enumeration used for congressional apportionment, as set forth in the Memorandum.

137. On June 23, 2020, Defendant Trump’s re-election campaign sent an email making plain that the intent of the Memorandum is to undermine the Census and demonize immigrants. The email characterized the Memorandum as an “Executive Order” that “will block” undocumented people from “receiving congressional representation” and from “being counted in the U.S. Census.”³⁷ The email claimed that this “Executive Order” was necessary because “Democrats are prioritizing dangerous, unlawful immigrants over American Citizens.”³⁸

D. The Effect of Excluding Undocumented Immigrants from the Census

³⁶ *Id.*

³⁷ Hansi Lo Wang (@hansilowang), TWITTER (July 23, 2020, 3:34 PM), <https://twitter.com/hansilowang/status/1286384297314844672>.

³⁸ *Id.* See also Tara Bahrapour, *Trump’s reelection campaign calls for adding citizenship question to 2020 census amid criticism that he is politicizing the count*, Wash. Post (Mar. 20, 2018), https://www.washingtonpost.com/local/social-issues/trump-campaign-calls-for-adding-citizenship-question-to-2020-census-amid-accusations-that-the-president-is-politicizing-the-annual-count/2018/03/20/dd5929fe-2c62-11e8-b0b0-f706877db618_story.html (describing a “Trump reelection campaign” email that asked supporters whether they “support[ed] the president in adding a citizenship question” to the Census and noting that critics described the email as “demoralizing,” “an assault on the constitution,” and “a sly attempt to rally the president’s base”).

138. Pew Research Center has estimated that the total population of undocumented immigrants in the United States was 10.5 million people in 2017.³⁹ The Department of Homeland Security (DHS) has estimated that the total population of undocumented immigrants in the United States was 12 million in 2015.⁴⁰

139. California, Texas, and New York are consistently three of the states with the largest populations of undocumented residents.

140. According to Pew Research Center, California had 2 million undocumented residents, Texas had 1.6 million undocumented residents, and New York had 650,000 undocumented residents in 2017, subject to an upward or downward variance of 50,000 people for each estimate.⁴¹

141. According to DHS, California had 2.9 million undocumented residents, Texas had 1.9 million undocumented residents, and New York had 590,000 undocumented residents in 2015.⁴²

142. The current average population of each U.S. House district is 710,767 people.

³⁹ Jeffrey S. Passel and D’Vera Cohn, *Mexicans decline to less than half the U.S. unauthorized immigrant population for the first time*, Pew Research Ctr. (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

⁴⁰ Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

⁴¹ Passel and Cohn, *supra* note 38.

⁴² Office of Immigration Statistics, *supra* note 46.

143. The Memorandum expressly aims to alter Congressional apportionment based on states' undocumented populations. For example, it argues that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” Memorandum§ 2.

144. Of these states, the Memorandum specifically targets California, anticipating that excluding undocumented immigrants from the census would deprive California of multiple House seats (and thus, Electoral College votes). The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.* Upon information and belief, this “one State” is California.

145. Unlawfully excluding undocumented residents from the population count used for apportionment will likely deprive several states—most particularly, Arizona, California, New York, and Texas—of at least one House seat (or will cause not to gain at least one House seat they would have gained) during the post-2020 Decennial Census apportionment process.

146. Indeed, this Court found that Arizona, California, Florida, Illinois, New York, and Texas all faced a substantial certainty of losing a seat based on a differential undercount of 5.8% of all noncitizens in the 2020 census. *New York*, 351 F. Supp. 3d at 594, *aff’d in relevant part*, 139 S. Ct. 2551. The evidence upon which the Court based these findings—the testimony of Dr. Chris Warshaw—relied on smaller undercounts of

noncitizens in each of these states than would be caused by the Memorandum. *See id.* (citing Warshaw Decl., Dkt. No. 526-1). A greater impact will occur for these states if **100%** of undocumented immigrants are removed from the apportionment count. Other studies have also confirmed the certainty that various states would lose a seat if undocumented residents are removed.⁴³

147. But the effects of the Memorandum are likely to run even deeper. Like the failed effort to add a citizenship question to the census, the new policy of excluding undocumented immigrants from the census will broadcast a xenophobic message to immigrant communities about census participation, suppressing responses from households containing immigrants and noncitizens. This will result in the omission from the census not only of undocumented immigrants, but also noncitizen immigrants with legal status and United States citizens. The resulting undercount will harm the work of organizations—including that of the Plaintiffs here—in promoting census participation and will further strip representation and economic resources from communities with immigrant populations.

E. The Census Bureau’s Likely Use of Statistical Modeling to Estimate the Undocumented Population

⁴³ *See* Amelia Thomson-DeVeaux, *The Citizenship Question Could Cost California And Texas A Seat In Congress*, FiveThirtyEight (June 17, 2019), <https://fivethirtyeight.com/features/the-citizenship-question-could-cost-california-and-texas-a-seat-in-congress/> (finding California, Arizona, and Texas would lose at least one seat in a poorly conducted census and 10% of households with undocumented immigrants undercounted). While there are questions about the accuracy of its expert’s methodology, the State of Alabama has asserted essentially the same thing in separate litigation. *See* Expert Report of Dudley Poston at 28, *Alabama v. U.S. Dep’t of Commerce*, No. 2:18-cv-00772-RD (N.D. Ala.) (opining that excluding undocumented residents from apportionment base would cause California, Texas, and New Jersey to lose seats).

148. The Census Bureau does not have a means to individually enumerate undocumented immigrants separate and apart from the rest of the population in each jurisdiction.

149. After completion of the citizenship question litigation, the Census Bureau indicated that it would seek to compile citizenship status information for Census respondents by using administrative records, including records from the Social Security Administration. Such administrative records, however, do not provide information as to *legal status*, as opposed to citizenship, and cannot be used to determine whether census respondents are *undocumented immigrants* specifically.

150. In fact, the Government has recently represented in separate litigation, via a declaration by Census Bureau Senior Advisor Enrique Lamas, that it “lack[s] . . . accurate estimates of the resident undocumented population” on a state-by-state basis.⁴⁴

⁴⁴ Defendants’ Supp. Rule 26(a)(1) Disclosures and Rule 26(a)(2)(C) Disclosures, *State of Alabama v. Dep’t of Commerce*, Case No. 2:18-cv-00772-RDP (N.D. Ala. March 13, 2020). See also Jeffrey Mervis, *Why the U.S. Census Bureau could have trouble complying with Trump’s order to count citizens*, Science Mag. (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (detailing the “formidable challenge” in relying on administrative records); Comment from Campaign Legal Center, OMB Control Number 0607-0995, <https://campaignlegal.org/sites/default/files/2020-01/Final%20Campaign%20Legal%20Center%20Comment%20OMB%20Control%20No%200607-0995.pdf> (noting that “[s]tate administrative data on individual citizenship status are notoriously riddled with errors and outdated information” and “records misidentify naturalized U.S. citizens as non-U.S. citizens”); Jennifer Van Hook, *Counting 11 million undocumented immigrants is easier than Trump thinks*, The Conversation (July 17, 2019), <https://theconversation.com/counting-11-million-undocumented-immigrants-is-easier-than-trump-thinks-120459> (observing that administrative records provide “inconsistent information about the same person,” have “limited value for describing those who fall outside of the administrative records system,” and will require researchers to “make assumptions about coverage error”).

151. In the absence of means to actually enumerate the total population of the United States minus undocumented immigrants, the Government has indicated its intention to use statistical modeling to estimate the undocumented population and thereby calculate an apportionment population that excludes undocumented immigrants. In separate litigation, Department of Justice attorney Stephen Ehrlich recently stated in a hearing that “there may need to be some statistical modeling” in order to carry out the Memorandum, though the Government had not yet “formulated a methodology.”⁴⁵

152. This statement is consistent with the previous efforts of governmental and non-governmental actors that have endeavored to project the population of undocumented immigrants in the United States. For example, Pew Research Center compiles statistical estimates of the population of undocumented immigrants rather than an actual enumeration, making a variety of statistical adjustments to the census population numbers and weighting the data.⁴⁶ DHS has similarly used statistical sampling methodology, the residual method, for estimated the populations of undocumented immigrants.⁴⁷

153. The scope of any statistical model required to estimate the number of undocumented immigrants would be unprecedented for use in calculating the

⁴⁵ Hansi Lo Wang (@hansilowang), Twitter (July 22, 2020, 10:58 AM), <https://twitter.com/hansilowang/status/1285952274410409985>

⁴⁶ See, J. Passel, *Measuring illegal immigration: How Pew Research Center counts unauthorized immigrants in the US* (July 12, 2019), <https://www.pewresearch.org/fact-tank/2019/07/12/how-pew-research-center-counts-unauthorized-immigrants-in-us/>.

⁴⁷ Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf. DHS has not performed any estimates of the population of undocumented immigrants for any year since 2015.

apportionment population. Such statistical processes are not an “actual Enumeration” as required under Article I of the Constitution. *See Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 338 (1999); *id.* at 346 (Scalia, J., concurring) (“It is in my view unquestionably doubtful whether the constitutional requirement of an ‘actual Enumeration,’ Art. I, § 2, cl. 3, is satisfied by statistical sampling.”).

CAUSES OF ACTION

COUNT ONE

Violation of Enumeration and Apportionment (Article I, Section 2, Clause 3 of the Constitution, and Section 2 of the Fourteenth Amendment) (All Plaintiffs against All Defendants)

154. Plaintiffs repeat and re-allege by reference all of the previous allegations in this Complaint.

155. The Constitution requires that the apportionment of seats for the House of Representatives be conducted on the basis of the total population of all persons in each state, following each Decennial Census.

156. In particular, Article I, Section 2 of the Constitution requires that “Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined” based on the number of “persons” in each state according to an “actual Enumeration,” “in such Manner as [Congress] shall by Law direct.” U.S. Const. art. I, § 2, cl. 3.

157. Section 2 of the Fourteenth Amendment provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting the *whole number of persons* in each State.” U.S. Const. amend. XIV, § 2 (emphasis added).

158. “Whatever his status under the immigration laws, an alien is . . . a ‘person’” for purposes of the Fourteenth Amendment. *Plyler*, 457 U.S. at 210. A “person” means a “human being,” *Black’s Law Dictionary* (11th ed. 2019), and no matter what the Trump Administration may say, undocumented immigrants are human beings. Undocumented immigrants living in the United States are among the “whole number of persons in each State,” U.S. Const. amend. XIV, § 2, and thus the plain and unequivocal text requires counting undocumented immigrants in the total population base used for Congressional apportionment.

159. The Supreme Court has definitively held that non-citizens must be included in the population base used to apportion U.S. House seats to each state. The Court held just four years ago that “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population,” including non-citizens. *Evenwel*, 136 S. Ct. at 1129; *see also id.* at 1128 (“The product of these debates was § 2 of the Fourteenth Amendment, which retained total population as the congressional apportionment base.”).

160. Other courts, including this Court, have recognized the same. *See, e.g., New York*, 351 F. Supp. 3d at 514 (“[T]he Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without,” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states”); *Klutznick*, 486 F. Supp. at 576 (“The language of the Constitution is not ambiguous. It requires the counting of the ‘whole number of persons’ for

apportionment purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly ‘persons.’”).

161. The Memorandum brazenly ignores this precedent and the plain text of the Constitution. It purports to unilaterally declare that undocumented immigrants are not “persons” under the Fourteenth Amendment. Based on that shocking and baseless assertion, the Memorandum declares it to be the explicit policy of the United States “to exclude from the apportionment base aliens who are not in a lawful immigration status.” The Memorandum further directs the Secretary to provide the President with information in his Census report that excludes undocumented immigrants from the population count of each state, so as to permit the President to exclude such persons in reporting to Congress the number of each representatives to which each State is entitled, which the President will then do.

162. By denying undocumented immigrants are “persons” and excluding them from the total population count for congressional apportionment, the Memorandum violates the plain and straightforward command of the Enumeration Clause and the Fourteenth Amendment, as well as binding Supreme Court precedent.

163. The Memorandum further violates the Enumeration Clause and the Fourteenth Amendment by apportioning U.S. House seats among the states based on data other than the “numbers” reflecting the total population of each state as determined by the “actual Enumeration” of the Decennial Census.

164. Defendants’ violations of the Enumeration Clause and the Fourteenth Amendments will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to each receive at least one fewer seat in

the House of Representatives. Because these states will have at least one fewer congressional district than they would otherwise, each congressional district in these states will encompass more total people than it would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy

165. Defendants' violations of the Enumeration Clause and the Fourteenth Amendments also causes harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute substantial portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

166. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. at 2565–66; *Utah v. Evans*, 536 U.S. 452, 464 (2002); *U.S. House of Representatives*, 525 U.S. at 329–34.

COUNT TWO
Violation of Census Act
(2 U.S.C. § 2a(a); 13 U.S.C. § 141)
(Ultra Vires)

167. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

168. Congress has required that the Secretary of Commerce “shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the ‘decennial census date.’” 13 U.S.C. § 141(a). “The tabulation of total population by States under subsection (a) of [§ 141] *as required for the apportionment of Representatives in Congress* among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” *Id.* § 141(b) (emphasis added).

169. In turn, “the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions.” 2 U.S.C. § 2a(a).

170. As the Supreme Court and the Census Bureau have recognized, these statutes require that persons whose “usual residence” is in the United States must be counted in the enumeration and apportionment of U.S. House seats at that “usual residence.” “[T]he first census conducted in 1790 required that persons be allocated to their place of ‘usual residence,’ and “‘usual residence’ has continued to hold broad connotations” through present day. *Franklin*, 505 U.S. at 803, 805. The Census Bureau has confirmed that its official policy today is that “[t]he state in which a person resides and the specific location within that state is determined in accordance with the concept of

‘usual residence,’ which is defined by the Census Bureau as the place where a person lives and sleeps most of the time.” Residence Rule, 83 Fed. Reg. at 5526.

171. Under the Census Bureau’s Residence Rule, “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533.

172. The President’s Memorandum violates 13 U.S.C. § 141(a)–(b) by requiring the Secretary of Commerce to tabulate and transmit reports to the President estimates of the total population in each State that are based on data other than the actual Enumeration of each state as determined by the decennial census, and that do not count all persons who live in the state as their “usual residence.” Specifically, the President’s Memorandum violates 13 U.S.C. § 141(a)–(b) by requiring the Secretary to rely on administrative data other than the actual Enumeration of each state as determined by the decennial census, and to exclude undocumented immigrants who reside in a state as their usual residence, in tabulating the total population of each state and transmitting those total population numbers to the President.

173. The President’s Memorandum also violates 2 U.S.C. § 2a(a) and 13 U.S.C. § 141(a)–(b) by requiring the President to calculate and transmit to Congress total population figures for each state, and the apportionment of U.S. House seats among the states, based on data other than “decennial census of the population,” and by using a method other than the “method of equal proportions” prescribed by Congress. 2 U.S.C. § 2a(a). The President may use only the actual enumeration of the total population of each State as “ascertained under the . . . decennial census”—and nothing else—to calculate the whole number of persons in each State and the number of Representatives for each state.

2 U.S.C. § 2a(a). Likewise, the “method of equal proportions” is a “rigid” formula “provided by Congress itself” that requires use of the total population of each State as determined based on the decennial census and no other administrative data. *Franklin*, 505 U.S. at 2775.

174. The President’s Memorandum also violates 2 U.S.C. § 2a(a) and 13 U.S.C. § 141(a)–(b) by causing the President to transmit to Congress total population figures for each state that do not include all persons who live in each state as their “usual residence,” and/or by causing the President to transmit to Congress a number of Representatives for each state that is calculated by excluding persons who live in each state as their “usual residence.” If the Secretary of Commerce transmits one set of total population numbers to the President that *do* include undocumented immigrants who live in the United States as their usual residence (as the Secretary must do), then the President is required to use *that* set of total population numbers in transmitting to Congress “the whole number of persons in each State,” and “the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions.” 2 U.S.C. § 2a(a). The number of whole of persons in each state that the President must transmit to Congress must be that “ascertained under the . . . decennial census of the population,” *id.*, which includes all persons living in the United States as their usual residence, 13 U.S.C. § 141(a)–(b). And it is “required for the apportionment of Representatives in Congress among the several States” that the President and the Secretary use the total population numbers tabulated for each state that include all persons who live in each state as their usual residence. 13 U.S.C. § 141(b).

175. Because Defendant Trump and Secretary Ross will act beyond the scope of their statutory authority in a way that causes constitutional violations, they are acting *ultra vires* pursuant to 2 U.S.C. § 2a(a) and 13 U.S.C. § 141. *See, e.g., Mountain States Legal Foundation v. Bush*, 306 F. 3d. 1132, 1136 (D.C. Cir. 2002) (“[T]he Supreme Court has indicated generally that review is available to ensure that Proclamations are consistent with constitutional principles and the President has not exceeded his statutory authority.”); *Chamber of Commerce of United States v. Reich*, 74 F.3d 1322, 1328 (D.C. Cir. 1996) (“When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority. . . . That the executive's action here is essentially that of the President does not insulate the entire executive branch from judicial review.”).

176. The Memorandum also will result in the President and Secretary Ross failing to perform their clear legal duties to, among other things: tabulate the total populations of the States based on data from the decennial census that includes all persons who live in the United States as their usual residence; calculate the whole number of persons in each state and the number of U.S. House seats to which each seat is entitled based on data from the decennial census that includes all persons who live in the United States as their usual residence; and transmit to Congress the whole number of persons in each state and the number of U.S. House seats to which each seat is entitled based on data from the decennial census that includes all persons who live in the United States as their usual residence.

177. Defendants’ violations of 2 U.S.C. § 2a(a) and 13 U.S.C. § 141 will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives.

Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy.

178. Defendants' violations of 2 U.S.C. § 2a(a) and 13 U.S.C. § 141 also causes harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

179. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

COUNT THREE
Discrimination on the Basis of Race and National Origin
(Fifth and Fourteenth Amendments of the U.S. Constitution)
(All Plaintiffs against All Defendants)

180. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

181. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires that the federal government not deny people the equal protection of its laws and prohibits the federal government from discriminating against individuals in the United States on the basis of race, ethnicity, national origin, and citizenship. U.S. Const. amend V.

182. The Supreme Court has affirmed the clear text of the Fifth Amendment by recognizing its constitutional protections apply to “person[s]” within the jurisdiction of the United States, and not only to citizens. *See, e.g., Wong Wing v. United States*, 163 U.S. 228 (1896) (Field, J., concurring) (“[t]he term ‘person,’ used in the [F]ifth [A]mendment, is broad enough to include any and every human being within the jurisdiction of the republic”); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993).

183. The Fifth Amendment’s Due Process Clause “applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

184. The “bedrock protections of the Fifth Amendment’s Due Process Clause” are not eliminated by the “mere act of entry into the United States without documentation.” *Garza v. Hargan*, 874 F.3d 735, 737–38 (D.C. Cir. 2017) (Millett, J., concurring).

185. The Fifth Amendment’s prohibition on discrimination on the basis of race, ethnicity, national origin, and citizenship is co-extensive with the Equal Protection guarantees of the Fourteenth Amendment, which the Supreme Court has long recognized extends to undocumented immigrants. “The Fourteenth Amendment to the Constitution is not confined to the protection of citizens [and is] universal in [its] application, to

all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.” *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). In more recent years, the Supreme Court has reaffirmed that “aliens whose presence in this country is unlawful . . . have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Plyler*, 457 U.S. at 210.

186. The Memorandum violates the Fifth Amendment’s prohibition on discrimination in at least two distinct respects. First, it facially targets undocumented immigrants for exclusion from the decennial enumeration, outright denying them the status of “persons” under the Constitution. Government action denying the *personhood* of people living in the United States echoes the darkest chapters of American constitutional history. *See Dred Scott v. Sandford*, 60 U.S. 393 (1857).

187. Second, as with the failed scheme to include a citizenship question on the census, this latest discriminatory act is motivated by a bare desire to harm immigrant communities of color, and particularly Latinx communities, by reducing their political clout and access to federal resources.

188. Defendant Trump and nativist members of his Administration view non-white, undocumented immigrants as a political and cultural threat. The President, as noted *supra*, has directed particularly virulent animus at Latinx immigrants. Defendant Trump and members of his Administration have long warned about the consequences of rising Latinx political power in the United States and the ostensible harms of undocumented immigrants to the United States.

189. The Memorandum not only would codify the animus and discriminatory goals of Defendants, but it would result in a cascade of discriminatory effects, including, but not limited to:

a. The loss of congressional seats and Electoral College votes in states where these groups constitute significant portions of the population and where Plaintiffs have members, including a certainly impending loss for California; a substantial risk of a loss for New York, Texas, Florida, Arizona, and Illinois; and a considerable risk of a loss for New Jersey and Georgia; and

b. A substantial reduction in the amount of federal funds distributed to the local and state governments in which the Plaintiffs reside, which all have significant, non-white populations; and

c. A reduction of the political influence to which these communities would receive through an accurate census count.

190. In addition to the discriminatory effects evidence well-known and acted upon by Defendants and the direct intent evidence outlined, the haphazard process through which the Defendants promulgated this Memorandum provides strong circumstantial evidence of discriminatory intent. This evidence includes the timing of the release of the Memorandum, which coincides with dispatching of Census field operations to conduct outreach to groups the Defendant Trump has discouraged from participating with dark and racist presidential campaign statements; the bizarre procedural sequence and series of events leading up to the Memorandum; the President's repeated efforts to generate confusion surrounding and distrust of the Census process; the shallow justifications cited by the President for the memorandum; the historical background and

substantive departures from prior precedents; contemporary statements of the President and other decisionmakers; and the profound unworkability of the Memorandum.

191. Defendants' violations of the Fifth Amendment will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives. Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy

192. Defendants' violations of the Fifth Amendment also cause harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

193. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

COUNT FOUR
Separation of Powers
(Article I, Section 2, Clause 3 of the Constitution,
as amended by the Fourteenth Amendment)
(All Plaintiffs against Defendant Trump)

194. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

195. Article I of the U.S. Constitution, in conjunction with the Fourteenth Amendment, requires that the federal government conduct an “actual Enumeration” of the national population every ten years to determine the “whole number of persons” in the United States and within each state for the purpose of apportioning members of the House of Representatives to the respective states according to their population. U.S. Const. art I, § 2, cl. 3; *id.* amend. XIV, § 2.

196. The Constitution, through the Enumeration Clause, “vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration.’” *Dep’t of Commerce*, 139 S. Ct. at 2566 (quoting *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996)).

197. As the Supreme Court has noted repeatedly, through the Census Act, Congress “delegated to the *Secretary of Commerce* the tasks of conducting the decennial census ‘in such form and content as he may determine,’”—not the President. *Id.* at 2567 (quoting 13 U.S.C. § 141(a)).

198. The text of the Census Act itself makes clear that Congress has delegated authority over the census to the *Commerce Secretary*, not the *President*.

199. Section 141(a) of the Census Act requires that “[t]he *Secretary shall*, in the year 1980 and every 10 years thereafter, take a decennial census of population as of

the first day of April of such year, which date shall be known as the ‘decennial census date’, *in such form and content as he may determine*”—not the President. 13 U.S.C. § 141(a) (emphasis added).

200. Section 4 of the Census Act requires the Secretary, *not* the President, to “perform the functions and duties imposed upon him by this title.” 13 U.S.C. § 4.

201. The Census Act plainly distinguishes between the Secretary and the President in their roles regarding the Census, as intended by Congress. *See, e.g.*, 13 U.S.C. § 141(b) (“The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported *by the Secretary to the President* of the United States.”) (emphasis added); 13 U.S.C. § 21 (distinguishing between “the President” and “the Secretary”).

202. The Constitution and Census Act thus make clear that the President has usurped powers Congress has delegated to the Secretary. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) (“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”); *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008) (“Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area.”).

203. The Constitution and Census Act are unambiguous: Congress has constitutional authority over the census, and it has delegated none of that authority to the President. The Memorandum therefore violates the Constitution’s separation of powers.

204. Defendants' constitutional violation causes ongoing harm to Plaintiffs and their members because as explained their members are undocumented immigrants and live in communities where undocumented immigrants constitute significant portions of the populations; and provide services to undocumented immigrants, and as such, these violations will deprive them of the political influence and funding to which they would be entitled by a more accurate census.

205. The Supreme Court has stated, "An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate." *Bond v. United States*, 564 U.S. 211, 222 (2011).

206. Defendants' violations of the constitutional separation of powers will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives. Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy

207. Defendants' violations of the constitutional separation of powers also causes harm to Plaintiffs and their members because, as explained, some of their

members are undocumented immigrants and live in communities where undocumented immigrants constitute significant portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

208. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

COUNT FIVE
Administrative Procedure Act
(All Plaintiffs against Defendants Ross, Dillingham, Department of Commerce and Census Bureau)

209. Plaintiffs repeat and re-allege by reference all of the previous factual allegations in this Complaint.

210. The Administrative Procedure Act (APA), 5 U.S.C. §§ 702, 704, provides for a cause of action against any final agency action, within the meaning of the APA.

211. Upon information and belief, the Department of Commerce has directed the Census Bureau to effectuate the Memorandum's policy of excluding noncitizens from the enumeration used to apportion congressional representation and has instructed the Census Bureau to that effect. This constitutes a final agency action within the meaning of the APA because it marks the consummation of the agency's decision-making process, and it is one by which rights or obligations have been determined, or from which legal consequences will flow, *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

212. In addition, the Secretary's tabulation of total population numbers for each state that exclude undocumented immigrants and his transmission of those numbers to the President is required under the Memorandum, and thus the fact that the Secretary will take these actions is indisputable and inevitable. The Secretary's tabulation of total population numbers for each state that exclude undocumented immigrants and his transmission of those numbers to the President are separate final agency actions within the meaning of the APA. Requiring Plaintiffs to challenge those mandated final actions after they occur could enable Defendants to evade judicial review.

213. The APA, 5 U.S.C. § 706(2), provides that a court shall hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

214. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the Memorandum also violates the APA because it is contrary to statutory and constitutional law. *Dep't of Commerce*, 139 S. Ct. 2551 at 2569; *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 42-43.

215. The Census Act requires that this decennial census result in a "tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States" to be reported to the President. 13 U.S.C. § 141(b). This statute has identical meaning as the Constitution, whose mandate it implements: undocumented immigrants are included in the "total population" of each state, and thus must be included in the Census. The statute governing reapportionment, 2 U.S.C. § 2a, provides that after within one week of the first day of the first regular

session of each Congress following the Census – that is, after receiving the Secretary of Commerce’s report pursuant to 13 U.S.C. § 141(b) – the President shall transmit to Congress the population of each state and the number of seats to which it is entitled in the House of Representatives. Like the Census Act, this statute implements the Constitution’s requirement that apportionment be based on the total population of each state by mandating that the President’s statement to Congress show “the whole number of persons in each State” 2 U.S.C. § 2a(a). Undocumented immigrants are included within the “whole number of persons in each State” as used in 2 U.S.C. § 2a(a).

216. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the Memorandum is also arbitrary and capricious in violation of the APA because: it relied on factors which Congress has not intended it to consider; entirely failed to consider an important aspect of the problem; and offered an explanation for its decision that runs counter to the evidence before the agency. *Dep’t of Commerce*, 139 S. Ct. 2551 at 2569; *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 42-43.

217. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the Memorandum is also arbitrary and capricious in violation of the APA because it changed long-standing, consistent Census Bureau policy without a “reasoned analysis of the change.” *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 42-43; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

218. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the

Memorandum is also arbitrary and capricious in violation of the APA because it is the subject of improper political influence and pressure from political actors. *D.C. Fed'n of Civic Assoc. v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1971); *Tummino v. Torti*, 603 F. Supp. 2d 519 (E.D.N.Y. 2009).

219. The Memorandum further violates the APA by effectively abrogating the Residence Rule without going through notice-and-comment rulemaking. The Census Bureau issued the Residence Rule pursuant to notice-and-comment rulemaking. The Census Bureau provided in the Residence Rule that foreign citizens must be “[c]ounted at the U.S. residence where they live and sleep most of the time,” 83 Fed. Reg. at 5533, and the Census Bureau confirmed that “[a]pportionment is based on the resident population” as calculated pursuant to the Residence Rule. 83 Fed. Reg. at 5526 n.1. The APA’s notice-and-comment requirements prohibit the Census Bureau from calculating the total population of each state in a manner different from that set forth in the Residence Rule without revising or replacing the Residence Rule pursuant to notice-and-comment rulemaking. Neither the President nor the Secretary of Commerce may order the Census Bureau to violate a rule issued pursuant to notice-and-comment rulemaking. “An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *Fox Television Stations, Inc.*, 556 U.S. 502.

220. Defendants’ violations of the APA will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives. Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would

otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy.

221. Defendants' violations of the APA also cause harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute significant portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

222. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

i. Declare that Defendants' exclusion of undocumented immigrants from (a) the tabulation of the total population of the states; (b) the calculation and statement of the whole number of persons in each state; and (c) the calculation and statement of the apportionment of the House of Representatives among the states, is unauthorized by and violates the Constitution and laws of the United States;

ii. Declare that Defendants' exclusion of undocumented immigrants is *ultra vires* and violates 2 U.S.C. § 2a(a) and 13 U.S.C. § 141(a)-(b);

iii. Preliminarily and permanently enjoin Defendants and all those acting on their behalf from excluding undocumented immigrants from: (a) the tabulation of total population by states; (b) the calculation and statement of the whole number of persons in each state; and (c) the calculation and statement of the apportionment of the House of Representatives among the states;

iv. Estop Defendants from excluding undocumented immigrants from: (a) the tabulation of total population by states; (b) the calculation and statement of the whole number of persons in each state; and (c) the calculation and statement of the apportionment of the House of Representatives among the states;

v. Issue a writ of mandamus compelling the Secretary of Commerce to tabulate and report the total population of each state under 13 U.S.C § 141(b) based only on the actual enumeration of the total population as determined by the decennial census, including undocumented immigrants who live in the United States as their usual residence;

vi. Issue a writ of mandamus compelling the President to calculate the whole number of persons in each state and the apportionment of the House of Representatives among the states based only on the actual enumeration of the total population as determined by the decennial census, including undocumented immigrants who live in the United States as their usual residence;

vii. Issue a writ of mandamus compelling the President to calculate the apportionment of the House of Representatives among the states based on the method of equal proportions prescribed by Congress;

viii. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and

ix. Award any other such additional relief as the Court deems proper.

Dated: July 24, 2020

Respectfully submitted,

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** Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).

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**UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF PATERSON, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, DEBRA DE OLIVEIRA, SARA PAVON, JONATHAN ALLAN REISS, and MYRNA YOUNG,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States,

UNITED STATES DEPARTMENT OF COMMERCE,

WILBUR L. ROSS, JR., in his official capacity as Secretary of Commerce,

CHERYL L. JOHNSON, in her official capacity as the Clerk of the United States House of Representatives,

Defendants.

Case No. _____

COMPLAINT

INTRODUCTION

1. This is a complaint for declaratory judgment and injunctive relief against implementation of the Memorandum issued by President Donald J. Trump on July 21, 2020, titled “Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census” (the “Memorandum”), on the grounds that the Memorandum violates Article I, § 2 of the U.S. Constitution as amended by § 2 of the Fourteenth Amendment; the Equal Protection guarantees of the Fifth and Fourteenth Amendments; and 2 U.S.C. § 2a(a) and 13 U.S.C. § 141.

2. The Memorandum purports to break with almost 250 years of past practice by excluding undocumented immigrants when calculating the number of seats to which each State is entitled in the House of Representatives. This new policy flouts the Constitution’s plain language, which states that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting *the whole number of persons in each state*,” excluding only “Indians not taxed.” U.S. Const., amend. XIV, § 2 (emphasis added). It also flies in the face of the statutory scheme governing apportionment, which requires the President to include “the *whole number of persons in each State*” in the apportionment base—again, excluding only “Indians not taxed.” 2 U.S.C. § 2a(a) (emphasis added).

3. Since the founding, the three branches of government have agreed that “the whole number of persons in each state” includes non-citizens, whether documented or undocumented. Now, for the first time in our nation’s history, the President has purported to declare the opposite. As the Department of Justice observed in 1980, such a change would be “a radical revision of the constitutionally mandated system for allocation of Representatives to the States of the Union and an equally radical revision of the historic mission of the decennial census.”

4. President Trump’s Memorandum is not an isolated event. Rather, it is the culmination of a concerted effort, stretching back at least five years, to shift the apportionment base from *total* population to *citizen* population—a strategy intended, in the words of its chief architect, to enhance the political power of “Republicans and non-Hispanic whites” at the expense of people of color, chiefly Latinos. The Memorandum is, in this respect, consistent with the Administration’s attempt to add a citizenship question to the 2020 census—a ploy that the U.S. Supreme Court rejected as pretextual and unlawful. The Administration’s latest effort should meet the same end.

5. Plaintiffs bring this action for declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) to halt Defendants' violations of the Constitution and laws of the United States and to protect the right of all of this country's inhabitants to the equal protection of its laws.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, and relief is authorized under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Defendants are United States agencies or officers acting in their official capacities or under color of legal authority, and Defendants reside in this District, or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District, or one or more Plaintiffs resides in this District.

8. This Court has personal jurisdiction over Defendants because Defendants are located within this District and Defendants' actions and omissions giving rise to Plaintiffs' claims occurred in this District.

PARTIES

9. Plaintiff Common Cause is a nonprofit organization organized and existing under the laws of the District of Columbia, with its principal place of business in the District of Columbia. Common Cause is a nonpartisan democracy organization with over 1.2 million members, 22 state offices, and a presence in all 50 states. It has members in all 50 states and in every congressional district. Since its founding by John Gardner fifty years ago, Common Cause

has been dedicated to making government at all levels more representative, open, and responsive to the interests of ordinary people. It sues herein on behalf of its members.

10. Plaintiff City of Atlanta is the capital and most populous city in the State of Georgia, with a population of over half a million people. People of color constitute the majority of its population. It has a notably large population of immigrants, including Latino immigrants, as well as immigrants from East and South Asia, Africa, and the Caribbean.

11. Plaintiff City of Paterson is the county seat of Passaic County, New Jersey, with a population of approximately 150,000 people. It has a notably large population of immigrants, including Latino immigrants, as well as immigrants from Bangladesh, India, South Asia, and the Arab and Muslim world.

12. Plaintiff Partnership for the Advancement of New Americans (PANA) is a 501(c)(3) nonprofit based in San Diego, California with over 400 members. PANA is dedicated to advancing the full economic, social, and civic inclusion of refugees. It advocates for public policy solutions that will ensure local governments invest in the long-term economic self-sufficiency of newcomers and refugee families, including effective resettlement strategies and equitable allocation of federal resources. PANA provides support to communities directly affected by unjust immigration policies, including nationals from Iran, Libya, Somalia, Sudan, Syria and Yemen who have resettled and continue to seek refuge in the San Diego region. In addition to its public policy advocacy, PANA engages more than 40,000 former refugee, African immigrant, Muslim, and Southeast Asian voters in elections throughout the San Diego region to ensure the fair representation of these historically underrepresented communities. It sues herein both on its own behalf and on behalf of its members.

13. Plaintiff Roberto Aguirre is a naturalized U.S. citizen and a resident of Queens, New York City, New York. He is of Latino ethnicity and Ecuadorean national origin. He is a registered voter and regularly exercises his right to vote.

14. Plaintiff Sheila Aguirre is a natural-born U.S. citizen and a resident of Queens, New York City, New York. She is of Latina ethnicity and Ecuadorean heritage. She is a registered voter and regularly exercises her right to vote.

15. Plaintiff Paula Aguirre is a natural-born U.S. citizen and a resident of Queens, New York City, New York. She is of Latina ethnicity and Ecuadorean heritage. She is a registered voter and regularly exercises her right to vote.

16. Plaintiff Andrea M. Alexander is a natural-born citizen and a resident of Brooklyn, New York City, New York. Her racial identity is Black. She is a registered voter and regularly exercises her right to vote.

17. Plaintiff Debra de Oliveira is a naturalized U.S. citizen and a resident of Margate, Florida. Her racial identity is Black and her national origin is Guyanese. She is a registered voter and regularly exercises her right to vote.

18. Plaintiff Sara Pavon is a naturalized U.S. citizen and a resident of Queens, New York City, New York. She is of Latina ethnicity and Ecuadorean national origin. She is a registered voter and regularly exercises her right to vote.

19. Plaintiff Jonathan Allan Reiss is a naturalized U.S. citizen and a resident of Manhattan, New York City, New York. He is of Caucasian ethnicity and Canadian national origin. He is a registered voter and regularly exercises his right to vote.

20. Plaintiff Myrna Young is a naturalized U.S. citizen and a resident of Fort Myers, Florida. Her racial identity is Black and her national origin is Guyanese. She is a registered voter and regularly exercises her right to vote.

21. Defendant Donald J. Trump is the current President of the United States of America. He is sued herein in his official capacity. Pursuant to statute, the President is responsible for transmitting the results of the decennial census, and the resulting congressional apportionment figures, to Congress.

22. Defendant United States Department of Commerce is a cabinet agency within the executive branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). Pursuant to statute, the Commerce Department is responsible for, among other things, implementing and administering the decennial census and transmitting the resulting tabulations to the President for further transmittal to Congress.

23. Defendant Wilbur L. Ross, Jr., is the Secretary of Commerce of the United States and a member of the President's Cabinet. He is responsible for conducting the decennial census and oversees the Census Bureau. He is sued herein in his official capacity.

24. Defendant Cheryl L. Johnson is the Clerk of the United States House of Representatives. Pursuant to statute, she is responsible for “send[ing] to the executive of each State a certificate of the number of Representatives to which such State is entitled” following a decennial reapportionment. 2 U.S.C. § 2a(b). She is sued herein in her official capacity.

FACTUAL ALLEGATIONS

A. Statutory Law Requires the President to Include All Persons in the Congressional Apportionment Base, Irrespective of Citizenship or Immigration Status

25. From the founding, the federal Constitution has required a decennial census (that is, an “actual Enumeration”) to determine the apportionment of members of the U.S. House of

Representatives among the States. The Constitution tasks Congress with passing legislation to “direct” the “manner” in which the census shall occur, subject to the requirements set forth in the Constitution itself. *See* U.S. Const., art. I, § 2, cl. 3; *Franklin v. Massachusetts*, 505 U.S. 788, 791 (1992).

26. By statute, Congress has assigned the responsibility of conducting the census to the Secretary of Commerce, and empowered the Secretary of Commerce to delegate authority for establishing procedures to conduct the census to the Census Bureau. 13 U.S.C. §§ 2, 4, 141; *Franklin*, 505 U.S. at 792.

27. To that end, the Census Bureau sends a questionnaire to every household in the United States, to which every resident in the United States (documented or otherwise) is legally required to respond. 13 U.S.C. § 221. The Census Bureau then counts responses from every household to determine the population count in the various states.

28. The Census Bureau’s rules state that its enumeration procedures “are guided by the constitutional and statutory mandates to count *all residents* of the several states,” including “[c]itizens of foreign countries living in the United States.”¹

29. Within nine months of the census date (in this case, by January 1, 2021), the Secretary of Commerce is required by statute to report to the President “the tabulation of *total population* by States . . . as required for the apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 141(b) (emphasis added).

30. Thereafter, the President is required by statute to transmit to Congress two sets of numbers. First, the President must provide “a statement showing the *whole number of persons*

¹ U.S. Census Bureau, *Residence Criteria and Residence Situations for the 2020 Census of the United States* at 1-2 (emphasis added), available at <https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf> (last accessed July 22, 2020).

in each State, excluding Indians not taxed, as ascertained under the . . . decennial census of the population.” 2 U.S.C. § 2a(a) (emphasis added).

31. Second, based on the census count of the “whole number of persons in each State,” the President must specify “the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.” *Id.*

32. “Each State” shall thereupon “be entitled” to the number of representatives “shown in” the President’s statement to Congress, “until the taking effect of a reapportionment under this section or subsequent statute.” 2 U.S.C. § 2a(b). It is “the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of [the President’s] statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled” *Id.*; see *Franklin*, 505 U.S. at 792.

33. The governing statute does not authorize the Secretary of Commerce to transmit to the President a number *other than* “the whole number of persons in each State,” as determined by the census. Nor does it vest the President with discretion to base the apportionment calculation that he or she transmits to Congress on something *other than* “the whole number of persons in each State.”

34. Indeed, in enacting this statute, members of Congress noted repeatedly that the President’s role in calculating apportionment figures is ministerial—*i.e.*, that the statute directs the President “to report ‘upon a problem in mathematics . . . for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.’” *Franklin*, 505 U.S. at 799 (quoting S. Rep. No. 2, 71st Cong., 1st Sess. at 4-5 (1929)); see also S. Rep. No. 2, 71st Cong., 1st Sess. at 4 (1929) (stating that the President shall report “apportionment tables”

to Congress “pursuant to a purely ministerial and mathematical formula”); 71 Cong. Rec. 1858 (1929) (statement of Sen. Vandenberg) (stating that the “function served by the President [under this statute] is as purely and completely a ministerial function as any function on earth could be”).

35. The Supreme Court, too, has recognized that “the President *exercises no discretion* in calculating the numbers of Representatives,” and that his or her role in the apportionment calculation is therefore “*admittedly ministerial.*” *Franklin*, 505 U.S. at 799 (emphasis added).

36. The Executive Branch has similarly conceded the exclusively ministerial nature of the President’s role in translating the census data to an apportionment determination. *See* Reply Br. for the Federal Appellants at 24, *Franklin v. Massachusetts*, No. 91-1502 (U.S. Apr. 20, 1992), 1992 U.S. S. Ct. Briefs LEXIS 390 (“[I]t is true that the method [prescribed by 2 U.S.C. § 2a] calls for application of a set mathematical formula to the state population totals produced by the census”); Transcript of Oral Argument at 12-13, *Franklin v. Massachusetts*, No. 91-1502 (U.S. Apr. 21, 1992) (argument of Deputy Solicitor General Roberts) (“The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives [from the Secretary of Commerce] . . . It would be unlawful [for the President] . . . just to say, ‘these are the figures, they are right, but I am going to submit a different statement.’”).

B. The Constitution Requires the President to Include All Persons in the Congressional Apportionment Base, Irrespective of Citizenship or Immigration Status

37. From the founding of our nation, all three branches of government have agreed that, independent of statutory law, the Constitution itself requires that the census count *all* “persons” residing in each State, irrespective of citizenship or immigration status, and that *all* such “persons” be included in the congressional apportionment base.

38. As originally ratified, Article I, Section 2 of the Constitution provided that “Representatives . . . shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to *the whole number of free persons*, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons [*i.e.*, slaves]” (emphasis added). This infamous “Three-Fifths Compromise” did not exclude free non-citizens, who as a matter of plain meaning are “persons,” from the apportionment base.

39. The Fourteenth Amendment was ratified following the Civil War. That amendment eliminated the “three-fifths” clause, but otherwise “retained total population as the congressional apportionment base.” *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128 (2016). Specifically, Section 2 of the Fourteenth Amendment provides that “Representatives shall be apportioned among the several states according to their respective numbers, counting *the whole number of persons in each state*, excluding Indians not taxed” (emphasis added).

40. During the debates over the Fourteenth Amendment, Congress considered revising the apportionment formula to exclude persons ineligible to vote—a category which, Congress expressly recognized, included the “unnaturalized foreign-born.” Cong. Globe, 39th Cong., 1st Sess., 1256 (1866) (remarks of Sen. Wilson). This proposal was soundly rejected, on the ground that “non-voting classes”—including unnaturalized immigrants—“have as vital an interest in the legislation of the country as those who actually deposit the ballot.” *Evenwel*, 136 S. Ct. at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess., 141 (1866) (remarks of Rep. Blaine)).

41. On several occasions since the Fourteenth Amendment’s passage, Congress has considered measures to exclude “aliens,” including undocumented immigrants, from the census count and/or apportionment base. “[I]t appears to have been generally accepted that such a result

would require a constitutional amendment.” *Fed. For Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576-77 (D.D.C.) (three-judge court), *appeal dismissed*, 447 U.S. 916 (1980).

42. In 1929, for example, the Senate Legislative Counsel concluded that, absent such an amendment, “statutory exclusion of aliens from the apportionment base would be unconstitutional.” *Id.* (citing 71 Cong. Rec. 1821 (1929)).

43. Again in 1940, Congress considered whether “aliens who are in this country in violation of law have the right to be counted and represented.” *Id.* (quoting 86 Cong. Rec. 4372 (1940)). Representative Celler of New York explained:

The Constitution says that all persons shall be counted. I cannot quarrel with the founding fathers. They said that all should be counted. We count the convicts who are just as dangerous and just as bad as the Communists or as the Nazis, *as those aliens here illegally*, and I would not come here and have the temerity to say that the convicts shall be excluded, if the founding fathers say they shall be included. The only way we can exclude them would be to pass a constitutional amendment.

Id. (emphasis added). On this basis, Congress rejected a proposal to exclude “aliens” from the apportionment base. *See id.*

44. The Executive Branch, too, has repeatedly recognized—under Presidents of both parties—that the Constitution requires that congressional apportionment take place on the basis of total population, irrespective of citizenship or immigration status.

45. For example, in 1980, under President Jimmy Carter, private plaintiffs filed a lawsuit in this District seeking to exclude “illegal aliens” from the census and the congressional apportionment base. *Klutznick*, 486 F. Supp. at 565. Opposing the suit, the U.S. Department of Justice (“DOJ”) told this Court that the plaintiffs “s[ought] a radical revision of the constitutionally mandated system for allocation of Representatives to the States of the Union and

an equally radical revision of the historic mission of the decennial census.” Federal Defendants’ Post-Argument Mem. at 1, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. filed Feb. 15, 1980).

46. “[F]or 200 years,” the DOJ told this Court, “the decennial census has counted all residents of the states irrespective of their citizenship or immigration status,” and those counts had been employed in apportionment. *Id.* Given “the clear and unequivocal language of Section 2 of the Fourteenth Amendment,” the DOJ urged, the “radical revision” that the plaintiffs sought could come only from “a constitutional amendment.” *Id.* What is more, the DOJ explained, such a revision would be “patently unfair” to residents of communities in which undocumented immigrants live, as undocumented immigrants “demand[] precisely the same level of the services from the municipalities and states in which [they] reside as do all other citizens.” *Id.* at 12.

47. In 1988, under President Ronald Reagan, the Director of the Office of Management and Budget sought the views of the DOJ on yet another proposal to exclude “illegal aliens” from congressional apportionment base. The DOJ concluded that the proposed legislation was “unconstitutional.” Letter from Thomas M. Boyd, Acting Assistant Attorney General, dated June 29, 1988, at 5.² In the DOJ’s view, it was “clear” that, under the Fourteenth Amendment, “all persons, *including aliens residing in this country*, [must] be included” in the congressional apportionment base. *Id.* at 2 (emphasis added). In fact, the DOJ noted, the Reconstruction Congress “rejected arguments that representation should be based on people with permanent ties to the country” and “consciously chose to include aliens.” *Id.* at 2-3.

48. In its 1988 opinion, the DOJ went on to explain that, for apportionment purposes, the Fourteenth Amendment makes no distinction between “aliens” who are and are not lawfully

² *Included in* 1990 Census Procedures and Demographic Impact on the State of Michigan: Hearing Before the Committee on Post Office and Civil Service, House of Representatives, One Hundredth Congress, Second Session, June 24, 1988 at 240 (United States: U.S. Government Printing Office 1988).

present in the United States. Furthermore, DOJ explained, in analyzing the Fourteenth Amendment, “the Supreme Court . . . has read the word ‘person’ to include illegal aliens.” *Id.* at 3-4 (citing *Plyler v. Doe*, 457 U.S. 202, 210 (1982)).

49. In 1989, under President George H. W. Bush, the DOJ issued a similar opinion. Once again, a Senator had “requested the views of the Department of Justice concerning the constitutionality of proposed legislation excluding illegal or deportable aliens from the decennial census count.” Letter from Carol T. Crawford, Assistant Attorney General, dated Sept. 22, 1989, at 1, 135 Cong. Rec. S12235 (1989). The DOJ responded that “section two of the Fourteenth Amendment which provides for ‘counting the whole number of persons in each state’ and the original Apportionment and Census Clauses of Article I section two of the Constitution ***require that inhabitants of States who are illegal aliens be included*** in the census count.” *Id.* (emphasis added). At that time, current Attorney General William Barr was the head of DOJ’s Office of Legal Counsel. In that position, he would be expected to have reviewed and approved the DOJ opinion.

50. In 2015, under President Barack Obama, the DOJ once again took the position—this time in briefing to the Supreme Court—that Article I, § 2 and the Fourteenth Amendment “were purposely drafted to refer to ‘persons,’ rather than to voters, and to include people who could not vote”—specifically including “aliens.” Brief for the United States as *Amicus Curiae*, *Evenwel v. Abbott*, No. 14-940, at 18 (quoting Cong. Globe, 39th Cong., 1st Sess. 141, 359), 2015 U.S. S. Ct. Briefs LEXIS 3387. In the DOJ’s words, this is because “the federal government act[s] in the name of (and thereby represent[s]) all people, whether they [are] voters or not, and whether they [are] citizens or not.” *Id.* at 19.

51. The judiciary, too, has long echoed this consensus. For over fifty years, the U.S. Supreme Court has found it “abundantly clear . . . that in allocating Congressmen the number assigned to each state should be determined solely by the number of the State’s inhabitants.” *Wesberry v. Sanders*, 376 U.S. 1, 13 (1964).

52. Just four years ago, the Supreme Court unanimously reaffirmed that the Constitution “select[s] . . . total population as the basis for allocating congressional seats, . . . *whether or not [individuals] qualify as voters.*” *Evenwel*, 136 S. Ct. at 1129. Because immigration was at the center of the controversy in *Evenwel*,³ it is beyond question that the Supreme Court had non-citizen immigrants in mind when it made this declaration.

53. Lower courts, too, have determined that “illegal aliens . . . are clearly ‘persons’” for purposes of congressional apportionment, and that “the population base for purposes of apportionment” must therefore “include[] all persons, *including aliens both lawfully and unlawfully within our borders.*” *Klutznick*, 486 F. Supp. at 576 (emphasis added).

54. To Plaintiffs’ knowledge, no court has ever held otherwise.

C. In Violation of Statute and the Constitution, The President Has Purported to Exclude Undocumented Immigrants from Congressional Apportionment

55. On July 21, 2020, without any advance notice to the public, the President issued a proclamation titled “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census” (the “Memorandum”).⁴ Breaking with almost 250 years of

³ See, e.g., Brief of Eagle Forum as *Amicus Curiae* for Appellants, *Evenwel v. Abbott*, No. 14-940, at 2, 2015 U.S. S. Ct. Briefs LEXIS 2687 (complaining of the “influx of non-citizens in[to] urban areas”); Brief of Immigration Reform Law Institute as *Amicus Curiae* for Appellants, *Evenwel v. Abbott*, No. 14-940, at 1, 2015 U.S. S. Ct. Briefs LEXIS 2724 (complaining of the “harms . . . posed by mass migration to the United States, both lawful and unlawful”).

⁴ Available at <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/> (last accessed July 23, 2020).

precedent, the Memorandum declares that it is now “the policy of the United States to exclude from the [congressional] apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible” Memorandum § 2.

56. To implement that purported “policy,” the Memorandum states that, when the President “transmits . . . to the Congress” his report “regarding the ‘whole number of persons in each State’” and the consequent “number of Representatives to be apportioned to each State,” he will unilaterally “exclude . . . aliens who are not in a lawful immigration status” from the figures that he transmits. *Id.* §§ 1, 2. The Memorandum further asserts that these manipulated figures created at the President’s direction, and not the actual “whole number of persons in each State,” as provided in the governing statute, shall then “‘settle[] the apportionment’ of Representatives among the States.” *Id.* § 1.

57. To enable the President to prepare this manipulated apportionment, the Memorandum orders the Secretary of Commerce to “take all appropriate action . . . to provide information permitting the President . . . to carry out the policy set forth in . . . this memorandum.” *Id.* § 3. Presumably, this includes providing the President with “data on the number of citizens, non-citizens, and illegal aliens in the country,” which the President had earlier commanded the Department of Commerce to collect to permit the President to accomplish this purpose. *Id.* § 1 (citing Executive Order 13880, July 11, 2019).

58. The Memorandum makes no serious attempt to square the President’s new “policy” with the governing statutory and constitutional provisions described above or with over two centuries of contrary practice. Instead, the Memorandum purports to justify this “policy” based on the President’s own view that “[e]xcluding . . . illegal aliens from the apportionment

base is more consonant with the principles of representative democracy underpinning our system of Government.” *Id.* § 2. The Memorandum also relies on the unexceptional premise that transient *visitors* to a State are not included in census numbers to argue that *inhabitants* of a state can be excluded based on their immigration status.

59. The President is not free to substitute his own personal judgment for those that have already been made by the Congress that enacted 2 U.S.C. § 2a and by the framers and ratifiers of Article I, § 2 and the Fourteenth Amendment. As explained above, the President’s duty in preparing and transmitting the apportionment calculations to Congress is purely ministerial. There is no room under the statutory scheme for his exercise of judgment concerning what is most “consonant with the principles of representative democracy.” And even if the statutory scheme permitted the President to exercise such judgment, he would of course be restrained by the Constitution’s clear command.

D. The Memorandum is the Latest in a Series of Unlawful Attempts to Manipulate Apportionment to Deprive Minorities of Political Power

60. The Memorandum is not the first time that this Administration has sought to manipulate the census and apportionment process to deprive immigrants and racial and ethnic minorities of political power. To the contrary, it is the latest in an interconnected series of unlawful actions that this Administration has taken for that purpose.

61. The planning for these actions predated the start of this Administration. In August 2015, the now-deceased Republican redistricting guru Thomas B. Hofeller prepared a secret study for a major Republican donor titled “The Use of Citizen Voting Age Population in

Redistricting” (the “Hofeller Study”).⁵ According to the New York Times, Hofeller had already “achieved near-mythic status in the Republican party as the Michelangelo of gerrymandering, the architect of partisan political maps that cemented the party’s dominance across the country.”⁶ The Hofeller Study fortuitously came to light only after he died and his estranged daughter made his personal storage devices available to Plaintiff Common Cause.

62. In his study, Hofeller concluded that “[a] switch to the use of citizen voting age population as the redistricting population base”—in lieu of total population, as presently used—“would be *advantageous to Republicans and non-Hispanic whites*” and would dilute the political power of Hispanics. Hofeller Study at 9 (emphasis added). The problem, Hofeller explained, was that insufficient information was available to accurately determine the States’ citizen voting-age population for purposes of reapportionment. Without “add[ing] a citizenship question to the 2020 Decennial Census form,” he concluded, such a switch would be “functionally unworkable.” *Id.* at 4.

63. Notably, the Hofeller Study addressed only the possibility of changing the population base for *state*-level redistricting. This is because Hofeller knew that the Constitution and federal law expressly require use of total population as an apportionment base at the *federal* level. Even in his most ambitious private scheming, Hofeller did not imagine that the apportionment base for the U.S. Congress could be changed.

64. When Defendant Trump was elected to the presidency in 2016, Hofeller “urg[ed] [his] transition team to tack the [citizenship] question onto the census.” The transition staffer

⁵ Available at <https://www.commoncause.org/wp-content/uploads/2019/05/2015-Hofeller-Study.pdf> (last accessed July 23, 2020).

⁶ Michael Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, New York Times, May 30, 2019, available at <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html> (last accessed July 23, 2020).

with whom Hofeller spoke then discussed the issue with Defendant Ross and his advisors several times in the early days of the Administration. Soon thereafter, Hofeller ghostwrote “the key portion of a draft Justice Department letter” that claimed—falsely, and with no small amount of irony—that “the [citizenship] question was needed to enforce the 1965 Voting Rights Act,” a statute intended to protect the political power of racial and ethnic minorities.⁷

65. The rest is already well-known. *See generally Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019). In March 2018, Defendant Ross, in his capacity as Secretary of Commerce, announced his intent “to reinstate a question about citizenship on the 2020 decennial census questionnaire.” *Id.* at 2562. Ross “stated that he was acting at the request of the [DOJ], which sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act” *Id.*

66. Of course, this rationale was pretextual. The real reason for Ross’s decision was that stated by Hofeller in his 2015 study: to provide the data necessary to enable the change in apportionment base from total population to citizen voting-age population, and thereby maximize the political power of “Republicans and non-Hispanic whites.”

67. Shortly after Ross announced his decision, two groups of plaintiffs filed suit to block the citizenship question. After a bench trial, a federal district court in New York ruled (among other things) “that the Secretary’s action was arbitrary and capricious” and “based on a pretextual rationale.” *Id.* at 2564. The Supreme Court granted certiorari before judgment and affirmed, agreeing with the district court that “the Secretary’s decision must be set aside because it rested on a pretextual basis.” *Id.* at 2573.

⁷ Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, *supra*.

68. In particular, the Supreme Court found that “the [Voting Rights Act] played an insignificant role in the decisionmaking process.” *Id.* at 2574. Instead, “the Secretary was determined to reinstate a citizenship question from the time he entered office; instructed his staff to make it happen; waited while Commerce officials explored whether another agency would request census-based citizenship data; subsequently contacted the Attorney General himself to ask if DOJ would make the request; and adopted the Voting Rights Act rationale late in the process” as a “distraction” from his true, invidious motive. *Id.* at 2575-76.

69. On July 5, 2019, just days after the Supreme Court rendered its decision, President Trump admitted what the true reason for the citizenship question had always been. At a press conference, he was asked: “What’s the reason . . . for trying to get a citizenship question on the census?” Contrary to what the Administration had maintained in the census litigation, the President answered: “Congress. You need it for Congress, for districting.”⁸

70. With the citizenship question now quashed, however, the Administration sought another way to implement their goal of changing the apportionment base to shift political power to “Republicans and non-Hispanic whites.” Thus, on July 11, 2019—six days after his press-conference remarks—the President issued Executive Order 13880, titled “Collecting Information About Citizenship Status in Connection with the Decennial Census.” 84 Fed. Reg. 33821.

71. In that Executive Order, the President recognized that it was now “impossible . . . to include a citizenship question on the 2020 decennial census questionnaire.” *Id.* Instead, as a backup plan, the President “determined that it is imperative that all executive departments and agencies . . . provide the [Commerce] Department the maximum assistance permissible . . . in

⁸ Remarks by President Trump Before Marine One Departure, July 5, 2019, *available at* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/> (last accessed July 23, 2020).

determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective.” *Id.* To that end, the President “order[ed] all agencies to share information requested by the [Commerce] Department.” *Id.* at 33822. He also “direct[ed] the Department to strengthen its efforts . . . to obtain State administrative records concerning citizenship.” *Id.*

72. For the first time, the President specifically called out the importance of “generat[ing] an estimate of the aggregate number of aliens *unlawfully* present in each State.” *Id.* at 33823 (emphasis added). In addition, the President once again openly acknowledged the true reason why, from the outset, his Administration had been so intently set on collecting citizenship data: not improving enforcement of the Voting Rights Act, but rather, enabling Hofeller’s plan to “design . . . legislative districts based on the population of voter-eligible citizens,” rather than total population. *Id.* at 33823-24.

73. There is a clear through-line running through all of the above actions and decisions: from Hofeller’s original 2015 plan to change the basis of apportionment, which required new citizenship data; to Ross’s decision—at Hofeller’s urging—to place a citizenship question on the census, while giving a pretextual reason to mask his true motive; to the President’s Executive Order instructing the Commerce Department to collect citizenship data through alternate means; to the President’s recent Memorandum purporting to unilaterally shift the basis of congressional apportionment. All of these actions are part of an unconstitutional concerted effort to shift political power away from racial and ethnic minorities, chiefly Latinos, to “Republicans and non-Hispanic whites.”

E. Plaintiffs’ Injuries as a Result of the Challenged Conduct

74. The unlawful conduct alleged herein has caused, is causing, and unless enjoined, will cause Plaintiffs to suffer various injuries in fact.

75. As recognized in the Hofeller Study, removing undocumented immigrants from the apportionment base “alienat[es] Latino voters” and other voters of color, who “perceive [such] a switch . . . as an attempt to diminish their voting strength.” Hofeller Study at 4. In addition to inflicting alienation, it does, in fact, diminish the voting strength of these groups. *See id.* at 6-7.

76. As alleged above, many of the individual Plaintiffs are voters of color, as are many members of the organizational Plaintiffs and many residents of the city Plaintiffs. These include Latinos, African-Americans, Asian-Americans, and voters of other racial and ethnic backgrounds. These voters have suffered dignitary harm as a result of Defendants’ challenged actions. They are also certain to suffer diminished voting strength if those actions are not enjoined.

77. Removing undocumented immigrants from the apportionment base also dilutes the votes and diminishes the representational rights of *citizens*—of all races and ethnicities—who live in jurisdictions with an above-average number of undocumented immigrants. *See* Hofeller Study at 6. As the Department of Justice has previously argued, “[i]t would be patently unfair to penalize” these citizens “by depriving them of fair representation in Congress” and diluting their voting strength merely because “a certain number of members of their community are . . . in the class of potentially deportable aliens.” Federal Defendants’ Post-Argument Mem. at 12, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. filed Feb. 15, 1980).

78. Many of the individual Plaintiffs, many members of the organizational Plaintiffs, and many residents of the city Plaintiffs live in areas with an above-average number of undocumented immigrants. These persons are certain to suffer vote dilution and diminished representational rights if Defendants' challenged actions are not enjoined.

79. The President has already acknowledged as much. The Memorandum expressly notes that one state—California—has “more than 2.2 million illegal aliens” and that the exclusion of those undocumented immigrants from the apportionment base could cost California “two or three . . . congressional seats.” Memorandum § 2. Plaintiffs Common Cause and PANA have members residing in California whose votes would be diluted and who would lose representation under the Memorandum's apportionment regime.

80. By the same token, the State of New York had approximately 725,000 undocumented immigrants in 2016, a number that has likely increased since then.⁹ If implemented, the Memorandum's apportionment regime would likely result in the loss of one of New York's congressional seats, as each seat in New York presently corresponds to approximately 719,000 people.¹⁰ As alleged above, a number of the individual Plaintiffs reside in New York, as do many members of Plaintiff Common Cause. Their votes would be diluted, and they would lose representation, under the Memorandum's apportionment regime.

81. Similarly, the State of Georgia has approximately 400,000 undocumented immigrants—enough to potentially cost the State one congressional seat if they were not

⁹ American Immigration Council, *Fact Sheet: Immigrants in New York*, <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-york> (last accessed July 23, 2020).

¹⁰ *2012 – 2020 Federal Representation by People per House Seat, Senate Seat, and Electors*, The Green Papers, <https://www.thegreenpapers.com/Census10/FedRep.phtml> (last accessed July 23, 2020).

counted.¹¹ Plaintiff City of Atlanta is located in Georgia, as are many members of Plaintiff Common Cause. The votes of their residents and members would be diluted, and they would lose representation, under the Memorandum’s apportionment regime.

82. In addition, as the Department of Justice has recognized, removing undocumented immigrants from the apportionment base “require[s]” residents of areas with an above-average number of undocumented immigrants—including residents who are U.S. citizens—“to assume a greater burden of the cost of state and municipal services” merely because the President has now “determined that a certain percentage of the residents of their community do not exist for purposes of allocation of federal census-based fiscal assistance.” Federal Defendants’ Post-Argument Mem. at 12, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. filed Feb. 15, 1980).

83. Again, many of the individual Plaintiffs, many members of the organizational Plaintiffs, and many residents of the city Plaintiffs live in areas with an above-average number of undocumented immigrants. These persons are certain to suffer fiscal burdens, including increased costs of state and municipal services, if the challenged actions are not enjoined.

84. These increased costs would be felt especially acutely by the city Plaintiffs, which must necessarily provide municipal services to citizens, documented immigrants, and undocumented immigrants on an equal basis. *See, e.g., Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 74 (1978) (noting that “police, fire, and health protection” are “basic municipal services” whose delivery to all residents is a “city’s responsibility”); *Plyler*, 457 U.S. 202 (holding that the right to a free public education extends to minor undocumented immigrants).

¹¹ American Immigration Council, *Fact Sheet: Immigrants in Georgia*, <https://www.americanimmigrationcouncil.org/research/immigrants-in-georgia> (last accessed July 23, 2020).

85. For example, the State of Georgia reportedly has the seventh-largest number of undocumented immigrants in the United States, many of them concentrated in the city of Atlanta. If undocumented immigrants were removed from the apportionment base, Plaintiff City of Atlanta would have to continue to provide these municipal services to those residents without receiving federal resources and representation commensurate with their numbers.

86. Plaintiff PANA, moreover, would suffer certain harm to its organizational mission if the challenged actions are not enjoined. Again, PANA's mission centers around providing support to immigrant communities, including foreign nationals who have resettled and continue to seek refuge in the San Diego region. Because the San Diego region has a higher-than-average number of undocumented immigrants, removing undocumented immigrants from the apportionment base would reduce the federal resettlement resources directed to that region—resources on which PANA depends to carry out its mission.

87. Importantly, whatever figures the President transmits to Congress in January 2021, the issuance of the Memorandum is *already* inflicting irreparable injury on Plaintiffs. The census count is ongoing and is not expected to conclude until the end of October.¹² At this moment, the Memorandum is causing fear and confusion among the immigrant population and reducing the likelihood that immigrants (both documented and undocumented) will respond to the census survey.¹³ Unless Defendants' actions are declared unlawful and void now, before the

¹² *Important Dates*, United States Census 2020, <https://2020census.gov/en/important-dates.html> (last accessed July 23, 2020).

¹³ See, e.g., *Exclusion of undocumented immigrants from the Census is unconstitutional*, El Sol Latino, July 22, 2020, <https://elsolnewsmedia.com/jim-kenney-exclusion/> (last accessed July 23, 2020) (reporting statement of the mayor of Philadelphia that the Memorandum “appears targeted to suppress census participation and create fear and confusion among undocumented immigrant communities”); Kendall Ashman, *President's memo to exclude undocumented immigrants from 2020 census apportionment count*, ABC 40/29 News, July 22, 2020, <https://www.4029tv.com/article/presidents-memo-to-exclude-undocumented-immigrants-from-2020-census-apportionment-count/33397647#> (last accessed July 23,

conclusion of the count, the results of the census—and the consequent impact on congressional apportionment—will be irretrievably altered. It will be too late to remedy these harms in January 2021, when President is scheduled to transmit the results of the count to Congress.

COUNT I
Violation of U.S. Const., Art. I, § 2, cl. 3 and U.S. Const., amend. XIV, § 2

88. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

89. As set forth above, Art. I, § 2, cl. 3, as modified by Section 2 of the Fourteenth Amendment, provides that “Representatives shall be apportioned among the several states according to their respective numbers, counting *the whole number of persons in each state*, excluding Indians not taxed.” U.S. Const., amend. XIV, § 2.

90. Since the Founding, all three branches of the federal government have consistently agreed that “the whole number of persons in each state” includes non-citizens, irrespective of their immigration status—and, consequently, that non-citizens must be counted in the census and included in the basis for congressional apportionment.

2020) (reporting view of Arkansas immigrant organization that “the president’s memo will potentially scare immigrant communities from taking part” in the census count); Alexandra Watts, *Charlotte Reacts to Trump’s Proposed Census Changes*, WFAE, July 22, 2020 <https://www.wfae.org/post/charlotte-reacts-trumps-proposed-census-changes-0#stream/0> (last accessed July 23, 2020) (reporting that “[m]embers of North Carolina’s Latino community say those who are in the country illegally will be even more fearful of filling out the 2020 census after President Trump released [the Memorandum]”); *Trump excluding those in US illegally from reapportionment*, Adirondack Daily Enterprise, July 22, 2020, <https://www.adirondackdailyenterprise.com/news/politics/2020/07/trump-excluding-those-in-us-illegally-from-reapportionment/> (last accessed July 23, 2020) (reporting that the Memorandum has “dr[awn] fury and backlash from critics who alleged that it was intended to discourage participation in the [census] survey, not only by people living in the country illegally but also by citizens who fear that participating would expose noncitizen family members to repercussions”); Micah Danney, *SPLC calls Trump census memo unlawful and unconstitutional*, Alabama Reporter, July 22, 2020, <https://www.alreporter.com/2020/07/22/splc-calls-trump-census-memo-unlawful-and-unconstitutional/> (last accessed July 23, 2020) (reporting statement of the Southern Poverty Law Center that “the memo will cause widespread confusion and deter people from participating in the census”).

91. By purporting to exclude undocumented immigrants from the basis for congressional apportionment, the President has violated Art. I, § 2, cl. 3 of the U.S. Constitution and Section 2 of the Fourteenth Amendment to the U.S. Constitution.

92. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

COUNT II

Violation of Equal Protection Clause – Vote Dilution and Representational Injury

93. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

94. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, made applicable to the federal government via the Due Process Clause of the Fifth Amendment, provides that the government may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1, cl. 2.

95. In particular, the Equal Protection clause prohibits the government from taking action in the apportionment process that dilutes or debases the weight of a voter’s vote based on the happenstance of where that voter lives. *See Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964).

96. By purporting to exclude undocumented immigrants from the congressional apportionment base, Defendants have unlawfully diluted Plaintiffs’ votes (or the votes of their members and/or residents) by requiring them to live and vote in congressional districts with a population that is higher than an equal proportion of persons as determined by the census and as required by the Constitution. Similarly, Defendants have caused Plaintiffs (or their members and/or residents) to suffer representational injury by forcing them to compete for their

Representative's limited attention and resources with an artificially high number of fellow-constituents.

97. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

COUNT III
Violation of Equal Protection Clause – Invidious Discrimination

98. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

99. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, made applicable to the federal government via the Due Process Clause of the Fifth Amendment, provides that the government may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1, cl. 2.

100. In particular, the Equal Protection Clause prohibits the government from taking adverse action against any person on the basis of race, ethnicity, or national origin. *See Flowers v. Mississippi*, 139 S. Ct. 2228 (2019). This prohibition extends to the apportionment process, and encompasses not only “explicit racial classifications, but also . . . laws neutral on their face but ‘unexplainable on grounds other than race.’” *Miller v. Johnson*, 515 U.S. 900, 905 (1995).

101. As alleged above, the President's Memorandum is the culmination of a years-long effort to transfer political power *en masse* from voters of color—chiefly, but not exclusively, Latino voters—to “Republicans and non-Hispanic whites.” In other words, the Memorandum, and the policy changes embodied therein, was motivated by intentional invidious discrimination on the basis of race, ethnicity, and/or national origin.

102. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

COUNT IV
Violation of 2 U.S.C. § 2a and 13 U.S.C. § 141

103. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

104. As set forth above, 13 U.S.C. § 141(b) requires the Secretary of Commerce to transmit to the President “the tabulation of *total population* by States . . . as required for the apportionment of Representatives in Congress.”

105. Thereafter, 2 U.S.C. § 2a(a) requires the President to transmit to Congress “a statement showing the *whole number of persons* in each State . . . as ascertained under the . . . decennial census” and “the number of Representatives to which each State would be entitled” applying the so-called “method of equal proportions” to *that* “whole number of persons.”

106. These statutes do not authorize the Secretary of Commerce to transmit to the President any number *other* than the “total population by States.” Nor do they authorize the President to transmit to Congress, or to calculate apportionment based on, any number *other* than the “whole number of persons in each State . . . as ascertained under the . . . decennial census.”

107. The President’s statutory role in this calculating the apportionment figures is purely ministerial and neither calls for, nor permits, the President’s exercise of discretion with regard to the proper apportionment basis or the proper underlying theory of democratic representation.

108. By purporting to require the Secretary of Commerce to transmit to the President population figures concerning or adjusted to exclude undocumented immigrants, and by purporting to exclude undocumented immigrants in the apportionment of congressional representatives, the President has violated 2 U.S.C. § 2a(a) and has commanded the Secretary of Commerce to violate 13 U.S.C. § 141(b).

109. These violations have caused, are causing, and unless Defendants are enjoined, will continue to cause Plaintiffs to suffer injury-in-fact as alleged above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for injunctive and declaratory relief as requested above under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a), and more specifically pray for:

A. A declaration that the Memorandum, and the other actions challenged herein, are unauthorized by and contrary to the Constitution and laws of the United States, and therefore are null, void, and without force;

B. A preliminary injunction and permanent injunction halting and restraining Defendants' violations of the U.S. Constitution and laws of the United States alleged herein, by ordering, among other things:

1. That Defendant Ross, Defendant U.S. Department of Commerce, and their employees and agents (a) not transmit to the President any data regarding citizenship or immigration status; (b) not transmit to the President any census-related data or calculation other than the whole number of persons residing in each State, excluding Indians not taxed; and (c) provide no support or assistance of any kind to the President in carrying out his stated intent to exclude persons from his enumeration and apportionment determinations on the basis of citizenship or immigration status;

2. That Defendant Trump include all of the inhabitants of each State, excluding Indians not taxed, without respect to such inhabitants' citizenship or immigration status, in the enumeration and apportionment calculations that he prepares and transmits to Congress; and

3. That Defendant Johnson neither certify nor transmit to the States any purported apportionment determination by the President that excludes persons from the apportionment base on the basis of their citizenship or immigration status.

C. An award of Plaintiffs' reasonable fees, costs, and expenses, including attorney's fees, pursuant to 28 U.S.C. § 2412; and

D. Such other and further relief as the Court may deem just and proper.

DATED: July 23, 2020

/s/ Daniel S. Ruzumna

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NEW YORK IMMIGRATION
COALITION, MAKE THE ROAD NEW
YORK, CASA, AMERICAN-ARAB ANTI-
DISCRIMINATION COMMITTEE, ADC
RESEARCH INSTITUTE, FIEL HOUSTON
INC.

Civil Action No.

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United
States,

UNITED STATES DEPARTMENT OF
COMMERCE;

WILBUR L. ROSS, JR., in his official
capacity as Secretary of Commerce,

BUREAU OF THE CENSUS, an agency
within the United States Department of
Commerce; and

STEVEN DILLINGHAM, in his official
capacity as Director of the U.S. Census
Bureau,

Defendants.

COMPLAINT

1. This action challenges President Trump’s lawless attempt to exclude undocumented immigrants from the “persons” who must be counted in the Census for purposes of apportioning congressional seats to states. This xenophobic effort to deny the basic humanity of undocumented immigrants violates Article I’s mandate to count all “persons” in the Census, and the Fourteenth Amendment’s requirement that

“Representatives shall be apportioned among the several States according to their respective numbers, counting the *whole number of persons* in each State” (emphasis added). These words leave no room for doubt: they expressly mandate counting “the whole number of persons” living in the United States for purposes of congressional apportionment. As the Supreme Court held just four years ago, “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population,” including all non-citizens living in the United States, regardless of legal status. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1129 (2016).

2. Despite this exceedingly clear constitutional command and binding Supreme Court precedent, on July 21, 2020, Defendant Trump issued a Presidential Memorandum addressed to Defendant Commerce Secretary Wilbur Ross titled, “Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census” (the “Memorandum”). The Memorandum purports to declare—for the first time in our nation’s history—that it is “the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.).” In other words, the Memorandum directs Secretary Ross: do not count undocumented immigrants at all for purposes of congressional apportionment.¹

¹ The Memorandum appears to potentially exclude both those with no form of status whatsoever as well as those currently authorized to remain and work in the U.S., such as holders of Deferred Action for Childhood Arrivals, who are nonetheless not “in lawful status under the Immigration and Nationality Act.” See *Regents of the Univ. of California v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476, 487 (9th Cir. 2018) (“recipients of deferred action enjoy no formal immigration status”) (quotations omitted), *rev’d in part, vacated in part sub nom Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 412

3. Rarely does any government actor, much less the President of the United States, so openly and obviously violate the Constitution. The Fourteenth Amendment mandates “counting the whole number of persons” for congressional apportionment. As the Supreme Court reaffirmed nearly four decades ago, an undocumented individual living in the United States “is surely ‘a person’ in any ordinary sense of that term,” “[w]hatever his status under the immigration laws.” *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The President cannot change the fact that undocumented individuals are human beings.

4. The new “policy” also breaks an uninterrupted line of history: every Decennial Census in our nation’s history has included every person who lives in the United States, regardless of citizenship or immigration status, for purposes of apportioning congressional representation. Defendant Trump’s new policy set forth in the Memorandum therefore not only violates the plain and unequivocal text of Section 2 of the Fourteenth Amendment and related Supreme Court precedent, it also departs from hundreds of years of consistent Census practice.

5. In addition to contravening the plain text of the Constitution, Supreme Court precedent, and an unbroken line of historical practice, the policy conflicts with the Department of Justice’s own longstanding position—asserted repeatedly over decades in litigation in courts around this country, including to this Court in 2018—that undocumented immigrants are “persons” who must be counted in the Decennial Census

(E.D.N.Y. 2018) (“Deferred action does not . . . confer lawful immigration status”), *vacated and remanded sub nom. Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020). For the sake of consistency, Plaintiffs refer to all those excluded here as “undocumented.”

and apportionment calculations. The Administration's own lawyers have made clear that the policy is unconstitutional.

6. The new policy is a discriminatory attack on immigrants and immigrant communities, and particularly immigrant communities of color. It is intended to erase these individuals and communities, and to send the message that they do not count. Indeed, whereas the original Apportionment Clause in Article I, Section 2 infamously discounted enslaved Black Americans as three-fifths of a person for purposes of congressional apportionment, the Memorandum raises this numerical dehumanization to a new level: not three-fifths, but zero.

7. In practical terms, the policy will result in states such as California, Texas, and New York receiving fewer congressional districts and Electoral College votes, diluting the political power of the residents of these states. The policy will also deplete federal resources from states and localities with substantial immigrant populations. The policy is rank discrimination on the basis of national origin, race, and ethnicity in violation of the Equal Protection and Due Process guarantees of the Fifth Amendment.

8. The effects of the new policy will cascade beyond the exclusion of undocumented immigrants from the Census count. It is no coincidence that the Memorandum was unveiled shortly before the Census Bureau was scheduled to commence non-response follow up ("NRFU") field operations to identify persons who have not yet responded to the Census. The new policy of excluding undocumented immigrants from the Census conveys a xenophobic message aimed at suppressing Census participation from households containing immigrants and noncitizens. Unless enjoined, the policy undoubtedly will undermine the effectiveness of the Census Bureau's

operations and deter members of immigrant communities—including undocumented immigrants, noncitizen immigrants with legal status, and United States citizens—from participating in the Census.

9. The new policy also violates a panoply of other constitutional and statutory prohibitions, including constitutional separation of powers, the Census Act, and the Administrative Procedure Act.

10. This is not Defendant Trump’s first attempt to weaponize the Census to attack immigrant communities. Last year, the Supreme Court affirmed that the administration’s effort to add a citizenship question to the 2020 Decennial Census would reduce Census responses among non-citizen households, and held that Defendant Ross’s publicly-stated rationale—purportedly to help enforce the Voting Rights Act—was “contrived.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2565-66, 2575 (2019).

11. In issuing the Memorandum, Defendant Trump has now confessed the real reason behind that failed effort: to delete undocumented immigrants from the decennial enumeration altogether, and to exclude them categorically from the very concept of *personhood* in the Constitution. Among its many cynical motivations, the President’s new policy is an obvious attempt to evade the consequences of the Supreme Court’s decision and the permanent injunction issued by the district court in the citizenship question litigation. *See Dep’t of Commerce*, 139 S. Ct. 2551; Order, *New York v. Dep’t of Commerce*, No. 18-CV-2921, ECF No. 634 (S.D.N.Y. July 16, 2019).

12. Plaintiffs therefore request declaratory, injunctive, and/or mandamus relief to prohibit Defendants from excluding undocumented immigrants from the population count used to apportion the House of Representatives.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1346(a), and 28 U.S.C. § 1361.

14. Venue is proper in this judicial district under 28 U.S.C. § 1391(e).

15. This Court has the authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

PARTIES

A. Plaintiffs

1. The New York Immigration Coalition

16. The New York Immigration Coalition (“NYIC”) is an umbrella policy and advocacy organization for more than 200 groups in New York State, representing the collective interests of New York’s diverse immigrant communities and organizations. It has its principal place of business at 131 West 33rd St, New York, NY 10001.

17. NYIC’s mission is to unite immigrants, members, and allies so that all New Yorkers can thrive. It envisions a New York State that is stronger because all people are welcome, treated fairly, and given the chance to pursue their dreams. NYIC pursues solutions to advance the interests of New York’s diverse immigrant communities and advocates for laws, policies, and programs that lead to justice and opportunity for all immigrant groups. It seeks to build the power of immigrants and the organizations that serve them to ensure their sustainability, improve people’s lives, and strengthen New York State.

18. NYIC’s 200-plus members are dues-paying, 501(c)(3), nonprofit organizations that are committed to advancing work on immigrant justice, empowerment,

and integration. NYIC's members are located throughout New York State and beyond. These member groups include grassroots community groups, social services providers, large-scale labor and academic institutions, and organizations working in economic, social, and racial justice. A number of NYIC's member organizations receive funding from a variety of local, state, and federal government sources to carry out social service, health, and education programs. Many of these organizations receive governmental funding that is directly tied to the Decennial Census.

19. New York is likely to lose at least one House seat during the post-2020 Decennial Census apportionment process as a result of the exclusion of undocumented immigrants from the apportionment base. NYIC member organizations will lose political power because of New York's loss of at least one seat in the House of Representatives.

20. The exclusion of undocumented immigrants from the Census base count will very likely reduce the amount of federal funds that are distributed to the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population. This will injure a number of NYIC's member organizations that receive funding to carry out social service, health, and education programs in these areas.

21. As an organization, NYIC has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations. For the 2020 Decennial Census, NYIC has and will continue to invest resources in Get Out the Count efforts through robust advocacy, outreach, and mass educational forums.

22. The Census is ongoing, with the Census Bureau's NRFU just getting started.² NYIC plans to continue its Get Out the Count efforts during this NRFU. In its extensive Decennial Census outreach, NYIC will now face a much more difficult environment due to the perception among New York undocumented immigrants that they no longer need to complete the Census now that undocumented immigrants are being excluded from the apportionment, as well as immigrant communities' heightened fear of interacting with government workers that this new policy will cause. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants who will be concerned that participating might endanger their loved ones.

23. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment count, as well as confusion among undocumented communities about whether they need to or should fill out the Census in light of the Memorandum, NYIC will be forced to expend additional resources on their outreach efforts to try to reduce the negative impact of the Memorandum on the response rate in the immigrant communities they serve, particularly to undocumented immigrant communities. Staff time and other resources devoted to NYIC's Get Out the Count efforts will be diverted to communications to combat fear and disinformation resulting from the Memorandum. Moreover, NYIC has already, and will continue to, divert resources from its other organizational priorities, including its work on health care

² U.S. Census Bureau, *2020 Census: Nonresponse Followup*, <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html> (June 19, 2020).

and language access issues, to address these concerns about decreased Census participation.

2. *Make the Road New York*

24. Plaintiff Make the Road New York (“Make the Road New York”) is a nonprofit membership organization with offices and service centers in Brooklyn, Queens, Staten Island, Suffolk County, and White Plains.

25. Make the Road New York’s mission is to build the power of immigrant and working-class communities to achieve dignity and justice. To achieve this mission, they engage in four core strategies: Legal and Survival Services, Transformative Education, Community Organizing and Policy Innovation.

26. Make the Road New York has more than 22,000 members who reside in New York City, Long Island and Westchester County. These members lead multiple organizing committees across numerous issues and program areas of concern to the organization. Members take on leadership roles in the campaigns, determine priorities, and elect the representatives who comprise most of the Board of Directors.

27. The apportionment resulting from the exclusion of undocumented immigrants from the apportionment base will likely deprive New York of at least one seat in the House of Representatives, diminishing the political and voting power and influence, and thus injuring, Make the Road members who live in New York.

28. The exclusion of undocumented immigrants from the Census base count will very likely reduce the amount of federal funds that are distributed to states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population.

29. Make the Road New York members include individuals who do not have lawful immigration status and as a result of the Memorandum will not be counted for apportionment of Congressional seats. Make the Road New York members also reside in states and localities where immigrant communities of color constitute significant portions of the population, including New York City and suburban areas outside of New York City. Its members in these jurisdictions rely on a number of government services whose funding is allocated based on population and demographics determined by the Decennial Census. This includes parents with children enrolled in Title I schools, and drivers who use the roads on a daily basis and thus depend on federal highway funds to perform their jobs.

30. Make the Road New York members will be deprived of funding to which they would be entitled by a more complete Census count.

31. One of the many Make the Road members who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Perla Liberato. Ms. Liberato is a resident of Queens County, NY, where she works as a Youth Organizer. Because Ms. Liberato resides in New York State, she will lose political power because of her state's loss of representation in Congress.

32. Another Make the Road member who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Yatziri Tovar. Ms. Tovar is a resident of Bronx County, NY, and works as a media specialist. Because Ms. Tovar resides in New York State, she will lose political power because of her state's loss of representation in Congress.

33. Make the Road New York has an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. For the 2020 Decennial Census, Make the Road New York is engaged in outreach and education work and receiving outside funding to help support this work. This work includes, among other things, general education programs, workshops for members, and person-to-person outreach. Make the Road New York's Census outreach efforts have already contacted over 100,000 people and assisted over 7,500 people with completing the Census questionnaire.

34. Make the Road New York will now face a much more difficult environment due to its constituents' heightened fear of interacting with government workers, which will be increased by anti-immigrant actions such as the decision to exclude undocumented immigrants from the apportionment base. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants, who will be concerned that participating in the Decennial Census might endanger their loved ones.

35. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment base, as well as confusion among undocumented communities about whether they need to or should fill out the Census in light of the Memorandum, Make the Road New York will be forced to expend more resources on their Decennial Census outreach efforts to reduce the effect of this policy change on the response rate in the immigrant communities of color it serves.

36. Because of the need to increase the time and money spent on Decennial Census outreach due to the fear and confusion generated by the Administration's decision

to exclude undocumented immigrants from the apportionment base, Make the Road New York will need to divert resources from other areas critical to its mission including civic engagement and providing legal services.

3. *CASA*

37. Plaintiff CASA is a nonprofit membership organization headquartered in Langley Park, Maryland. It has offices in Maryland, Virginia and Pennsylvania. CASA is the largest membership-based immigrants' rights organization in the mid-Atlantic region, with more than 90,000 members.

38. CASA's mission is to create a more just society by increasing the power of and improving the quality of life in low-income immigrant communities. To advance this mission, CASA offers social, health, job training, employment, and legal services to immigrant communities. CASA serves nearly 20,000 people a year through its offices and provides support to additional clients over the phone and through email.

39. CASA as an organization receives governmental funding that is directly tied to the Decennial Census. Among other things, CASA receives Community Development Block Grant (CDBG) funds that are allocated based on population and demographics determined by the Decennial Census, including poverty levels. The exclusion of undocumented immigrants in the Census base count will very likely result in a lower percentage of CDBG funds allocated to the areas that CASA serves, and therefore CASA will receive fewer such funds.

40. CASA has an ongoing commitment to promote participation in the Decennial Census among its members and constituents. For the 2020 Decennial Census, CASA is participating in ongoing outreach and education work.

41. CASA plans to continue its Get Out the Count efforts during the NRFU. But CASA's efforts will be undermined by the decision to exclude undocumented immigrants from the congressional apportionment because this will decrease participation among undocumented immigrants who will believe that they no longer need to complete the Census, and it will heighten fear of interacting with government workers among immigrant communities of color. This fear extends not only to undocumented immigrants but also to family members of undocumented immigrants, who will be concerned that participating in the Decennial Census might endanger their loved ones.

42. Because of the difficulties created by the decision to exclude undocumented immigrants from the Census count base, CASA will be forced to expend more resources on its Decennial Census outreach efforts to reduce the effect of this change in policy on the response rates in the immigrant communities of color it serves.

43. Because of the need to increase the time and money spent on Decennial Census outreach due to the decision to exclude undocumented immigrants from the Census count base, CASA will need to divert resources from other areas critical to its mission, including job training and health outreach.

4. The American-Arab Anti-Discrimination Committee

44. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a civil rights organization committed to defending and promoting the rights and liberties of Arab-Americans and other persons of Arab heritage. ADC is the largest American-Arab grassroots civil rights organization in the United States.

45. Founded in 1980 by former Senator James Abourezk, ADC's objectives include combating stereotypes and discrimination against and affecting the Arab-

American community in the United States, serving as a public voice for the Arab-American community in the United States on domestic and foreign policy issues, and educating the American public in order to promote greater understanding of Arab history and culture. ADC advocates, educates, and organizes to defend and promote human rights and civil liberties of Arab-Americans and other persons of Arab heritage.

46. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California, New York, and Texas. Its members are also active through ADC's 28 local chapters and organizing committees, located in 20 states and the District of Columbia, including in Tucson and Phoenix, Arizona; Los Angeles and Orange County, California; Miami and Orlando, Florida; New York, New York; and Austin and Dallas, Texas.

47. ADC has members in states with significant populations of undocumented immigrants, such as Texas, New York, Florida, California, Arizona and Illinois. These states—particularly Arizona, California, New York, and Texas—are likely to lose at least one House seat (or not gain at least one House seat they would have gained) during the post-2020 Decennial Census apportionment process, as a result of the exclusion of undocumented immigrants from the apportionment base. Many but not all of ADC's members in these states are U.S. citizens. The loss of political representation and political power will injure ADC's members in these states.

48. The exclusion of undocumented immigrants in the Census base count will reduce the amount of federal funds that are distributed to the states and localities where Latinos, Asian Americans, Arab Americans, and other immigrant communities of color constitute significant portions of the population. This will injure ADC members who

reside in these areas, such as San Antonio and Houston, Texas and Miami-Dade, Broward, and Orange Counties, Florida, Kings County, New York, and Prince George's County, Maryland. For example, ADC has members in these jurisdictions with children enrolled in Title I schools and members who use the roads on a regular basis and thus depend in part on federal highway funds for their upkeep.

49. As an organization, ADC is committed to promoting participation in the Decennial Census among its members and constituents. For the 2020 Decennial Census, ADC has undertaken engagement work within the Arab-American community. For example, ADC is conducting training for Census enumerators, running advertisements encouraging participation, and holding a strategy symposium, among other activities. ADC plans to continue its Get Out the Count work through the Non-Response Follow-Up time period.

50. ADC faces a difficult environment due to increased fear of interacting with government workers among the Arab-American community, a fear that will be heightened now because of the decision to exclude undocumented immigrants from the apportionment. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants, who fear that participating in the Decennial Census might endanger their loved ones.

51. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment base, ADC will be forced to invest more resources in its Decennial Census outreach efforts to reduce the effect of this policy change on the response rates in the communities it serves.

52. Because of the need to increase the time and money spent on Decennial Census outreach caused by the decision to exclude undocumented immigrants from the apportionment base, ADC will need to divert resources from other areas critical to its mission, including organizing, issue advocacy efforts, and educational initiatives.

5. The ADC Research Institute

53. Plaintiff ADC Research Institute (“ADCRI”) is a 501(c)(3) corporation founded in 1982 by former Senator James Abourezk. ADCRI sponsors public programs and initiatives in support of the constitutional and First Amendment rights of Arab-Americans, as well as research studies, publications, seminars, and conferences that document discrimination faced by Arab-Americans in the workplace, schools, media and government agencies. These programs also promote a better understanding of Arab cultural heritage by the public and policy makers.

54. ADCRI is currently engaged in promoting Decennial Census participation among its constituents. ADCRI plans to continue this work through NRFU time period.

55. ADCRI is now facing a much more difficult environment due to increased fear in the Arab-American community of interacting with government workers, due in part to anti-immigrant actions such as the exclusion of undocumented immigrants from the apportionment base. Because of this heightened fear and suspicion, ADCRI will be forced to invest more resources in its outreach efforts to reduce the effect of this policy change on the response rates in the communities it serves.

56. Because of the need to increase the time and money spent on Decennial Census outreach due to the decision to exclude undocumented immigrants from the apportionment base, ADCRI will need to divert resources from other areas critical to its

mission, including its engagement with public school teachers and other educational issues

6. *FIEL Houton Inc.*

57. FIEL Houston Inc. (“FIEL”) is a membership-based not-for-profit organization based in Houston, Texas. FIEL is an immigrant-led organization who advocates for just laws for immigrant youth, their families, access to higher education for all people regardless of immigration status and access to justice for the community.

58. FIEL provides resources for undocumented students, understanding the path to college is unsteady for many first and even second-generation Americans. FIEL’s office is open to anyone seeking guidance in their process of obtaining a higher education, including assistance with applying to college and applying for scholarships and other financial aid. FIEL also provides a variety of immigration services for our community—from providing legal counsel for immigrants to begin their pathway to citizenship to handling most immigration cases.

59. FIEL was born out of the need for civic engagement in support of undocumented students seeking a higher education and conducts organizing for the betterment of the communities they serve, including outreach and campaigns related to the 2020 Decennial Census directed at immigrant communities in Texas.

60. Today, FIEL has approximately 11,000 members in the greater Houston area who help lead FIEL’s organizing. FIEL members reside in parts of Texas where immigrant communities of color constitute significant portions of the population, including Harris County.

61. Texas would lose at least one House seat (or not gain at least one House seat they would have gained) during the post-2020 Decennial Census apportionment process, as a result of the exclusion of undocumented immigrants from the apportionment base. The loss of political representation and political power will therefore injure FIEL's many members who live in Texas

62. FIEL members in Houston rely on a number of government services whose funding is allocated based on population and demographics determined by the decennial Census. This includes parents with children enrolled in Title I schools, drivers who use the roads on a daily basis and thus depend on federal highway funds to perform their jobs, and many other programs and facilities that receive Census-guided funding. FIEL members will be deprived of the benefits of census-guided funding to which they would be entitled by a more complete census count.

63. One of the many FIEL members who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Deyanira Palacios. Ms. Palacios is a lawful permanent resident and a resident of Montgomery County, Texas. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives.

64. Another FIEL member who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Karen Ramos. Ms. Ramos is a resident of Harris County, Texas, where she works as a realtor. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives. Ms. Ramos is entitled to remain and work lawfully in the United States through the Deferred Action for Childhood Arrivals ("DACA")

Program. She is entitled to be counted in the ongoing 2020 Decennial Census along with all other residents of Texas, regardless of their immigration status.

65. The exclusion of undocumented immigrants from the census base count will very likely reduce the amount of federal funds that are distributed to the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population, including Texas. This will injure FIEL and its members who benefit from census-guiding funding to carry out social service, health, and education programs in these areas.

66. As an organization, FIEL has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations. For the 2020 Decennial Census, FIEL has and will continue to invest resources in Get Out the Count efforts.

67. The Census is ongoing, with the Census Bureau's Non-Response Follow-Up just getting started. FIEL plans to continue its Get Out the Count efforts during this Non-Response Follow-Up. In its extensive Decennial Census outreach, FIEL will now face a more difficult environment due to the perception among undocumented immigrants in Texas that they no longer need to complete the Census now that undocumented immigrants are being excluded from the apportionment, as well as immigrant communities' heightened fear of interacting with government workers that this new policy will cause. This fear extends not only to undocumented immigrants, but also to family and household members of undocumented immigrants who will be concerned that participating might endanger their loved ones.

68. Because of the heightened fear and suspicion created by the decision to exclude undocumented immigrants from the apportionment count, as well as confusion among undocumented communities about whether they need to or should fill out the Census in light of the Memorandum, FIEL will be forced to expend additional resources on their outreach efforts to try to reduce the negative impact of the Memorandum on the response rate in the immigrant communities they serve, particularly to undocumented immigrant communities. Staff time and other resources devoted to FIEL's Get Out the Count efforts will be diverted to communications to combat fear and disinformation resulting from the Memorandum. Moreover, FIEL has already, and will continue to, divert resources from its other organizational priorities, including its work on access to education for students, to address these concerns about decreased census participation within immigrant communities.

69. Because of the need to increase the time and money spent on Decennial Census outreach due to the fear and confusion generated by the Administration's decision to exclude undocumented immigrants from the apportionment base, FIEL will need to divert resources from other areas critical to its mission such as other civic engagement activities.

B. Defendants

70. Defendant Donald J. Trump is the President of the United States. In that capacity, Defendant Trump issued a July 21, 2020 Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, described *infra*. As President, he has the statutory responsibility of transmitting to Congress "a statement showing *the whole number of persons* in each State, excluding Indians not taxed, as

ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.” 2 U.S.C. § 2a (emphasis added). He is sued in his official capacity.

71. Defendant United States Department of Commerce is a cabinet agency within the executive branch of the United States Government. The Commerce Department is responsible for planning, designing, and implementing the 2020 Decennial Census. 13 U.S.C. § 4.

72. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He oversees the Bureau of the Census (“Census Bureau”) and is thus responsible for conducting the Decennial Census of the population. 13 U.S.C. § 141(a). He has statutory responsibility to “take a decennial census of the population,” 13 U.S.C. § 141(a), and for reporting to the President by January 1, 2021, a “tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States,” 13 U.S.C. § 141(b). He is sued in his official capacity.

73. Defendant Census Bureau is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is the agency responsible for planning and administering the Decennial Census.

74. Defendant Steven Dillingham is the Director of the Census Bureau and thus has responsibility for administering a complete count of all persons residing in the United States, including for the purpose of providing that figure to the Secretary of Commerce for transmission to the President. He is sued in his official capacity.

FACTS

A. Background on the Decennial Census

1. *The Constitutional Command to Include All People in the Census for Purposes of Congressional Apportionment*

75. The Constitution requires a Decennial Census for the purpose of determining the number of Representatives to which each State is entitled. Article I, Section 2, Clause 3 provides that “Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers” (the Apportionment Clause). U.S. Const. art. I, § 2, cl. 3. It also directs that “[t]he actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct” (the Census Clause). *Id.*

76. Key here, Section 2 of the Fourteenth Amendment provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting *the whole number of persons* in each State, excluding Indians not taxed.” *Id.* amend. XIV, § 2 (emphasis added).

77. “By its terms, therefore, the Constitution mandates that every ten years the federal government endeavor to count *every single person* residing in the United States, whether citizen or noncitizen, *whether living here with legal status or without,*” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states.” *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019) (emphases added).

78. Consistent with this express constitutional mandate, the federal government has conducted a Census that includes all persons living in the United States, regardless of citizenship or legal status, every ten years since 1790.

79. This was historically subject to only two qualifications, both contained in the explicit text of the Constitution: “Indians not taxed,” and the Three-Fifths Clause for persons who were enslaved. The first exception has not been relevant for some time; the second, the Three-Fifths Clause, assumed that enslaved persons would be included in the Census, but provided that they would not be counted as full persons for the purposes of calculating population for congressional apportionment.

80. The explicit nature of these two qualifications, neither of which applies in modern times, reinforces that the Decennial Census and the resulting apportionment base must include every person physically living in the United States.

81. The Civil War and the abolition of slavery repudiated the Three-Fifths Clause, which the Fourteenth Amendment then repealed. During debates over the Reconstruction Amendments, Congress considered, and affirmatively rejected, proposals that would have altered Congressional apportionment to be based on the population of voters, rather than total population. Thaddeus Stevens introduced a constitutional amendment that would have apportioned House seats “according to their respective legal voters.” *Evenwel*, 136 S. Ct. at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess., 10 (1866)). Congress rejected that proposal. *Id.*

82. As ratified, Section 2 of the Fourteenth Amendment carried forward the basic total population mandate of the Apportionment Clause, providing, as stated, that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.”

83. In introducing this final language on the Senate Floor, Senator Jacob Howard explained the provision as follows:

[The] basis of representation is numbers . . . that is, the whole population except untaxed Indians and persons excluded by the State laws for rebellion or other crime The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.

Evenwel, 136 S. at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess., 2766-2767 (1866)).

84. In *Evenwel v. Abbott*, the Supreme Court held that Section 2 of the Fourteenth Amendment “retained total population as the congressional apportionment base.” *Evenwel*, 136 S. Ct. at 1128. The proposition that non-citizens must be included in the population base for apportioning the total number of U.S. House seats to each state was central to the Court’s holding that the Fourteenth Amendment does not prohibit states from including non-citizens in drawing legislative districts within a state. The Court explained: “It cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis.” *Id.* at 1129. The concurring Justices agreed that “House seats are apportioned based on total population.” *Id.* at 1148 (Alito, J., concurring in the judgment); *see also id.* at 1138 (Thomas, J., concurring in the judgment) (“[F]eatures of the apportionment for the House of Representatives reflected the idea that States should wield political power in approximate proportion to their number of inhabitants.”). *See also Wesberry v. Sanders*, 376 U.S. 1,

14 (1964) (noting that the “principle solemnly embodied in the Great Compromise” is “equal representation in the House for equal numbers of people”).

85. Lower courts have similarly recognized that the Constitution requires that all people be included in the population totals used for Congressional apportionment, regardless of citizenship status. As a three-judge panel of the District Court for the District of Columbia explained:

The language of the Constitution is not ambiguous. It requires the counting of the “whole number of persons” for apportionment purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly “persons.” By making express provision for Indians and slaves, the Framers demonstrated their awareness that without such provisions, the language chosen would be all- inclusive. . . We see little on which to base a conclusion that illegal aliens should now be excluded, simply because persons with their legal status were not an element of our population at the time our Constitution was written.

Fed’n for Am. Immigration Reform v. Klutznick, 486 F. Supp. 564, 576 (D.D.C. 1980);
see also, e.g., New York, 351 F. Supp. 3d at 514.

2. *The Government’s Repeated Acknowledgment of Its Constitutional Obligation to Include All People in the Census for Purposes of Congressional Apportionment*

86. The Justice Department has likewise not only conceded but forcefully argued that it has a constitutional obligation to count every person residing in the United States no matter their immigration status, and to use that data for apportionment purposes.

87. Facing a legal challenge in the early 1980s to the inclusion of undocumented immigrants in apportionment figures in *Federation for American Immigration Reform v. Klutznick*, the Government argued that the plaintiffs there sought “a radical revision of the constitutionally mandated system for allocation of Representatives to the States of the Union and an equally radical revision of the historic mission of the decennial census.”

Defs.’ Post-Arg. Memo. at 1, No. 79-3269 (D.D.C. Feb. 15, 1980). It explained that the “Constitution expressly requires the enumeration of the ‘whole number of persons in each State’ for purposes of apportionment of Representatives to the United States Congress and none of plaintiffs’ legal theories puts in doubt that the plain meaning of this language must be given effect,” and that the Census “has never . . . excluded from the apportionment base any inhabitant counted in the decennial census.” Defs.’ Reply Memo. & Opp’n to Pls.’ Mot. for Summ. J. at 1, No. 79-3269 (D.D.C. Jan. 30, 1980).

88. The Government also rejected any policy rationale for overriding the constitutional mandate to include all persons in the enumeration for purposes of congressional apportionment, noting that the “constitutionally mandated requirement to count states’ inhabitants for apportionment purposes is a matter separate from the need to solve the problems of illegal immigration.” *Id.*

89. Similarly, in a September 22, 1989 letter, Carol Crawford, the Assistant Attorney General for Legislative Affairs, advised Senator Jeff Bingaman that the Justice Department had “found no basis” for reversing its existing position that the Census Clause and Section 2 of the Fourteenth Amendment “require that inhabitants of States who are illegal aliens be included in the census count.”³

90. More recently, in *New York v. Department of Commerce*, the Government argued in its Motion to Dismiss that the “Constitution supplies a simple judicial standard for determining the constitutionality of [Census Bureau] practices—the Secretary must perform a person-by-person headcount, rather than an estimate of population.” Memo. of

³ Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), *in* 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).

Law in Support of Defs.’ Mot. to Dismiss at 25, No. 1:18-cv-02921, ECF No. 155 (S.D.N.Y. May 25, 2018). Similarly, it contended that “where, as here, there is no allegation that the Secretary failed to establish procedures for counting every person, a case ceases to implicate ‘actual Enumeration’” Reply Memo. of Law in Further Support of Defs.’ Mot. to Dismiss at 7, No. 1:18-cv-02921, ECF No. 190 (S.D.N.Y. July 13, 2018).

91. The Government embraced the requirement that every person living in the United States must be included in the Census even more directly in its Post-Trial Proposed Findings of Fact in *New York v. Department of Commerce*, writing that the “Constitution requires the federal government to conduct a Decennial Census counting the total number of ‘persons’—with no reference to citizenship status—residing in each state.” Defs.’ Post-Trial Proposed Findings of Fact and Conclusions of Law Regarding Pls.’ Claims at 1, No. 1:18-cv-02921, ECF No. 546 (S.D.N.Y. Nov. 21, 2018) (internal citations omitted).

92. Even more recently, in ongoing litigation in Alabama over the inclusion of undocumented immigrants in the Census, the Government argued that “[t]he very purpose of the census . . . is to count the number of people residing in each state.” Memo. of Law in Support of Defs.’ Mot. to Dismiss at 1, *Alabama v. Dep’t of Commerce*, No. 2:18-cv-00772, ECF No. 45-1 (N.D. Ala. Nov. 13, 2019).

3. The Statutory Requirements to Include All People in the Census for Purposes of Congressional Apportionment

93. Article I, Section 2 of the Constitution provides that the Census may be conducted “in such manner as [Congress] shall direct by law.” Congress has codified this

command in a statutory scheme primarily contained in Title 13 of the United States Code, also known as the Census Act.

94. Congress delegated to the Secretary of Commerce responsibility for conducting the Census, providing that he “shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the ‘decennial census date’” 13 U.S.C. § 141(a).

95. Congress has also created the Census Bureau within the Department of Commerce and authorized the Secretary of Commerce to delegate his duties under the Census Act to the Census Bureau. 13 U.S.C. §§ 2, 4.

96. The Secretary must report to the President a “tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States” within nine months of the Census date. 13 U.S.C. § 141(b).

97. The President then performs a “ministerial” calculation of the number of U.S. House seats to which each state is entitled. *Franklin v. Massachusetts*, 505 U.S. 788, 799 (1992). The President is “require[d]” to use only “data from the decennial census” to perform this calculation, *id.* at 797, and the calculation must use a specific formula with “rigid specifications . . . provided by Congress itself, and to which there can be but one mathematical answer.” *Id.* at 799 (quoting S. Rep. No. 2, 71st Cong., 1st Sess., at 4–5).

98. The President must then transmit to Congress, “[o]n the first day, or within one week thereafter, of the first regular session . . . a statement showing *the whole number of persons* in each State . . . as ascertained under the . . . decennial census of the population,” and “the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives *by the method*

known as the method of equal proportions.” 2 U.S.C. § 2a (emphases added). The “method of equal proportions” is the specific formula prescribed by Congress that calculates the number of House seats for each state based on the total population of each state as enumerated in the Decennial Census.

99. Though the primary purpose of the Census enumeration remains the apportionment of Congressional seats (as well as, by extension, Presidential electors), the population count from the Decennial Census is also used by the states for decennial redistricting of state legislative districts; helps to determine the distribution of hundreds of billions of dollars of federal funding; and informs the decisions of federal, state, and local policymakers and private businesses.

4. The Census Bureau’s Repeated Acknowledgments that All People Must Be Included in the 2020 Census for Purposes of Congressional Apportionment

100. After more than a decade of preparation, the 2020 Census is currently being conducted, with “Census Day” having occurred on April 1. Beginning in January in some places, and in March nationwide, Americans were asked to respond to the Census questionnaire online, by phone, or by mail. And while there have been some delays due to the COVID-19 pandemic, in-person NRFU is currently scheduled to take place between August 11 and October 31.⁴

101. Throughout the entire process of preparing for and conducting the 2020 Census, the Census Bureau has consistently represented that it would adhere to the

⁴ See Census Bureau, *Overall Timeline*, <https://2020census.gov/en/important-dates.html> (last visited July 21, 2020).

centuries-old practice of counting every person living in the United States—including undocumented immigrants—for apportionment and other purposes.

102. In fact, the Census Bureau has formally adopted a rule—pursuant to a notice-and-comment rulemaking process—that undocumented immigrants must be counted where they live and included in apportionment numbers. On February 8, 2018, the Census Bureau promulgated its “Residence Rule” for the 2020 Census, which lays out this requirement. 83 Fed. Reg. 5525 (Feb. 8, 2018) (formally titled “Final 2020 Census Residence Criteria and Residence Situations.”).

103. The Residence Rule explains that the “residence criteria” are “used to determine where people are counted during each decennial census.” *Id.* at 5526. The Residence Rule indicates that the criteria for determining residency set forth in the rule must then be used “to apportion the seats in the U.S. House of Representatives among the states” and that “[a]pportionment is based on the resident population, plus a count of overseas federal employees, for each of the 50 states.” *Id.* at 5526 n.1.

104. The Residence Rule provides that “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” *Id.* at 5533. The Census Bureau elaborated that the “Census Bureau is committed to counting every person in the 2020 Census,” including citizens of foreign countries living in the United States. *Id.* at 5526. The Census Bureau considered a comment which “expressed concern about the impact of including undocumented people

in the population counts for redistricting because these people cannot vote.”⁵ In response, the Census Bureau declined to make any changes to its residence criteria and indicated that it “will retain the proposed residence situation guidance for foreign citizens in the United States.” *Id.* at 5530.

105. As of July 21, 2020, a copy of these criteria was available unchanged on the Census Bureau website, including the provision for foreign citizens:⁶

3. FOREIGN CITIZENS IN THE UNITED STATES

- a) *Citizens of foreign countries living in the United States* - Counted at the U.S. residence where they live and sleep most of the time.
- b) *Citizens of foreign countries living in the United States who are members of the diplomatic community* - Counted at the embassy, consulate, United Nations’ facility, or other residences where diplomats live.
- c) *Citizens of foreign countries visiting the United States, such as on a vacation or business trip* - Not counted in the census.

106. As of July 21, 2020, a webpage maintained by the Census Bureau addressing “Frequently Asked Questions on Congressional Apportionment” noted that resident population counts “include all people (citizens and non-citizens) who are living in the United States at the time of the census,” and explicitly affirmed that undocumented residents must be included in the population totals used for Congressional apportionment:⁷

⁵ Final 2020 Census Residence Criteria and Residence Situations, Federal Register, Vol. 83, No. 27, Thursday, February 8, 2018, <https://www.govinfo.gov/content/pkg/FR-2018-02-08/pdf/2018-02370.pdf> (last visited July 21, 2020).

⁶ Census Bureau, *Residence Criteria and Residence Situations for the 2020 Census of the United States*, <https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf> (last visited July 21, 2020).

⁷ Census Bureau, *Frequently Asked Questions on Congressional Apportionment*, <https://www.census.gov/topics/public-sector/congressional-apportionment/about/faqs.html#Q6> (last visited July 21, 2020).

Who is included in the apportionment population counts?

The apportionment population count for each of the 50 states includes the state's total resident population (citizens and non-citizens) plus a count of the overseas federal employees (and dependents) who have that state listed as their home state in their employers' administrative records.

For details on who is counted (and where they are counted) in the 2020 Census, see the 2020 Census Residence Criteria and Residence Situations.

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Who is included in the resident population counts?

The resident population counts include all people (citizens and non-citizens) who are living in the United States at the time of the census. People are counted at their usual residence, which is the place where they live and sleep most of the time.

The resident population also includes military and civilian employees of the U.S. government who are deployed outside the United States (while stationed or assigned in the United States) and can be allocated to a usual residence address in the United States based on administrative records from the Department of Defense.

Are undocumented residents included in the apportionment population counts?

Yes, all people (citizens and noncitizens) with a usual residence in the 50 states are included in the resident population for the census, which means they are all included in the apportionment counts.

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107. Likewise, as of July 21, the “Census in the Constitution” page on the Census Bureau website noted that “[t]he plan [of the Founders] was to count every person living in the United States of America, and to use that count to determine representation in Congress.”⁸

⁸ Census Bureau, *Census in the Constitution*, <https://www.census.gov/programs-surveys/decennial-census/about/census-constitution.html> (last visited July 21, 2020).

Census in the Constitution

Why Jefferson, Madison and the Founders Enshrined the Census in our Constitution

The U.S. Constitution empowers the Congress to carry out the census in "such manner as they shall by Law direct" (Article I, Section 2). The Founders of our fledgling nation had a bold and ambitious plan to empower the people over their new government. The plan was to count every person living in the newly created United States of America, and to use that count to determine representation in the Congress.

108. Similarly, the Census Bureau's 2020 guide for Complete Count Committees, which are volunteer organizations designed to boost Census participation, advised that the Census "mandates a headcount every 10 years of everyone residing in the 50 states," including "citizens, and noncitizens:"⁹

WHY DO WE TAKE THE CENSUS?

The U.S. Constitution (Article I, Section 2) mandates a headcount every 10 years of everyone residing in the 50 states, Puerto Rico, and the Island Areas of the United States. This includes people of all ages, races, ethnic groups, citizens, and noncitizens. The first census was conducted in 1790 and one has been conducted every 10 years since then.

⁹ Census Bureau, *2020 Census Complete Count Committee Guide* at 1 (2018), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/ccc-guide-d-1280.pdf> (last visited July 21, 2020).

109. Similarly, on its webpage “Setting the Record Straight,” as of July 21, 2020, the Census Bureau assured readers that “[e]veryone counts” and that “everyone living” in the United States, including non-citizens, is counted in the 2020 Census:¹⁰

Setting the Record Straight

Does the 2020 Census ask about citizenship status?

NO. The 2020 Census does not ask whether you or anyone in your home is a U.S. citizen.

Are non-citizens counted in the census?

YES. Everyone counts. The 2020 Census counts everyone living in the country, including non-citizens. [Learn more about who should be counted when you complete the 2020 Census.](#)

110. As of July 21, the Bureau’s “Who to Count” page repeated the same information:¹¹

¹⁰ Census Bureau, *Setting the Record Straight*, <https://2020census.gov/en/news-events/rumors.html> (last visited July 21, 2020).

¹¹ Census Bureau, *Who to Count*, <https://2020census.gov/en/who-to-count.html> (last visited July 21, 2020).

⊕ Visitors on Census Day

⊖ Foreign Citizens in the United States

Citizens of foreign countries who are living in the United States, including members of the diplomatic community, should be counted at the U.S. residence where they live and sleep most of time.

Citizens of foreign countries who are temporarily visiting the United States on vacation or business on April 1, 2020, should not be counted.

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⊕ Living Outside the United States

111. And, as of July 21, the “Who Is Required to Respond” page on the Census Bureau’s website for the 2020 Census also specified that “[e]veryone living in the United States . . . is required by law to be counted in the 2020 Census.”¹²

Who Is Required To Respond?

Everyone living in the United States and its five territories is required by law to be counted in the 2020 Census.

112. The 2020 Census is in process, but at this point remains far from enumerating the entire population. As of July 23, 2020, 62.3% of households in the United States have responded to the 2020 Census, according to the Census Bureau’s estimates.¹³ Included within this figure are likely significant numbers of undocumented immigrants who acted in good faith according to the Bureau’s own instructions and

¹² Census Bureau, *Who Is Required to Respond*, <https://2020census.gov/en/am-i-required.html> (last visited July 21, 2020).

¹³ Census Bureau, *Response Rates*, <https://2020census.gov/en/response-rates.html> (last visited July 21, 2020).

responded to the census, with the understanding that they would be counted just like every other person living in the United States.

B. Defendants’ First Attempt to Exclude Noncitizens from the Census: The Citizenship Question Litigation

113. This is not the first effort by Defendants to exclude noncitizens from the 2020 Census. Most notably, following the Secretary’s March 2018 announcement that a citizenship question would be included on the Census, numerous plaintiffs, including Plaintiffs here, filed suit to block the question. After an eight-day bench trial, this Court issued a 277-page opinion and order including its findings of fact and conclusions of law. *See New York*, 351 F. Supp. 3d 502. The Court concluded that Plaintiffs had standing to sue because the inclusion of a citizenship question on the Census would deter participation in the Census by households with a noncitizen, leading to an undercount of such households, and that Defendants violated the Administrative Procedure Act in various ways, including by offering a “pretextual” rationale, *id.* at 516—Voting Rights Act (“VRA”) enforcement—for the Secretary’s decision. *Id.* at 516.

114. The Supreme Court affirmed, finding that the Secretary’s VRA rationale was “incongruent with what the record reveal[ed] about the agency’s priorities and decision-making process” and “contrived.” *Dep’t of Commerce*, 139 S. Ct. at 2575-76. The Secretary’s March 2018 decision thus failed the basic requirement that agencies “pursue their goals reasonably,” and was unlawful. *Id.* at 2576.

115. The Secretary’s “contrived” pretext was pierced during discovery in a separate state court lawsuit, *Common Cause v. Lewis*, No. 18-CVS-14001 (N.C. Super. Ct.), where information that had been wrongfully concealed in discovery before this

Court revealed the true genesis of the decision to add a citizenship question to the 2020 Census. The evidence was discovered on the hard drive of Dr. Thomas Hofeller, a North Carolina-based longtime Republican strategist and redistricting expert who died in August 2018.¹⁴

116. In late August 2015, Hofeller was commissioned by the Washington Free Beacon, a conservative website, to study the “practicality” and “political and demographic effects” of using citizen voting age population (“CVAP”) instead of total population (“TPOP”) to achieve equal population in redistricting.¹⁵ Hofeller advised that if a citizenship question were added to the 2020 Decennial Census so as to enable the exclusion of non-citizens from the population base in redistricting, the results “would be advantageous to Republicans and Non-Hispanic Whites.”¹⁶

117. Documents also revealed that Hofeller in 2015 communicated directly with Census Bureau official Christa Jones, using her private email address, and that Jones notified Hofeller of the Federal Register’s notice for comment regarding the Census Bureau’s Content Test for that year, suggesting that there was “an opportunity to mention citizenship.”¹⁷ Hofeller subsequently helped ghostwrite a draft DOJ letter to Commerce

¹⁴ Michael Wines, *Thomas Hofeller, Republican Master of Political Maps, Dies at 75*, N.Y. Times (Apr. 21, 2018) <https://www.nytimes.com/2018/08/21/obituaries/thomas-hofeller-republican-master-of-political-maps-dies-at-75.html>.

¹⁵ Pls.’ Mot. for Order to Show Cause Ex. C at 1-2, *New York v. Dep’t of Commerce*, No. 18-CV-2921, ECF No. 595-1 (S.D.N.Y. May 31, 2019).

¹⁶ Pls.’ Mot. for Order to Show Cause Ex. D at 9, *New York v. Dep’t of Commerce*, No. 18-CV-2921, ECF No. 595-1 (S.D.N.Y. May 31, 2019).

¹⁷ Tara Bahrapour, *GOP strategist and census official discussed citizenship question, new documents filed by lawyers suggest*, Wash. Post (June 16, 2019), <https://www.washingtonpost.com/dc-md-va/2019/06/15/new-documents-suggest-direct->

requesting a citizenship question that subsequently came into the possession of his “good friend[.]” Mark Neuman, Defendant Secretary Ross’s “trusted” and “expert adviser” on census issues, who “act[ed] analogously to an agency employee.”¹⁸ Following a call between then-North Carolina Congressman (and now Defendant Trump’s Chief of Staff) Mark Meadows and Defendant Secretary Ross, senior aides of Secretary Ross facilitated a meeting at which Neuman provided Hofeller’s draft to John Gore, the Acting Assistant Attorney General for Civil Rights, who ultimately “requested” that the Bureau include a citizenship question on the census.¹⁹ Meanwhile, Jones eventually came to serve as Chief of Staff to the Acting Director of the Census Bureau at the time of Defendant Secretary Ross’s March 2018 Decision Memorandum ordering the inclusion of a citizenship question on the census. Jones later testified that Hofeller favored adding a citizenship question to the census to aid “the Republican redistricting effort” and that Hofeller’s business partner, Dale Oldham, advocated for a citizenship question for redistricting and apportionment purposes “more times than I can remember.”²⁰

connection-between-republican-redistricting-strategist-census-bureau-official-over-citizenship-question/.

¹⁸ NYIC Pls.’ Mot for Sanctions, 1:18-cv-2921 (JMF), ECF No. 635-1 at 124-136; Def’s Opp. to Ltr. Mot. to Compel, *N.Y. Immigration Coalition v. U.S. Dep’t of Commerce*, 1:18-cv-2921-JMF, ECF No. 451 at 3 (S.D.N.Y. Oct. 30, 2018).

¹⁹ Pls.’ Joint Proposed Post-Trial Findings of Fact, *N.Y. Immigration Coalition v. U.S. Dep’t of Commerce*, 1:18-cv-2921-JMF, ECF No. 545 at 52-53 ¶¶ 364-69 (S.D.N.Y. Nov. 21, 2018) (citing trial exhibits).

²⁰ Memorandum from Acting Chairwoman Carolyn B. Maloney to Members of the United States House Committee on Oversight, *Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress*, 12 (Nov. 12, 2019) <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf>.

118. Subsequent statements by Defendant Trump and other Administration officials and advisors confirmed that a discriminatory intent to exclude noncitizens—and particularly, undocumented immigrants—from redistricting was the actual purpose of the effort to add a citizenship question to the Census.

119. For example, on July 1, 2020, Defendant Trump stated that a citizenship question was “very important to find out if someone is a citizen as opposed to an illegal,” and that “Democrats want to treat the illegals, with healthcare and other things, better than they treat the citizens of this country.”²¹

120. Defendant Trump himself has repeatedly admitted that his administration sought to add the citizenship question to harm immigrant communities by excluding them from the decennial enumeration and thus from redistricting and apportionment. About a week after the Supreme Court’s holding in *Department of Commerce*, Defendant Trump, asked why he was still trying to get a citizenship question on the census, said: “Number one, you need it for Congress. You need it for Congress, for districting. You need it for appropriations. Where are the funds going? How many people are there?”²²

121. Days later, at a press conference in the White House Rose Garden, Defendant Trump similarly stated that the citizenship information his administration sought is “relevant to administering our elections. Some states may want to draw state

²¹ *Remarks by President Trump at Signing of H.R. 3401*, White House (July 1, 2019) <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/>.

²² *Remarks by President Trump Before Marine One Departure*, White House (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>.

and local legislative districts based upon the voter-eligible population.”²³ In particular, Defendant Trump urged states to apportion and redistrict on the basis of citizen voting age population instead of total population, as Hofeller had advised, because he suggested that the move might be immune from judicial scrutiny: “Indeed, the same day the Supreme Court handed down the census decision, it also said it would not review certain types of districting decisions, which could encourage states to make such decisions based on voter eligibility.”²⁴

122. At the same press conference, Defendant Trump stated: “As shocking as it may be, far-left Democrats in our country are determined to conceal the number of illegal aliens in our midst. They probably know the number is far greater, much higher than anyone would have believed before. Maybe that’s why they fight so hard. This is part of a broader left-wing effort to erode the rights of the American citizen.”²⁵

123. Several of Defendant Trump’s associates and agents also stated—in the wake of the Supreme Court’s ruling in *Department of Commerce*—that excluding noncitizens from the census is necessary either to curtail immigration or limit the political power of immigrant communities of color.

124. Matt Schlapp, Chairman of the American Conservative Union and husband to Mercedes Schlapp, Defendant Trump’s Director of Strategic Communications, tweeted on June 27, 2019 that he wanted to “impeach[] the Chief

²³ *Remarks by President Trump on Citizenship and the Census*, White House (July 11, 2019) <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/>.

²⁴ *Id.*

²⁵ *Id.*

Justice [Roberts]” for “angling for vast numbers of illegal residents to help Dems hold Congress.”²⁶

125. Former Vice Chair of the President’s Commission on Electoral Integrity and anti-immigrant zealot Kris Kobach stated on July 8, 2019 that he “advised the President on putting the citizenship question back on the U.S. Census,” adding that he wanted to “make it a requirement in federal law that we must ask the question in every census going forward.”²⁷ A supplement to the Administrative Record in the citizenship question litigation revealed that Secretary Ross (at the behest of former White House senior advisor Steve Bannon) had discussed adding a citizenship question with Kobach, who advised that the question’s absence on the census “leads to the problem that aliens ... are still counted for congressional apportionment purposes.” In separate public statements, Kobach reiterated that the purpose of adding a citizenship question to the census was “so Congress [can] consider excluding illegal aliens from the apportionment process,”²⁸ because “citizens in a district with lots of illegal aliens have more voting power than citizens in districts with few illegal aliens.”²⁹

²⁶ Matt Schlapp (@mschlapp), Twitter (June 27, 2019, 8:29 AM), <https://twitter.com/mschlapp/status/1144266564935528449>.

²⁷ Pilar Pedraza (@PilarPedrazaTV), Twitter (July 8, 2019), <https://twitter.com/PilarPedrazaTV/status/1148296658943381508>.

²⁸ Kris Kobach, *Exclusive—Kobach: Bring the Citizenship Question Back to the Census*, Breitbart (Jan. 30, 2018), <http://www.breitbart.com/big-government/2018/01/30/exclusive-kobach-bring-citizenship-question-back-census/>.

²⁹ Kris Kobach, *Why the Citizenship Question is So Important*, Breitbart (June 27, 2019), <https://www.breitbart.com/politics/2019/06/27/kobach-why-the-citizenship-question-is-so-important/>.

126. Defendant Trump has also repeatedly denigrated and dehumanized non-white immigrants. He has stated that certain immigrants “aren’t people, these are animals,”³⁰ and his administration has housed immigrant children in cages and separated them from their families.³¹ Indeed, Defendant Trump has long complained about the growth of immigrant communities of color, tweeting in 2015: “How crazy - 7.5% of all births in U.S. are to illegal immigrants, over 300,000 babies per year. This must stop.”³²

127. Secretary Ross has publicly supported the Trump Administration’s anti-immigrant agenda, applauding Trump Administration programs to “swiftly return illegal entrants” and to “stop sanctuary cities, asylum abuse, and chain immigration.”³³

128. This slew of public statements and actions—from Defendant Trump and some of his highest-level advisers and administration officials—shows clearly that the true rationale for adding a citizenship question is driven by racial animus against immigrants of color and a desire to curb the political power of immigrant communities of color.

C. The Presidential Memorandum to Exclude Undocumented Immigrants from the Census

³⁰ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times, May 16, 2018, <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

³¹ BBC, *Trump migrant separation policy: Children ‘in cages’ in Texas*, June 18, 2018, BBC News, <https://www.bbc.com/news/world-us-canada-44518942>.

³² Donald Trump (@realDonaldTrump), Twitter (Aug. 21, 2015 6:56 AM), <https://twitter.com/realdonaldtrump/status/634725641972248576>.

³³ Press Release, Commerce Dep’t, Statement From U.S. Secretary of Commerce Wilbur Ross on the Release of President Trump’s Immigration Priorities (Oct. 9, 2017), <https://www.commerce.gov/news/press-releases/2017/10/statement-us-secretary-commerce-wilbur-ross-release-president-trumps>.

129. Where subterfuge has failed, Defendants have now turned to executive fiat. Barred from including a citizenship question on the 2020 Census, Defendants have now contrived a new scheme to identify and directly exclude undocumented immigrants from the Actual Enumeration required for apportionment. On July 21, 2020, Defendant Trump issued a presidential memorandum to the Secretary of Commerce entitled, “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.”³⁴

130. The Memorandum wrongly asserts that “[t]he Constitution does not specifically define which persons must be included in the apportionment base,” that “persons in each state” has been interpreted to mean “inhabitants,” that the scope of the term “inhabitants” requires “the exercise of judgment,” and that the President purportedly has discretion to exercise that judgment to exclude entire categories of persons who reside in the United States. *Id.*

131. On this asserted legal basis, the Memorandum declares that for reapportionment following the 2020 Census, “it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” *Id.* § 2.

132. The Memorandum states that the Secretary, in submitting his Census report under 13 U.S.C. § 141(b), “shall take all appropriate action, consistent with the

³⁴ Available at <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

Constitution and other applicable law” to provide information to the President to allow for the exclusion of undocumented immigrants. *Id.* § 3.

133. By its explicit and emphatic declaration of federal policy, the Memorandum directs the Commerce Department (and through the Commerce Department, the Census Bureau) to take steps to allow the President to exclude undocumented immigrants in his apportionment report to Congress issued under 2 U.S.C. § 2(a). *Id.* This includes, but is not limited to, “provid[ing] information” in the report that the Secretary must provide to the President under 13 U.S.C. § 141(b) that will “permit[] the President” to exclude undocumented immigrants in calculating the number of U.S. House seats to which each state is entitle. *Id.*

134. The Memorandum asserts that excluding undocumented immigrants is justified because “the principles of representative democracy” are undermined by tying the political influence of states to a population that includes undocumented immigrants. Memorandum, § 2.

135. In an accompanying statement, Defendant Trump declared that the Memorandum followed through on his commitment to determine the citizenship status of the population, and argued that “the radical left is trying to erase the existence of [the concept of American citizenship] and conceal the number of illegal aliens in our country” as “part of a broader left-wing effort to erode the rights of Americans [sic] citizens.”³⁵ The statement repeated the Memorandum’s argument that counting undocumented

³⁵ President Donald Trump, *Statement from the President Regarding Apportionment* (July 21, 2020), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

immigrants creates “perverse incentives,” and that “we should not give political power to people who should not be here at all.”³⁶

136. Upon information and belief, following receipt of the Memorandum, the Department of Commerce has issued directives to the Census Bureau, constituting final agency action, to implement the policy of excluding noncitizens from the enumeration used for congressional apportionment, as set forth in the Memorandum.

137. On June 23, 2020, Defendant Trump’s re-election campaign sent an email making plain that the intent of the Memorandum is to undermine the Census and demonize immigrants. The email characterized the Memorandum as an “Executive Order” that “will block” undocumented people from “receiving congressional representation” and from “being counted in the U.S. Census.”³⁷ The email claimed that this “Executive Order” was necessary because “Democrats are prioritizing dangerous, unlawful immigrants over American Citizens.”³⁸

D. The Effect of Excluding Undocumented Immigrants from the Census

³⁶ *Id.*

³⁷ Hansi Lo Wang (@hansilowang), TWITTER (July 23, 2020, 3:34 PM), <https://twitter.com/hansilowang/status/1286384297314844672>.

³⁸ *Id.* See also Tara Bahrapour, *Trump’s reelection campaign calls for adding citizenship question to 2020 census amid criticism that he is politicizing the count*, Wash. Post (Mar. 20, 2018), https://www.washingtonpost.com/local/social-issues/trump-campaign-calls-for-adding-citizenship-question-to-2020-census-amid-accusations-that-the-president-is-politicizing-the-annual-count/2018/03/20/dd5929fe-2c62-11e8-b0b0-f706877db618_story.html (describing a “Trump reelection campaign” email that asked supporters whether they “support[ed] the president in adding a citizenship question” to the Census and noting that critics described the email as “demoralizing,” “an assault on the constitution,” and “a sly attempt to rally the president’s base”).

138. Pew Research Center has estimated that the total population of undocumented immigrants in the United States was 10.5 million people in 2017.³⁹ The Department of Homeland Security (DHS) has estimated that the total population of undocumented immigrants in the United States was 12 million in 2015.⁴⁰

139. California, Texas, and New York are consistently three of the states with the largest populations of undocumented residents.

140. According to Pew Research Center, California had 2 million undocumented residents, Texas had 1.6 million undocumented residents, and New York had 650,000 undocumented residents in 2017, subject to an upward or downward variance of 50,000 people for each estimate.⁴¹

141. According to DHS, California had 2.9 million undocumented residents, Texas had 1.9 million undocumented residents, and New York had 590,000 undocumented residents in 2015.⁴²

142. The current average population of each U.S. House district is 710,767 people.

³⁹ Jeffrey S. Passel and D’Vera Cohn, *Mexicans decline to less than half the U.S. unauthorized immigrant population for the first time*, Pew Research Ctr. (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

⁴⁰ Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

⁴¹ Passel and Cohn, *supra* note 38.

⁴² Office of Immigration Statistics, *supra* note 46.

143. The Memorandum expressly aims to alter Congressional apportionment based on states' undocumented populations. For example, it argues that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” Memorandum § 2.

144. Of these states, the Memorandum specifically targets California, anticipating that excluding undocumented immigrants from the census would deprive California of multiple House seats (and thus, Electoral College votes). The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.* Upon information and belief, this “one State” is California.

145. Unlawfully excluding undocumented residents from the population count used for apportionment will likely deprive several states—most particularly, Arizona, California, New York, and Texas—of at least one House seat (or will cause not to gain at least one House seat they would have gained) during the post-2020 Decennial Census apportionment process.

146. Indeed, this Court found that Arizona, California, Florida, Illinois, New York, and Texas all faced a substantial certainty of losing a seat based on a differential undercount of 5.8% of all noncitizens in the 2020 census. *New York*, 351 F. Supp. 3d at 594, *aff'd in relevant part*, 139 S. Ct. 2551. The evidence upon which the Court based these findings—the testimony of Dr. Chris Warshaw—relied on smaller undercounts of

noncitizens in each of these states than would be caused by the Memorandum. *See id.* (citing Warshaw Decl., Dkt. No. 526-1). A greater impact will occur for these states if **100%** of undocumented immigrants are removed from the apportionment count. Other studies have also confirmed the certainty that various states would lose a seat if undocumented residents are removed.⁴³

147. But the effects of the Memorandum are likely to run even deeper. Like the failed effort to add a citizenship question to the census, the new policy of excluding undocumented immigrants from the census will broadcast a xenophobic message to immigrant communities about census participation, suppressing responses from households containing immigrants and noncitizens. This will result in the omission from the census not only of undocumented immigrants, but also noncitizen immigrants with legal status and United States citizens. The resulting undercount will harm the work of organizations—including that of the Plaintiffs here—in promoting census participation and will further strip representation and economic resources from communities with immigrant populations.

E. The Census Bureau’s Likely Use of Statistical Modeling to Estimate the Undocumented Population

⁴³ *See* Amelia Thomson-DeVeaux, *The Citizenship Question Could Cost California And Texas A Seat In Congress*, FiveThirtyEight (June 17, 2019), <https://fivethirtyeight.com/features/the-citizenship-question-could-cost-california-and-texas-a-seat-in-congress/> (finding California, Arizona, and Texas would lose at least one seat in a poorly conducted census and 10% of households with undocumented immigrants undercounted). While there are questions about the accuracy of its expert’s methodology, the State of Alabama has asserted essentially the same thing in separate litigation. *See* Expert Report of Dudley Poston at 28, *Alabama v. U.S. Dep’t of Commerce*, No. 2:18-cv-00772-RD (N.D. Ala.) (opining that excluding undocumented residents from apportionment base would cause California, Texas, and New Jersey to lose seats).

148. The Census Bureau does not have a means to individually enumerate undocumented immigrants separate and apart from the rest of the population in each jurisdiction.

149. After completion of the citizenship question litigation, the Census Bureau indicated that it would seek to compile citizenship status information for Census respondents by using administrative records, including records from the Social Security Administration. Such administrative records, however, do not provide information as to *legal status*, as opposed to citizenship, and cannot be used to determine whether census respondents are *undocumented immigrants* specifically.

150. In fact, the Government has recently represented in separate litigation, via a declaration by Census Bureau Senior Advisor Enrique Lamas, that it “lack[s] . . . accurate estimates of the resident undocumented population” on a state-by-state basis.⁴⁴

⁴⁴ Defendants’ Supp. Rule 26(a)(1) Disclosures and Rule 26(a)(2)(C) Disclosures, *State of Alabama v. Dep’t of Commerce*, Case No. 2:18-cv-00772-RDP (N.D. Ala. March 13, 2020). See also Jeffrey Mervis, *Why the U.S. Census Bureau could have trouble complying with Trump’s order to count citizens*, Science Mag. (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (detailing the “formidable challenge” in relying on administrative records); Comment from Campaign Legal Center, OMB Control Number 0607-0995, <https://campaignlegal.org/sites/default/files/2020-01/Final%20Campaign%20Legal%20Center%20Comment%20OMB%20Control%20No%200607-0995.pdf> (noting that “[s]tate administrative data on individual citizenship status are notoriously riddled with errors and outdated information” and “records misidentify naturalized U.S. citizens as non-U.S. citizens”); Jennifer Van Hook, *Counting 11 million undocumented immigrants is easier than Trump thinks*, The Conversation (July 17, 2019), <https://theconversation.com/counting-11-million-undocumented-immigrants-is-easier-than-trump-thinks-120459> (observing that administrative records provide “inconsistent information about the same person,” have “limited value for describing those who fall outside of the administrative records system,” and will require researchers to “make assumptions about coverage error”).

151. In the absence of means to actually enumerate the total population of the United States minus undocumented immigrants, the Government has indicated its intention to use statistical modeling to estimate the undocumented population and thereby calculate an apportionment population that excludes undocumented immigrants. In separate litigation, Department of Justice attorney Stephen Ehrlich recently stated in a hearing that “there may need to be some statistical modeling” in order to carry out the Memorandum, though the Government had not yet “formulated a methodology.”⁴⁵

152. This statement is consistent with the previous efforts of governmental and non-governmental actors that have endeavored to project the population of undocumented immigrants in the United States. For example, Pew Research Center compiles statistical estimates of the population of undocumented immigrants rather than an actual enumeration, making a variety of statistical adjustments to the census population numbers and weighting the data.⁴⁶ DHS has similarly used statistical sampling methodology, the residual method, for estimated the populations of undocumented immigrants.⁴⁷

153. The scope of any statistical model required to estimate the number of undocumented immigrants would be unprecedented for use in calculating the

⁴⁵ Hansi Lo Wang (@hansilowang), Twitter (July 22, 2020, 10:58 AM), <https://twitter.com/hansilowang/status/1285952274410409985>

⁴⁶ See, J. Passel, *Measuring illegal immigration: How Pew Research Center counts unauthorized immigrants in the US* (July 12, 2019), <https://www.pewresearch.org/fact-tank/2019/07/12/how-pew-research-center-counts-unauthorized-immigrants-in-us/>.

⁴⁷ Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf. DHS has not performed any estimates of the population of undocumented immigrants for any year since 2015.

apportionment population. Such statistical processes are not an “actual Enumeration” as required under Article I of the Constitution. *See Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 338 (1999); *id.* at 346 (Scalia, J., concurring) (“It is in my view unquestionably doubtful whether the constitutional requirement of an ‘actual Enumeration,’ Art. I, § 2, cl. 3, is satisfied by statistical sampling.”).

CAUSES OF ACTION

COUNT ONE

Violation of Enumeration and Apportionment (Article I, Section 2, Clause 3 of the Constitution, and Section 2 of the Fourteenth Amendment) (All Plaintiffs against All Defendants)

154. Plaintiffs repeat and re-allege by reference all of the previous allegations in this Complaint.

155. The Constitution requires that the apportionment of seats for the House of Representatives be conducted on the basis of the total population of all persons in each state, following each Decennial Census.

156. In particular, Article I, Section 2 of the Constitution requires that “Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined” based on the number of “persons” in each state according to an “actual Enumeration,” “in such Manner as [Congress] shall by Law direct.” U.S. Const. art. I, § 2, cl. 3.

157. Section 2 of the Fourteenth Amendment provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting the *whole number of persons* in each State.” U.S. Const. amend. XIV, § 2 (emphasis added).

158. “Whatever his status under the immigration laws, an alien is . . . a ‘person’” for purposes of the Fourteenth Amendment. *Plyler*, 457 U.S. at 210. A “person” means a “human being,” *Black’s Law Dictionary* (11th ed. 2019), and no matter what the Trump Administration may say, undocumented immigrants are human beings. Undocumented immigrants living in the United States are among the “whole number of persons in each State,” U.S. Const. amend. XIV, § 2, and thus the plain and unequivocal text requires counting undocumented immigrants in the total population base used for Congressional apportionment.

159. The Supreme Court has definitively held that non-citizens must be included in the population base used to apportion U.S. House seats to each state. The Court held just four years ago that “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population,” including non-citizens. *Evenwel*, 136 S. Ct. at 1129; *see also id.* at 1128 (“The product of these debates was § 2 of the Fourteenth Amendment, which retained total population as the congressional apportionment base.”).

160. Other courts, including this Court, have recognized the same. *See, e.g., New York*, 351 F. Supp. 3d at 514 (“[T]he Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without,” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states”); *Klutznick*, 486 F. Supp. at 576 (“The language of the Constitution is not ambiguous. It requires the counting of the ‘whole number of persons’ for

apportionment purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly ‘persons.’”).

161. The Memorandum brazenly ignores this precedent and the plain text of the Constitution. It purports to unilaterally declare that undocumented immigrants are not “persons” under the Fourteenth Amendment. Based on that shocking and baseless assertion, the Memorandum declares it to be the explicit policy of the United States “to exclude from the apportionment base aliens who are not in a lawful immigration status.” The Memorandum further directs the Secretary to provide the President with information in his Census report that excludes undocumented immigrants from the population count of each state, so as to permit the President to exclude such persons in reporting to Congress the number of each representatives to which each State is entitled, which the President will then do.

162. By denying undocumented immigrants are “persons” and excluding them from the total population count for congressional apportionment, the Memorandum violates the plain and straightforward command of the Enumeration Clause and the Fourteenth Amendment, as well as binding Supreme Court precedent.

163. The Memorandum further violates the Enumeration Clause and the Fourteenth Amendment by apportioning U.S. House seats among the states based on data other than the “numbers” reflecting the total population of each state as determined by the “actual Enumeration” of the Decennial Census.

164. Defendants’ violations of the Enumeration Clause and the Fourteenth Amendments will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to each receive at least one fewer seat in

the House of Representatives. Because these states will have at least one fewer congressional district than they would otherwise, each congressional district in these states will encompass more total people than it would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy

165. Defendants' violations of the Enumeration Clause and the Fourteenth Amendments also causes harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute substantial portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

166. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. at 2565–66; *Utah v. Evans*, 536 U.S. 452, 464 (2002); *U.S. House of Representatives*, 525 U.S. at 329–34.

COUNT TWO
Violation of Census Act
(2 U.S.C. § 2a(a); 13 U.S.C. § 141)
(Ultra Vires)

167. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

168. Congress has required that the Secretary of Commerce “shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the ‘decennial census date.’” 13 U.S.C. § 141(a). “The tabulation of total population by States under subsection (a) of [§ 141] *as required for the apportionment of Representatives in Congress* among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” *Id.* § 141(b) (emphasis added).

169. In turn, “the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions.” 2 U.S.C. § 2a(a).

170. As the Supreme Court and the Census Bureau have recognized, these statutes require that persons whose “usual residence” is in the United States must be counted in the enumeration and apportionment of U.S. House seats at that “usual residence.” “[T]he first census conducted in 1790 required that persons be allocated to their place of ‘usual residence,’ and “‘usual residence’ has continued to hold broad connotations” through present day. *Franklin*, 505 U.S. at 803, 805. The Census Bureau has confirmed that its official policy today is that “[t]he state in which a person resides and the specific location within that state is determined in accordance with the concept of

‘usual residence,’ which is defined by the Census Bureau as the place where a person lives and sleeps most of the time.” Residence Rule, 83 Fed. Reg. at 5526.

171. Under the Census Bureau’s Residence Rule, “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533.

172. The President’s Memorandum violates 13 U.S.C. § 141(a)–(b) by requiring the Secretary of Commerce to tabulate and transmit reports to the President estimates of the total population in each State that are based on data other than the actual Enumeration of each state as determined by the decennial census, and that do not count all persons who live in the state as their “usual residence.” Specifically, the President’s Memorandum violates 13 U.S.C. § 141(a)–(b) by requiring the Secretary to rely on administrative data other than the actual Enumeration of each state as determined by the decennial census, and to exclude undocumented immigrants who reside in a state as their usual residence, in tabulating the total population of each state and transmitting those total population numbers to the President.

173. The President’s Memorandum also violates 2 U.S.C. § 2a(a) and 13 U.S.C. § 141(a)–(b) by requiring the President to calculate and transmit to Congress total population figures for each state, and the apportionment of U.S. House seats among the states, based on data other than “decennial census of the population,” and by using a method other than the “method of equal proportions” prescribed by Congress. 2 U.S.C. § 2a(a). The President may use only the actual enumeration of the total population of each State as “ascertained under the . . . decennial census”—and nothing else—to calculate the whole number of persons in each State and the number of Representatives for each state.

2 U.S.C. § 2a(a). Likewise, the “method of equal proportions” is a “rigid” formula “provided by Congress itself” that requires use of the total population of each State as determined based on the decennial census and no other administrative data. *Franklin*, 505 U.S. at 2775.

174. The President’s Memorandum also violates 2 U.S.C. § 2a(a) and 13 U.S.C. § 141(a)–(b) by causing the President to transmit to Congress total population figures for each state that do not include all persons who live in each state as their “usual residence,” and/or by causing the President to transmit to Congress a number of Representatives for each state that is calculated by excluding persons who live in each state as their “usual residence.” If the Secretary of Commerce transmits one set of total population numbers to the President that *do* include undocumented immigrants who live in the United States as their usual residence (as the Secretary must do), then the President is required to use *that* set of total population numbers in transmitting to Congress “the whole number of persons in each State,” and “the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions.” 2 U.S.C. § 2a(a). The number of whole of persons in each state that the President must transmit to Congress must be that “ascertained under the . . . decennial census of the population,” *id.*, which includes all persons living in the United States as their usual residence, 13 U.S.C. § 141(a)–(b). And it is “required for the apportionment of Representatives in Congress among the several States” that the President and the Secretary use the total population numbers tabulated for each state that include all persons who live in each state as their usual residence. 13 U.S.C. § 141(b).

175. Because Defendant Trump and Secretary Ross will act beyond the scope of their statutory authority in a way that causes constitutional violations, they are acting *ultra vires* pursuant to 2 U.S.C. § 2a(a) and 13 U.S.C. § 141. See, e.g., *Mountain States Legal Foundation v. Bush*, 306 F. 3d 1132, 1136 (D.C. Cir. 2002) (“[T]he Supreme Court has indicated generally that review is available to ensure that Proclamations are consistent with constitutional principles and the President has not exceeded his statutory authority.”); *Chamber of Commerce of United States v. Reich*, 74 F.3d 1322, 1328 (D.C. Cir. 1996) (“When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority. . . . That the executive's action here is essentially that of the President does not insulate the entire executive branch from judicial review.”).

176. The Memorandum also will result in the President and Secretary Ross failing to perform their clear legal duties to, among other things: tabulate the total populations of the States based on data from the decennial census that includes all persons who live in the United States as their usual residence; calculate the whole number of persons in each state and the number of U.S. House seats to which each seat is entitled based on data from the decennial census that includes all persons who live in the United States as their usual residence; and transmit to Congress the whole number of persons in each state and the number of U.S. House seats to which each seat is entitled based on data from the decennial census that includes all persons who live in the United States as their usual residence.

177. Defendants’ violations of 2 U.S.C. § 2a(a) and 13 U.S.C. § 141 will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives.

Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy.

178. Defendants' violations of 2 U.S.C. § 2a(a) and 13 U.S.C. § 141 also causes harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

179. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

COUNT THREE
Discrimination on the Basis of Race and National Origin
(Fifth and Fourteenth Amendments of the U.S. Constitution)
(All Plaintiffs against All Defendants)

180. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

181. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires that the federal government not deny people the equal protection of its laws and prohibits the federal government from discriminating against individuals in the United States on the basis of race, ethnicity, national origin, and citizenship. U.S. Const. amend V.

182. The Supreme Court has affirmed the clear text of the Fifth Amendment by recognizing its constitutional protections apply to “person[s]” within the jurisdiction of the United States, and not only to citizens. *See, e.g., Wong Wing v. United States*, 163 U.S. 228 (1896) (Field, J., concurring) (“[t]he term ‘person,’ used in the [F]ifth [A]mendment, is broad enough to include any and every human being within the jurisdiction of the republic”); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993).

183. The Fifth Amendment’s Due Process Clause “applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

184. The “bedrock protections of the Fifth Amendment’s Due Process Clause” are not eliminated by the “mere act of entry into the United States without documentation.” *Garza v. Hargan*, 874 F.3d 735, 737–38 (D.C. Cir. 2017) (Millett, J., concurring).

185. The Fifth Amendment’s prohibition on discrimination on the basis of race, ethnicity, national origin, and citizenship is co-extensive with the Equal Protection guarantees of the Fourteenth Amendment, which the Supreme Court has long recognized extends to undocumented immigrants. “The Fourteenth Amendment to the Constitution is not confined to the protection of citizens [and is] universal in [its] application, to

all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.” *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). In more recent years, the Supreme Court has reaffirmed that “aliens whose presence in this country is unlawful . . . have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Plyler*, 457 U.S. at 210.

186. The Memorandum violates the Fifth Amendment’s prohibition on discrimination in at least two distinct respects. First, it facially targets undocumented immigrants for exclusion from the decennial enumeration, outright denying them the status of “persons” under the Constitution. Government action denying the *personhood* of people living in the United States echoes the darkest chapters of American constitutional history. *See Dred Scott v. Sandford*, 60 U.S. 393 (1857).

187. Second, as with the failed scheme to include a citizenship question on the census, this latest discriminatory act is motivated by a bare desire to harm immigrant communities of color, and particularly Latinx communities, by reducing their political clout and access to federal resources.

188. Defendant Trump and nativist members of his Administration view non-white, undocumented immigrants as a political and cultural threat. The President, as noted *supra*, has directed particularly virulent animus at Latinx immigrants. Defendant Trump and members of his Administration have long warned about the consequences of rising Latinx political power in the United States and the ostensible harms of undocumented immigrants to the United States.

189. The Memorandum not only would codify the animus and discriminatory goals of Defendants, but it would result in a cascade of discriminatory effects, including, but not limited to:

a. The loss of congressional seats and Electoral College votes in states where these groups constitute significant portions of the population and where Plaintiffs have members, including a certainly impending loss for California; a substantial risk of a loss for New York, Texas, Florida, Arizona, and Illinois; and a considerable risk of a loss for New Jersey and Georgia; and

b. A substantial reduction in the amount of federal funds distributed to the local and state governments in which the Plaintiffs reside, which all have significant, non-white populations; and

c. A reduction of the political influence to which these communities would receive through an accurate census count.

190. In addition to the discriminatory effects evidence well-known and acted upon by Defendants and the direct intent evidence outlined, the haphazard process through which the Defendants promulgated this Memorandum provides strong circumstantial evidence of discriminatory intent. This evidence includes the timing of the release of the Memorandum, which coincides with dispatching of Census field operations to conduct outreach to groups the Defendant Trump has discouraged from participating with dark and racist presidential campaign statements; the bizarre procedural sequence and series of events leading up to the Memorandum; the President's repeated efforts to generate confusion surrounding and distrust of the Census process; the shallow justifications cited by the President for the memorandum; the historical background and

substantive departures from prior precedents; contemporary statements of the President and other decisionmakers; and the profound unworkability of the Memorandum.

191. Defendants' violations of the Fifth Amendment will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives. Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy

192. Defendants' violations of the Fifth Amendment also cause harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

193. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

COUNT FOUR
Separation of Powers
(Article I, Section 2, Clause 3 of the Constitution,
as amended by the Fourteenth Amendment)
(All Plaintiffs against Defendant Trump)

194. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

195. Article I of the U.S. Constitution, in conjunction with the Fourteenth Amendment, requires that the federal government conduct an “actual Enumeration” of the national population every ten years to determine the “whole number of persons” in the United States and within each state for the purpose of apportioning members of the House of Representatives to the respective states according to their population. U.S. Const. art I, § 2, cl. 3; *id.* amend. XIV, § 2.

196. The Constitution, through the Enumeration Clause, “vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration.’” *Dep’t of Commerce*, 139 S. Ct. at 2566 (quoting *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996)).

197. As the Supreme Court has noted repeatedly, through the Census Act, Congress “delegated to the *Secretary of Commerce* the tasks of conducting the decennial census ‘in such form and content as he may determine,’”—not the President. *Id.* at 2567 (quoting 13 U.S.C. § 141(a)).

198. The text of the Census Act itself makes clear that Congress has delegated authority over the census to the *Commerce Secretary*, not the *President*.

199. Section 141(a) of the Census Act requires that “[t]he *Secretary shall*, in the year 1980 and every 10 years thereafter, take a decennial census of population as of

the first day of April of such year, which date shall be known as the ‘decennial census date’, *in such form and content as he may determine*”—not the President. 13 U.S.C. § 141(a) (emphasis added).

200. Section 4 of the Census Act requires the Secretary, *not* the President, to “perform the functions and duties imposed upon him by this title.” 13 U.S.C. § 4.

201. The Census Act plainly distinguishes between the Secretary and the President in their roles regarding the Census, as intended by Congress. *See, e.g.*, 13 U.S.C. § 141(b) (“The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported *by the Secretary to the President* of the United States.”) (emphasis added); 13 U.S.C. § 21 (distinguishing between “the President” and “the Secretary”).

202. The Constitution and Census Act thus make clear that the President has usurped powers Congress has delegated to the Secretary. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) (“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”); *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008) (“Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area.”).

203. The Constitution and Census Act are unambiguous: Congress has constitutional authority over the census, and it has delegated none of that authority to the President. The Memorandum therefore violates the Constitution’s separation of powers.

204. Defendants' constitutional violation causes ongoing harm to Plaintiffs and their members because as explained their members are undocumented immigrants and live in communities where undocumented immigrants constitute significant portions of the populations; and provide services to undocumented immigrants, and as such, these violations will deprive them of the political influence and funding to which they would be entitled by a more accurate census.

205. The Supreme Court has stated, "An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate." *Bond v. United States*, 564 U.S. 211, 222 (2011).

206. Defendants' violations of the constitutional separation of powers will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives. Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy

207. Defendants' violations of the constitutional separation of powers also causes harm to Plaintiffs and their members because, as explained, some of their

members are undocumented immigrants and live in communities where undocumented immigrants constitute significant portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

208. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

COUNT FIVE
Administrative Procedure Act
(All Plaintiffs against Defendants Ross, Dillingham, Department of Commerce and Census Bureau)

209. Plaintiffs repeat and re-allege by reference all of the previous factual allegations in this Complaint.

210. The Administrative Procedure Act (APA), 5 U.S.C. §§ 702, 704, provides for a cause of action against any final agency action, within the meaning of the APA.

211. Upon information and belief, the Department of Commerce has directed the Census Bureau to effectuate the Memorandum's policy of excluding noncitizens from the enumeration used to apportion congressional representation and has instructed the Census Bureau to that effect. This constitutes a final agency action within the meaning of the APA because it marks the consummation of the agency's decision-making process, and it is one by which rights or obligations have been determined, or from which legal consequences will flow, *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

212. In addition, the Secretary's tabulation of total population numbers for each state that exclude undocumented immigrants and his transmission of those numbers to the President is required under the Memorandum, and thus the fact that the Secretary will take these actions is indisputable and inevitable. The Secretary's tabulation of total population numbers for each state that exclude undocumented immigrants and his transmission of those numbers to the President are separate final agency actions within the meaning of the APA. Requiring Plaintiffs to challenge those mandated final actions after they occur could enable Defendants to evade judicial review.

213. The APA, 5 U.S.C. § 706(2), provides that a court shall hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

214. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the Memorandum also violates the APA because it is contrary to statutory and constitutional law. *Dep't of Commerce*, 139 S. Ct. 2551 at 2569; *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 42-43.

215. The Census Act requires that this decennial census result in a "tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States" to be reported to the President. 13 U.S.C. § 141(b). This statute has identical meaning as the Constitution, whose mandate it implements: undocumented immigrants are included in the "total population" of each state, and thus must be included in the Census. The statute governing reapportionment, 2 U.S.C. § 2a, provides that after within one week of the first day of the first regular

session of each Congress following the Census – that is, after receiving the Secretary of Commerce’s report pursuant to 13 U.S.C. § 141(b) – the President shall transmit to Congress the population of each state and the number of seats to which it is entitled in the House of Representatives. Like the Census Act, this statute implements the Constitution’s requirement that apportionment be based on the total population of each state by mandating that the President’s statement to Congress show “the whole number of persons in each State” 2 U.S.C. § 2a(a). Undocumented immigrants are included within the “whole number of persons in each State” as used in 2 U.S.C. § 2a(a).

216. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the Memorandum is also arbitrary and capricious in violation of the APA because: it relied on factors which Congress has not intended it to consider; entirely failed to consider an important aspect of the problem; and offered an explanation for its decision that runs counter to the evidence before the agency. *Dep’t of Commerce*, 139 S. Ct. 2551 at 2569; *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 42-43.

217. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the Memorandum is also arbitrary and capricious in violation of the APA because it changed long-standing, consistent Census Bureau policy without a “reasoned analysis of the change.” *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 42-43; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

218. The Department of Commerce directive to the Census Bureau to effectuate the policy of excluding undocumented immigrants from the Census as set forth in the

Memorandum is also arbitrary and capricious in violation of the APA because it is the subject of improper political influence and pressure from political actors. *D.C. Fed'n of Civic Assoc. v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1971); *Tummino v. Torti*, 603 F. Supp. 2d 519 (E.D.N.Y. 2009).

219. The Memorandum further violates the APA by effectively abrogating the Residence Rule without going through notice-and-comment rulemaking. The Census Bureau issued the Residence Rule pursuant to notice-and-comment rulemaking. The Census Bureau provided in the Residence Rule that foreign citizens must be “[c]ounted at the U.S. residence where they live and sleep most of the time,” 83 Fed. Reg. at 5533, and the Census Bureau confirmed that “[a]pportionment is based on the resident population” as calculated pursuant to the Residence Rule. 83 Fed. Reg. at 5526 n.1. The APA’s notice-and-comment requirements prohibit the Census Bureau from calculating the total population of each state in a manner different from that set forth in the Residence Rule without revising or replacing the Residence Rule pursuant to notice-and-comment rulemaking. Neither the President nor the Secretary of Commerce may order the Census Bureau to violate a rule issued pursuant to notice-and-comment rulemaking. “An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *Fox Television Stations, Inc.*, 556 U.S. 502.

220. Defendants’ violations of the APA will cause Plaintiffs and their members harm because it will cause New York, California, and Texas, among other states, to receive at least one fewer seat in the House of Representatives. Because these states will have at least one less congressional district than they would otherwise, each congressional district in these states will encompass more total people than they would

otherwise, diluting the vote of residents of these states, such as Plaintiffs' members. The loss of a congressional seat will also result in fewer votes for each state in the Electoral College, reducing the political power of residents of these states. These injuries are directly traceable to the exclusion of undocumented immigrants as a result of the Memorandum and its policy.

221. Defendants' violations of the APA also cause harm to Plaintiffs and their members because, as explained, some of their members are undocumented immigrants and live in communities where undocumented immigrants constitute significant portions of the population; and Plaintiffs provide services to undocumented immigrants. The existence of an official policy to exclude undocumented immigrants from apportionment totals will cause fewer undocumented immigrants to respond to the Census, causing numerous injuries to the communities in which undocumented immigrants live, including loss of political power and funding.

222. There is a substantial likelihood that the requested relief will redress these injuries. *See Dep't of Commerce*, 139 S. Ct. at 2565-66; *Utah*, 536 U.S. at 464; *U.S. House of Representatives*, 525 U.S. at 329-34.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

i. Declare that Defendants' exclusion of undocumented immigrants from (a) the tabulation of the total population of the states; (b) the calculation and statement of the whole number of persons in each state; and (c) the calculation and statement of the apportionment of the House of Representatives among the states, is unauthorized by and violates the Constitution and laws of the United States;

ii. Declare that Defendants' exclusion of undocumented immigrants is *ultra vires* and violates 2 U.S.C. § 2a(a) and 13 U.S.C. § 141(a)-(b);

iii. Preliminarily and permanently enjoin Defendants and all those acting on their behalf from excluding undocumented immigrants from: (a) the tabulation of total population by states; (b) the calculation and statement of the whole number of persons in each state; and (c) the calculation and statement of the apportionment of the House of Representatives among the states;

iv. Estop Defendants from excluding undocumented immigrants from: (a) the tabulation of total population by states; (b) the calculation and statement of the whole number of persons in each state; and (c) the calculation and statement of the apportionment of the House of Representatives among the states;

v. Issue a writ of mandamus compelling the Secretary of Commerce to tabulate and report the total population of each state under 13 U.S.C § 141(b) based only on the actual enumeration of the total population as determined by the decennial census, including undocumented immigrants who live in the United States as their usual residence;

vi. Issue a writ of mandamus compelling the President to calculate the whole number of persons in each state and the apportionment of the House of Representatives among the states based only on the actual enumeration of the total population as determined by the decennial census, including undocumented immigrants who live in the United States as their usual residence;

vii. Issue a writ of mandamus compelling the President to calculate the apportionment of the House of Representatives among the states based on the method of equal proportions prescribed by Congress;

viii. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and

ix. Award any other such additional relief as the Court deems proper.

Dated: July 24, 2020

Respectfully submitted,

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** Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, DISTRICT OF
COLUMBIA, STATE OF HAWAI'I,
STATE OF ILLINOIS, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF NEW MEXICO, STATE OF
NORTH CAROLINA, STATE OF
OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH
OF VIRGINIA, STATE OF
WASHINGTON; CITY OF
CENTRAL FALLS, CITY OF
CHICAGO, CITY OF COLUMBUS,
CITY OF NEW YORK, CITY OF
PHILADELPHIA, CITY OF
PHOENIX, CITY OF PITTSBURGH,
CITY OF PROVIDENCE, CITY AND
COUNTY OF SAN FRANCISCO,
CITY OF SEATTLE; CAMERON
COUNTY, EL PASO COUNTY,
HIDALGO COUNTY, and
MONTEREY COUNTY,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*; UNITED STATES
DEPARTMENT OF COMMERCE;
WILBUR L. ROSS, JR., *in his official
capacity as Secretary of Commerce*;
BUREAU OF THE CENSUS; and

20 Civ. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

STEVEN DILLINGHAM, *in his
official capacity as Director of the
United States Census Bureau,*

Defendants.

INTRODUCTION

1. This lawsuit challenges President Donald J. Trump’s blatant disregard of an unambiguous constitutional command. The Fourteenth Amendment provides that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2. The Framers of the Fourteenth Amendment deliberately chose the phrase “whole number of persons” to refer to *all persons living* in each State—including the “entire immigrant population not naturalized.” Cong. Globe, 39th Cong., 1st Sess. 432 (1866) (Rep. John Bingham).

2. For 150 years—since the United States recognized the whole personhood of those formerly bound in slavery—the unambiguous requirement that all persons be counted for apportionment purposes, regardless of immigration status, has been respected by every executive official, every cabinet officer, and every President.

3. Until now. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.” 85 Fed. Reg. 44,679 (July 23, 2020) (attached as Ex. 1). For the first time in our history, the Memorandum announces a “policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status.” *Id.* at 44,680. It directs the Secretary of Commerce to provide the President with information to carry out this policy. And it declares the

President's intent to make a determination of the "whole number of persons in each State" that will in fact exclude the undocumented immigrants he has targeted throughout his administration.

4. The President's new policy and any actions Defendants take to implement it unequivocally violate the Fourteenth Amendment. The constitutional mandate to base apportionment on "the whole number of persons in each State" could hardly be clearer, and the Supreme Court has long recognized that undocumented immigrants are "persons" under the Fourteenth Amendment, *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Memorandum's open disregard of the Constitution's plain text is reason enough to invalidate it and to prevent Defendants from taking steps to carry out its unlawful policy.

5. But Defendants' decision to exclude undocumented immigrants from apportionment also violates the Constitution and federal statutes in multiple additional ways. Defendants' decision unlawfully discriminates against Hispanics and immigrant communities of color in violation of the Due Process Clause of the Fifth Amendment. By explicitly targeting and punishing States that refuse to assist in this administration's enforcement of federal immigration law, Defendants' decision violates the Tenth Amendment. And Defendants' decision to exclude undocumented immigrants from apportionment—as well as any action they take to implement or further that decision—is both contrary to law and arbitrary and capricious, in violation of the Administrative Procedure Act.

6. Defendants' decision harms Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests. If Defendants succeed in excluding undocumented immigrants from apportionment, some Plaintiffs will suffer severe injury to their most basic rights under our Constitution's representational form of government: they will improperly lose one or more Members in the House of Representatives and one or more corresponding electors in the

Electoral College. And removing undocumented immigrants from the apportionment base will further harm Plaintiffs by, for example, undermining their ability to conduct congressional and state-level redistricting, depriving them of critical federal funding, and eroding the quality of census data on which they rely to perform essential government functions.

7. Plaintiffs the State of New York, State of Colorado, State of Connecticut, State of Delaware, District of Columbia, State of Hawai‘i, State of Illinois, State of Maryland, Commonwealth of Massachusetts, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of North Carolina, State of Oregon, Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, Commonwealth of Virginia, State of Washington, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City and County of San Francisco, City of Seattle, Cameron County, El Paso County, Hidalgo County, and Monterey County therefore bring this action seeking declaratory and injunctive relief to hold Defendants to their obligation to base apportionment on “the whole number of persons in each State” and to forbid them from excluding undocumented immigrants—or any other person—from the apportionment base.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

9. Declaratory and injunctive relief is sought as authorized in 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiffs the State of New York and the City of New York are residents of this judicial district, and a

substantial part of the events or omissions giving rise to this Complaint occurred and are continuing to occur within the Southern District of New York.

PARTIES

11. Plaintiff the State of New York, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is New York State's chief law enforcement officer and is authorized under N.Y. Executive Law § 63 to pursue this action.

12. Plaintiff the State of Colorado is a sovereign state of the United States of America. The State of Colorado brings this action by and through its Attorney General, Philip J. Weiser. The Attorney General has authority to represent the state, its departments, and its agencies, and "shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party." Colo. Rev. Stat. § 24-31-101.

13. Plaintiff the State of Connecticut, represented by and through its Attorney General, William Tong, is a sovereign state of the United States of America. The Attorney General brings this action as the state's chief civil legal officer under Conn. Gen. Stat. § 3-124 *et seq.*

14. Plaintiff the State of Delaware is represented by and through its Attorney General Kathleen Jennings, and is a sovereign state of the United States of America. Attorney General Jennings is Delaware's chief law enforcement officer, *see* Del. Const., art. III, and is authorized to pursue this action under 29 Del. Code § 2504.

15. Plaintiff the District of Columbia is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District brings this case through the Attorney General for the District of Columbia, who is the chief legal officer for the District and possesses all powers afforded the

Attorney General by the common and statutory law of the District. The Attorney General is responsible for upholding the public interest and has the authority to file civil actions in order to protect the public interest. D.C. Code § 1-301.81.

16. Plaintiff the State of Hawai‘i, represented by and through its Attorney General, is a sovereign state of the United States of America. Attorney General Clare E. Connors is the chief legal officer of the State of Hawai‘i and is authorized to appear, personally or by deputy, on behalf of the state in all courts and in all cases in which the state is a party. Haw. Const. art. V, § 6; Haw. Rev. Stat. Chapter 28; Haw. Rev. Stat. § 26-7.

17. Plaintiff the State of Illinois, represented by and through its Attorney General, Kwame Raoul, is a sovereign state of the United States of America. The Attorney General is Illinois’s chief law enforcement officer and is authorized under 15 ILCS 205/4 to pursue this action.

18. Plaintiff the State of Maryland, by and through its Attorney General, Brian E. Frosh, is a sovereign state of the United States of America. The Attorney General is Maryland’s chief legal officer with general charge, supervision, and direction of the State’s legal business. The Attorney General’s powers and duties include acting on behalf of the State and the people of Maryland in the federal courts on matters of public concern. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws, Joint Resolution 1.

19. Plaintiff the Commonwealth of Massachusetts, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is authorized to pursue this action under Mass. Gen. Laws ch. 12, §§ 3 and 10.

20. Plaintiff the State of Michigan, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is Michigan's chief law enforcement officer and is authorized under Michigan law, Mich. Comp. Laws §§ 14.28 and 14.29, to pursue this action.

21. Plaintiff the State of Minnesota, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is Minnesota's chief legal officer and is authorized to pursue this action on behalf of the State. Minn. Stat. § 8.01.

22. Plaintiff the State of Nevada, represented by and through its Attorney General, is a sovereign state of the United States of America. Attorney General Aaron D. Ford is the chief legal officer of the State of Nevada and has the authority to commence actions in federal court to protect the interests of Nevada. Nev. Rev. Stat. § 228.170. Governor Stephen F. Sisolak is the chief executive officer of the State of Nevada. The Governor is responsible for overseeing the operations of the State and ensuring that its laws are faithfully executed. Nev. Const., art. 5, § 1.

23. Plaintiff the State of New Jersey, represented by and through its Attorney General Gurbir S. Grewal, is a sovereign state of the United States of America. The Attorney General is New Jersey's chief legal officer and is authorized to pursue this action on behalf of the State. *See* N.J. Stat. Ann. § 52:17A-4(e), (g).

24. Plaintiff the State of New Mexico, represented by and through its Attorney General Hector Balderas, is a sovereign state of the United States of America. The Attorney

General is authorized to bring an action on behalf of New Mexico in any court when, in his judgment, the interests of the State so require, N.M. Stat. Ann. § 8-5-2.

25. Plaintiff the State of North Carolina, represented by and through Attorney General Joshua H. Stein, is a sovereign state of the United States of America. The Attorney General is the State of North Carolina's chief law enforcement officer and brings this challenge pursuant to his independent constitutional, statutory, and common-law authority.

26. Plaintiff the State of Oregon, acting by and through the Attorney General of Oregon, Ellen F. Rosenblum, is a sovereign state of the United States of America. The Attorney General is the chief law officer of Oregon and is empowered to bring this action on behalf of the State of Oregon, the Governor, and the affected state agencies under Or. Rev. Stat. §§ 180.060, 180.210, and 180.220.

27. Plaintiff the Commonwealth of Pennsylvania is a sovereign state of the United States of America. This action is brought on behalf of the Commonwealth by Attorney General Josh Shapiro, the "chief law officer of the Commonwealth." Pa. Const. art. IV, § 4.1. Attorney General Shapiro brings this action on behalf of the Commonwealth pursuant to his statutory authority under 71 Pa. Stat. § 732-204.

28. Plaintiff the State of Rhode Island, represented by and through its Attorney General, is a sovereign state of the United States. Attorney General Peter F. Neronha is the chief legal advisor to the State of Rhode Island and is authorized to pursue this action pursuant to his constitutional, statutory, and common law authority. R.I. Const. art. IX § 12, R.I. Gen. Laws §§ 42-9-1 *et seq.*

29. Plaintiff the State of Vermont, represented by and through its Attorney General, Thomas J. Donovan, is a sovereign state in the United States of America. The Attorney General

is the state's chief law enforcement officer and is authorized to pursue this action pursuant to Vt. Stat. Ann. tit. 3, §§ 152 and 157.

30. Plaintiff the Commonwealth of Virginia brings this action by and through its Attorney General, Mark R. Herring. The Attorney General has the authority to represent the Commonwealth, its departments, and its agencies in "all civil litigation in which any of them are interested." Va. Code Ann. § 2.2-507(A).

31. Plaintiff the State of Washington, represented by and through its Attorney General, Robert W. Ferguson, is a sovereign state of the United States of America. The Attorney General is the chief legal adviser to the State of Washington and is authorized to pursue this action pursuant to RCW 43.10.030. The Attorney General's powers and duties include acting in federal court on matters of public concern.

32. Plaintiff the City of Central Falls is a municipal corporation organized pursuant to the laws of the State of Rhode Island.

33. Plaintiff the City of Chicago is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Illinois.

34. Plaintiff the City of Columbus is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Ohio and the City's Home Rule Charter.

35. Plaintiff the City of New York is a municipal corporation organized pursuant to the laws of the State of New York. New York City is a political subdivision of the State and derives its powers through the New York State Constitution, New York State laws, and the New York City Charter. New York City is the largest city in the United States by population.

36. Plaintiff the City of Philadelphia is a municipal corporation organized pursuant to the laws of the Commonwealth of Pennsylvania. The City is a political subdivision of the Commonwealth with powers derived from the Pennsylvania Constitution, Commonwealth law, and the City's Home Rule Charter.

37. Plaintiff the City of Phoenix is a municipal corporation organized pursuant to the laws of the State of Arizona.

38. Plaintiff the City of Pittsburgh is a municipal corporation organized pursuant to the laws of the Commonwealth of Pennsylvania. The City is a political subdivision of the Commonwealth with powers derived from the Pennsylvania Constitution, Commonwealth law, and the City's Home Rule Charter.

39. Plaintiff the City of Providence is a municipal corporation organized pursuant to the laws of the State of Rhode Island.

40. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.

41. Plaintiff the City of Seattle is a first-class charter city, incorporated under the laws of the State of Washington, empowered to sue and be sued, and represented by and through its elected City Attorney, Peter S. Holmes.

42. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas.

43. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas.

44. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas.

45. Plaintiff Monterey County, California is a political subdivision of the State of California.

46. Plaintiffs are aggrieved by Defendants' decision and conduct and have standing to bring this action because Defendants' decision and actions to exclude undocumented immigrants from the apportionment base harm Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests and will continue to cause injury unless and until the challenged decision and conduct are enjoined.

47. Defendant Donald J. Trump is the President of the United States. He is responsible for the actions and decisions that are being challenged by Plaintiffs in this action and is sued in his official capacity.

48. Defendant the United States Department of Commerce is a cabinet agency within the executive branch of the United States government. The Commerce Department is responsible for planning, designing, and implementing the 2020 Census. 13 U.S.C. § 4.

49. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He is responsible for overseeing the Census Bureau, conducting the decennial census of the population, and reporting to the President the tabulation of total population by States for the apportionment of Representatives in Congress. 13 U.S.C. § 141. He is sued in his official capacity.

50. Defendant Bureau of the Census is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for planning and administering the decennial census.

51. Defendant Steven Dillingham is Director of the Census Bureau. He is sued in his official capacity.

ALLEGATIONS

I. Constitutional and statutory background.

A. The Constitution requires apportioning Members of the House of Representatives among the States based on the total number of persons living in each State.

52. The Constitution requires that the Members of the House of Representatives “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2; *see id.* art. I, § 2, cl. 3.

53. The number of Representatives apportioned to each State, along with the two Senators given to each State, determines the allocation among the States of electors in the Electoral College. *Id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3.

54. To apportion Representatives among the States properly (and ultimately to allocate electors among the States properly) the Constitution requires an “actual Enumeration” of the total population every ten years, *id.* art. I, § 2, cl. 3.

55. “By its terms, therefore, the Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without,” and to use that enumeration of the total population “to apportion Representatives among the states.” *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019).

56. More than two hundred years of history, practice, and judicial and administrative precedents establish that the apportionment of Representatives must be based on *all persons living* in each State, regardless of their citizenship or immigration status.

57. During the country’s founding, the Framers debated the proper basis on which to apportion Representatives and declared that Representatives “shall be apportioned among the

several States which may be included within this Union, according to their *respective Numbers*.” U.S. Const. art. I, § 2, cl. 3 (emphasis added). The Framers repeatedly made clear that the basis for apportionment of Representatives was thus all persons. For example, as James Madison explained in 1788, the “fundamental principle of the proposed constitution” ensured that “the aggregate number of representatives allotted to the several states, is to be . . . founded on the aggregate number of inhabitants.” The Federalist No. 54, p. 284 (G. Carey & J. McClellan eds. 2001).

58. The original Apportionment Clause provided for only two exceptions to the use of total population for apportionment. First, “Indians not taxed” were excluded from the apportionment base. U.S. Const. art. I, § 2, cl. 1, § 3. Second, slaves were counted as only three-fifth of a person. *Id.* No other exceptions were provided, making clear that all other persons living in the United States needed to be counted by the decennial enumeration and included in the apportionment base.

59. When debating what is now the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats among the States and reaffirmed that apportionment must be based on *all persons living* in each State—citizens and noncitizens alike. The Framers of the Fourteenth Amendment rejected numerous proposals to change the basis of apportionment from total population to voter population. *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 10 (1865) (proposal to apportion representatives among the States “according to their respective legal voters”).

60. Instead, the Framers amended the Constitution to remove the provision that counted slaves as three-fifths of a person and declared that apportionment of Representatives must be based on the “whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

As the Fourteenth Amendment’s Framers explained, “numbers,” *i.e.*, all persons living in each State, is “the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such . . . is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.” Cong. Globe, 39th Cong., 1st Sess. 2767 (1866) (Jacob Howard).

61. Basing apportionment on all persons, the Framers further emphasized, ensured that each State’s representation in the House reflected all persons regardless of whether they could then vote, including women, children, and the “entire immigrant population not naturalized.” *Id.* at 432 (Rep. John Bingham); *see, e.g., id.* at 411 (representation based on number of voters improperly “takes from the basis of representation all unnaturalized foreigners” (Rep. Burton Cook)).

62. Since 1790, in accordance with the Constitution’s express requirement to base apportionment on all persons living in each State, the decennial actual enumeration has *always* counted all persons living in the United States based on where they “usually reside[.]” *See* Census Act of 1790, § 5, 1 Stat. 101 (1790); *2020 Decennial Census Residence Rule and Residence Situations*, 80 Fed. Reg. 28,950, 28,950 (May 20, 2015) (“The Census Act of 1790 established the concept of ‘usual residence’ as the main principle in determining where people are to be counted. This concept has been followed in all subsequent censuses.”).

63. Under the Census Bureau’s well-settled practice and a final rule that it promulgated pursuant to notice-and-comment rulemaking for the 2020 Census, usual residence means the place where a person lives and sleeps most of the time. *See Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525, 5533 (Feb. 8, 2018).

64. Accordingly, the decennial enumeration and apportionment base includes all noncitizens who live and sleep most of the time in the United States, regardless of their place of citizenship or immigration status. *See, e.g., id.* The enumeration likewise counts noncitizens who are “members of the diplomatic community” “at the embassy, consulate, United Nations’ facility, or other residences where diplomats live.” *Id.*

65. By contrast, noncitizens who are temporarily visiting the United States, such as on a vacation or business trip, are not included in the decennial enumeration and apportionment base because they do not live and sleep most of the time in the United States. *See, e.g., id.*

66. The millions of undocumented immigrants who do live in the United States have an established presence here. These immigrants have moved to the United States, and they are members of their state and local communities.

67. For example, the Migration Policy Institute has estimated, based on data from 2012 to 2016, that more than nine million undocumented immigrants have lived in the United States for five years or more. The Migration Policy Institute estimated that more than seven million undocumented immigrants have lived in this country for ten years or more, and that nearly four million undocumented immigrants have lived here for twenty years or more.¹

68. Undocumented immigrants residing here both contribute to and participate in their communities and in many public programs. For example, millions of undocumented immigrants

¹ Migration Policy Institute, *Profile of the Unauthorized Population: United States*, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.

work here and pay taxes.² Many undocumented immigrants live here with their family members, including children who are United States citizens.³

69. Based on the Constitution’s text, more than two centuries of history, and well-settled census practice, the Supreme Court and other courts have repeatedly made clear that the Fourteenth Amendment requires apportionment of Representatives based on the total number of all persons living in each State. *See, e.g., Wesberry v. Sanders*, 376 U.S. 1, 10-18 (1964); *Evenwel v. Abbott*, 136 S. Ct. 1120, 1127-29 (2016). Courts have also repeatedly determined that the “whole number of persons” used to apportion Representatives includes all noncitizens who are living in the United States regardless of their immigration status. *See, e.g., Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576-78 (D.D.C. 1980) (three-judge court).

70. The federal government, and several of the Defendants here, have conceded that the decennial enumeration that constitutes the apportionment base must count all persons living in the United States.

71. For example, on March 14, 2019, Secretary Ross testified under oath during a congressional committee hearing, stating “The constitutional mandate, sir, for the census is to try

² *See, e.g.,* Jens Manuel Krogstad et al., Pew Research Center, *5 facts about illegal immigration in the U.S.* (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s> (estimating that in 2017, the United States’ civilian workforce included 7.6 million undocumented immigrants); American Immigration Council, *Adding Up the Billions in Tax Dollars Paid by Undocumented Immigrants* 1, https://www.americanimmigrationcouncil.org/sites/default/files/research/adding_up_the_billions_in_tax_dollars_paid_by_undocumented_immigrants.pdf; Hunter Hallman, Bipartisan Policy Center, *How do Undocumented Immigrants Pay Federal Taxes? An Explainer* (Mar. 28, 2018), <https://bipartisanpolicy.org/blog/how-do-undocumented-immigrants-pay-federal-taxes-an-explainer/>.

³ Migration Policy Institute, *supra* (estimating that more than 3 million undocumented immigrants over the age of 15 resided with a citizen child under the age of 18).

to count *every person residing* in the U.S. at their place of residence on the dates when the census is conducted.” *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 31 (Mar. 14, 2019) (emphasis added). Secretary Ross further testified that “the Department of Commerce is fully committed to administering as complete and accurate decennial census as we can. We intend to try to *count every person* taking all necessary actions to do so.” *Id.* (emphasis added).

72. During a congressional committee hearing in February 2020, Census Bureau Director Dillingham stated that the Bureau will “*count everyone*, wherever they are living,” including undocumented immigrants. *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 12, 2020) (emphasis added).

73. The federal government has repeatedly argued that excluding undocumented immigrants from the decennial enumeration or the apportionment base violates the Constitution and applicable statutes. For example, in *Federation for American Immigration Reform v. Klutznick*, the government urged a district court to reject claims demanding exclusion of undocumented immigrants from the “whole number of persons” that constitutes the apportionment base. The government explained that “the plain language of the Constitution, as well as the intent of its framers, establishes that *all* inhabitants, including illegal aliens, must be enumerated for the purpose of apportioning Representatives.”⁴

74. Similarly, the Department of Justice’s Office of Legislative Affairs has opined that the Constitution requires inclusion of undocumented immigrants in the decennial

⁴ Defs.’ Mem. of Points & Authorities in Support of Mot. to Dismiss or for Summary Judgment, No. 79-3269 (D.D.C.), *reprinted in 1980 Census: Counting Illegal Aliens, Hr’gs Before the S. Subcomm. on Energy, Nuclear Proliferation and Federal Services*, 96th Cong. 125-156 (1980).

enumeration that constitutes the apportionment base. *See, e.g.*, Letter from Carol T. Crawford, Assistant Attorney General, to Senator Jeff Bingham (Sept. 22, 1989).

75. The population count derived from the census is used not only to apportion representatives and ultimately electors “but also to allocate federal funds to the States and to draw electoral districts.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2561 (2019).

76. For these reasons, the “decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs.” Pub. L. No. 105-119, § 209(a)(5), 111 Stat. 2440, 2481 (1997).

B. The Census Act requires that the total population count used for congressional apportionment include all persons living in the United States.

77. The Constitution provides that an “actual Enumeration shall be made” every ten years “in such manner as [Congress] shall direct by law.” U.S. Const. art. I, § 2. Congress has exercised its authority over the census by enacting various statutory provisions (“Census Act”).

78. Congress has assigned the responsibility of conducting the decennial enumeration to the Secretary of Commerce, and the Secretary may delegate authority for establishing procedures to conduct the census to the Census Bureau. 13 U.S.C. §§ 2, 4, 141.

79. The Census Act requires that the decennial census be taken on April 1, 2020, the “decennial census date.” 13 U.S.C. § 141(a). The Secretary of Commerce has no discretion to delay the decennial census date under the Census Act. *Id.*

80. Within nine months of the decennial census date, *i.e.*, by January 1, 2021, the Secretary of Commerce must report to the President “[t]he tabulation of total population by States” that is “required for the apportionment of Representatives in Congress among the several States.” *Id.* § 141(b).

81. Then, between January 3 and January 8, 2021, the President must transmit to Congress “a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.” 2 U.S.C. § 2a(a).

82. Within fifteen days of receiving the President’s statement, the Clerk of the House of Representatives must transmit “to the executive of each State a certificate of the number of Representatives to which such State is entitled.” *Id.* § 2a(b).

II. Defendants’ unlawful attempt to add a citizenship question to the decennial census.

83. Defendants’ decision and actions to exclude undocumented immigrants from the apportionment base are directly related to Secretary Ross’s earlier and unlawful attempt to alter the decennial census that provides the apportionment count by adding a question inquiring about citizenship status.

84. On March 26, 2018, Secretary Ross directed the Census Bureau to use the 2020 Census to demand information on the citizenship status of every resident in the country.⁵ Secretary Ross stated that he had decided to add the citizenship question because doing so was “necessary to provide complete and accurate data” that would aid enforcement of the Voting Rights Act (VRA) by the Department of Justice.

⁵ Memorandum from Sec’y of Commerce Wilbur Ross to Under Sec’y of Commerce for Econ. Affairs Karen Dunn Kelley, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire* 7 (Mar. 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf.

85. Many of the plaintiffs here filed a lawsuit challenging the addition of the citizenship question as, among other things, arbitrary and capricious and contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2). *See* Second Am. Compl., *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921, Doc. No. 210 (S.D.N.Y. filed July 23, 2018).

86. After an eight-day bench trial, the United States District Court for the Southern District of New York vacated Secretary Ross's decision to add a citizenship question to the 2020 census questionnaire. *New York*, 351 F. Supp. 3d at 679. In so ruling, the court concluded that the plaintiffs had standing to sue because the inclusion of a citizenship question would deter participation in the census by households with a noncitizen and lead to a differential undercount of noncitizens and Hispanics that would concretely harm plaintiffs in various ways. *Id.* at 578-593. For example, the court found that adding a citizenship question would cause some plaintiffs to lose congressional seats, impair state and local redistricting efforts that rely on census numbers, harm the quality and accuracy of census data, and reduce federal funding to plaintiffs' jurisdictions. *Id.* at 593-98, 607-15.

87. The court also determined that Secretary Ross's decision violated the Administrative Procedure Act for several reasons, including because his rationale for adding the citizenship question was pretextual. *Id.* at 660-64. As the court explained, the evidence was "clear that Secretary Ross's rationale was pretextual—that is, that the real reason for his decision [to add the citizenship question] was something other than the sole reason he put forward in his Memorandum, namely enhancement of DOJ's VRA enforcement efforts." *Id.* at 660. The court noted that it was "unable to determine—based on the existing record, at least—what Secretary Ross's real reasons for adding the citizenship question were." *Id.* at 569-70.

88. The Supreme Court granted certiorari before judgment and affirmed, in relevant part, the district court’s final judgment setting aside the Secretary’s decision to add a citizenship question. The Supreme Court held that “the Secretary’s decision must be set aside because it rested on a pretextual basis.” *Dep’t of Commerce*, 139 S. Ct. at 2573. The Court reasoned that the Secretary’s decision “cannot be adequately explained in terms of DOJ’s request for improved citizenship data to better enforce the VRA” because there was “a significant mismatch between the decision the Secretary made and the rationale he provided.” *Id.* at 2575. In short, Secretary Ross’s “VRA enforcement rationale—the sole stated reason—seems to have been contrived.” *Id.*

89. After the Supreme Court remanded the case to the district court, the court entered a permanent injunction that enjoined the defendants “from including a citizenship question on the 2020 decennial census questionnaire; from delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019 for the purpose of including a citizenship question; and from asking persons about citizenship status on the 2020 census questionnaire or otherwise asking a citizenship question as part of the 2020 decennial census.” Order, *New York v. Dep’t of Commerce*, No. 18-cv-2921, Doc. No. 634 (S.D.N.Y. July 16, 2019).

90. On July 11, 2019, President Trump issued an Executive Order to “ensure that accurate citizenship data is compiled in connection with the census” notwithstanding the Supreme Court’s decision and the district court’s order precluding the use of a citizenship question in the 2020 Census. *Collecting Information About Citizenship Status in Connection with the Decennial Census*, Exec. Order 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019).

91. To achieve that goal, President Trump directed all executive departments and agencies to provide to the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and noncitizens in the country.” *Id.*

92. In a public statement accompanying the issuance of the Executive Order, given from the White House’s Rose Garden, President Trump made clear that the federal government would not be “backing down on our effort to determine the citizenship status of the United States population.” President Donald Trump, *Remarks by President Trump on Citizenship and the Census* (July 19, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/>. President Trump stated that “[t]here used to be a time when you could proudly declare, ‘I am a citizen of the United States.’ Now they’re trying to erase the very existence of a very important word and a very important thing: citizenship.” *Id.*

93. President Trump further stated that, pursuant to the Executive Order, the federal government will be taking steps “to ensure that citizenship is counted so that we know how many citizens we have in the United States.” *Id.*

III. The July 21, 2020 Memorandum directing exclusion of undocumented immigrants from the apportionment count.

94. Recent events have now laid bare the real reasons driving Secretary Ross’s decision to add a citizenship question to the 2020 Census: to exclude undocumented persons from the “whole number of persons” that constitutes the apportionment base and to discriminate against Hispanics and noncitizens.

95. On July 21, 2020, President Trump issued a memorandum (i) declaring that undocumented immigrants will be excluded from the “whole number of persons in each State” enumerated by the 2020 Census and used to apportion the number of Representatives to each State, and (ii) directing the Secretary to take “all appropriate action” to provide the President

with information to exclude undocumented immigrants from the apportionment base.

Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679 (July 23, 2020) (attached as Ex. 1).

96. The Memorandum declares that “[f]or the purpose of the reapportionment of Representatives following the 2020 Census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible.” *Id.* at 44,680.

97. The Memorandum asserts that the Executive branch has purported “discretion” to exclude from the apportionment base all undocumented immigrants who reside in the United States, *id.* at 44,679—no matter how long they have been living here.

98. The Memorandum acknowledges that the Constitution explicitly requires apportionment of Representatives based on the “whole number of persons in each State.” *Id.* It states that not every person who is physically present on the decennial census date is living in the United States. *Id.* For example, the Memorandum states, noncitizens who are temporarily visiting on vacation or for business are not “inhabitants” of the United States and are thus not included in the apportionment base. *Id.* Without any plausible basis, the Memorandum then asserts that purported “discretion delegated to the executive branch to determine who qualifies as an ‘inhabitant’ includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status”—even if those persons have been living in the United States for many years. *Id.*

99. In the Memorandum, President Trump targets States (including some of the plaintiff States) that have many undocumented immigrants living in their jurisdictions or that have declined to affirmatively assist the federal government’s immigration enforcement efforts.

100. For example, President Trump stated that “[a]ffording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles.” *Id.* at 44,680. The Memorandum further stated that States that decline to adopt state laws or policies to assist federal efforts to enforce the immigration laws passed by Congress should essentially be stripped of any “representation in the House of Representatives” that is based on undocumented immigrants living in their jurisdictions. *Id.*

101. The Memorandum requires Secretary Ross, in preparing his § 141(b) report of the actual enumeration on which apportionment must be based, to take actions “to provide information” to the President to exclude undocumented immigrants from apportionment. *Id.* The Memorandum thus directs the Secretary (and by extension the Commerce Department and Census Bureau) to take actions to enable the President to exclude undocumented immigrants from his § 2a(a) report of both the “whole number of persons in each State” and the corresponding number of Representatives that each State receives. *Id.*

102. On the same day that he issued the Memorandum, President Trump issued a public statement making clear that Defendants’ decision and actions to exclude undocumented immigrants from the apportionment base are a continuation of the federal government’s prior unlawful attempt to add a citizenship question to the 2020 Census. President Donald Trump,

Statement from the President Regarding Apportionment (July 21, 2020),

<https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

103. As President Trump’s statement explained, he had previously asserted during his Rose Garden statements in July 2019 that he “would not back down in [his] effort to determine the citizenship status of the United States population.” *Id.* He further explained that he was now following “through on that commitment by directing the Secretary of Commerce to exclude illegal aliens from the apportionment base following the 2020 census.” *Id.* Echoing his earlier statements about the citizenship question, Trump further asserted that “[t]here used to be a time when you could proudly declare, ‘I am a citizen of the United States’” and that “the radical left is trying to erase the existence of this concept and conceal the number of illegal aliens in our country.” *Id.* He stated that his Memorandum directing exclusion of undocumented immigrants from the apportionment base responds to a purported “broader left-wing effort to erode the rights of Americans citizens.” *Id.*

104. Upon information and belief, following receipt of the Memorandum, the Secretary or Department of Commerce has issued (or will imminently issue) directives to the Census Bureau, constituting final agency action, to implement President Trump’s directive to exclude noncitizens from the enumeration and apportionment base.

IV. Defendants’ decision to exclude undocumented immigrants from the apportionment base is motivated by discriminatory animus toward Hispanics and immigrant communities of color.

105. The Memorandum explicitly states that its goal is to reduce political influence and congressional representation to jurisdictions with a larger share of undocumented immigrants. 85 Fed. Reg. at 44,680.

106. President Trump has repeatedly articulated concerns about the growth of immigrant communities and the impact of that growth on political power, and has sought to

minimize the power of Hispanic and immigrant communities to increase the power of non-Hispanic whites.

107. During the 2016 presidential campaign, for example, President Trump tweeted: “How crazy—7.5% of all births in U.S. are to illegal immigrants, over 300,000 babies per year. This must stop.”⁶

108. On April 5, 2018, when discussing his opposition to family-based immigration systems, President Trump claimed that Democrats favor “chain migration” because the party believes the immigrants will “vote Democratic.” Three weeks later, on April 28, President Trump revisited this topic, stating that Democrats favor undocumented immigration because “all of these people that are pouring across are going to vote for Democrats, they’re not going to vote for Republicans.”⁷

109. Defendants’ exclusion of undocumented immigrants from the apportionment base is of a piece with President Trump’s anti-immigrant and anti-Hispanic rhetoric and his Administration’s targeting of immigrant and Hispanic communities, which reflect animus towards those groups.

110. President Trump has long engaged in rhetoric that disparages Hispanics and immigrants of color. In statements stretching back to the beginning of his campaign, President Trump has repeatedly dehumanized, devalued, and vilified immigrants in general, and specifically immigrants from Latin America. For instance:

⁶ Donald Trump (@realDonaldTrump), Twitter (Aug. 21, 2015 6:56 AM), <https://twitter.com/realdonaldtrump/status/634725641972248576>.

⁷ Fox News (@FoxNews), Twitter (Apr. 28, 2018), <https://twitter.com/foxnews/status/990383288232620032>.

- a. During his campaign launch in June 2015, President Trump claimed that “[w]hen Mexico sends its people. . . . They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. . . . It’s coming from more than Mexico. It’s coming from all over South and Latin America.”⁸
- b. During a meeting about recent immigrants in the Oval Office in June 2017, President Trump stated that 15,000 immigrants from Haiti “all have AIDS” and that 40,000 immigrants from Nigeria would never “go back to their huts” in Africa after seeing the United States.⁹
- c. During a January 2018 meeting with lawmakers, while discussing protections for immigrants from Haiti, El Salvador and other African countries, President Trump asked why the United States is “having all these people from shithole countries come here” and suggested that the United States should have more immigrants from countries like Norway.¹⁰

⁸ *Full text: Donald Trump announces a presidential bid*, Wash. Post, June 16, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/>.

⁹ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times, Dec. 23, 2017, <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

¹⁰ Ali Vitali, Kasie Hunt & Frank Thorp V, *Trump referred to Haiti and African nations as ‘shithole’ countries*, Jan. 12, 2018, <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946>.

- d. In a May 16, 2018 speech, President Trump stated that “[w]e have people coming into the country, or trying to come in You wouldn’t believe how bad these people are. These aren’t people, these are animals.”¹¹
- e. Speaking on the topic of migrant groups travelling to the United States from Central America at a rally on May 8, 2019, President Trump, stated, “[W]hen you see these caravans starting out with 20,000 people, that’s an invasion.”¹²

111. President Trump has acted on this rhetoric by adopting policies that seek to isolate, exclude, and instill fear in Hispanic immigrants and other immigrants of color. For instance, the Trump Administration has:

- a. Attempted to rescind the Deferred Action for Childhood Arrivals program, which protected 800,000 individuals, 90% of whom were Hispanic and 80% of whom were Mexican-American;
- b. Banned travel from several majority-Muslim countries;
- c. Suspended refugee admissions to the United States;
- d. Terminated special protections from removal for migrants from nations experiencing war and natural disasters, including Nicaragua, Honduras, Haiti and El Salvador;

¹¹ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times, May 16, 2018, <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

¹² *President Trump Holds Rally in Panama City Beach, Florida*, C-SPAN (May 8, 2019) (video), <https://www.c-span.org/video/?460412-1/president-trump-holds-rally-panama-city-beach-florida>.

- e. Increased actual and threatened raids and deportations of undocumented migrants, including, as recently as June 17, 2019, when President Trump tweeted a threat that “[n]ext week ICE will begin the process of removing the millions of illegal aliens who have illicitly found their way into the United States. They will be removed as fast as they come in”;¹³
- f. Attempted to build a physical wall along the Mexico-U.S. border;
- g. Adopted policies of separating children from their families when entering the United States from Mexico, and detaining children separate from their parents and families thereafter; and
- h. Maintained children and other migrants across the U.S.-Mexico border in detention facilities that the United Nations Children’s Fund has described as “dire” and as causing “irreparable harm” to children housed in them.¹⁴

112. These public statements and actions from Defendant Trump establish that the rationale for excluding undocumented immigrants from the apportionment base is motivated by racial animus against immigrants of color, and a desire to curb the political power of immigrant communities of color.

¹³ Nick Miroff & Maria Sacchetti, *Trump vows mass immigration arrests, removals of ‘millions of illegal aliens’ starting next week*, Wash. Post, June 17, 2019, https://www.washingtonpost.com/immigration/trump-vows-mass-immigration-arrests-removals-of-millions-of-illegal-aliens-starting-next-week/2019/06/17/4e366f5e-916d-11e9-aadb-74e6b2b46f6a_story.html?utm_term=.ece5e6a6b7e6.

¹⁴ *After Rio Grande tragedy, UNICEF chief highlights “dire” detention centres on US-Mexico border*, UN News (June 27, 2019), <https://news.un.org/en/story/2019/06/1041421>.

V. Plaintiffs are harmed by Defendants' decision to exclude undocumented immigrants from the apportionment base.

113. Defendants' decision and actions to exclude undocumented immigrants from the apportionment base harm Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests because they will cause some Plaintiffs to lose congressional seats and decrease their share of presidential electors in the Electoral College; skew the division of electoral districts within Plaintiffs' jurisdictions by impairing state and local redistricting efforts that rely on the census count; reduce federal funds to Plaintiffs' jurisdictions by deterring immigrants from responding to the decennial census that is currently underway; and degrade the quality of census data that Plaintiffs rely on to perform critical governmental functions.

114. First, excluding undocumented immigrants from the apportionment count will likely cause several States to lose one or more Representatives in Congress, directly harming those Plaintiff States, as well as those Plaintiff counties and cities within affected States, by diluting their political power and undermining their interest in fair congressional representation.

115. For example, large numbers of undocumented immigrants reside in California, Texas, New York, New Jersey, and Illinois.¹⁵ Defendants' decision to exclude undocumented immigrants from the apportionment count is likely to directly reduce representation for those jurisdictions in Congress, injuring the representational interests of Plaintiffs the State of New York, State of New Jersey, State of Illinois, City of Chicago, City of New York, City and County of San Francisco, Cameron County, El Paso County, Hidalgo County, and Monterey County.

¹⁵ Pew Research Center, November 27, 2018, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2019/03/Pew-Research-Center_2018-11-27_U-S-Unauthorized-Immigrants-Total-Dips_Updated-2019-06-25.pdf.

Other Plaintiffs may also suffer direct representational harms if undocumented individuals are excluded from the apportionment count.

116. The Memorandum itself acknowledges and intends these harms. *See* 85 Fed. Reg. at 44,680 (recognizing that excluding undocumented immigrants will “result in the allocation” of fewer congressional seats “than would otherwise be allocated” to some states).

117. The loss of a congressional seat will also cause the affected Plaintiff States, counties, and cities to lose one or more votes in the Electoral College, impairing their ability to elect the President and Vice President and harming their political power.

118. Second, excluding undocumented immigrants from the apportionment base will harm Plaintiffs’ representational interests by directly impairing Plaintiffs’ ability to draw accurate districting lines for congressional, state, or local legislative districts.

119. To comply with the Fourteenth Amendment’s one-person, one-vote requirement, States must use total population as the population base for congressional redistricting. *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (describing “our Constitution’s plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives”); *see Evenwel*, 136 S. Ct. at 1129. Defendants’ decision to exclude undocumented immigrants from the apportionment base will undermine Plaintiff States’ ability to comply with this Constitutional mandate.

120. Certain Plaintiffs are required by state constitutional or statutory provisions to use the total population count from the decennial census as the basis for redistricting within their jurisdictions. New York state law provides, for example, that “each federal census taken decennially . . . shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of

senate and assembly districts.” N.Y. Const. art. III, § 4(a); *see also id.* §§ 3-5, 5-a. Many of the other Plaintiffs have comparable laws.¹⁶

121. Third, excluding undocumented immigrants from the apportionment base will deprive Plaintiffs of critical federal funding and inflict substantial financial harms on Plaintiffs.

122. Political science literature establishes that States that lose seats in Congress typically see a decrease in their share of federal outlays in subsequent years due to the reduction in their voting power in Congress. *See, e.g.,* Roy Elis, Neil Malhotra, & Marc Meredith, *Apportionment Cycles as Natural Experiments*, *Political Analysis* 358-76 (2009). Those Plaintiffs likely to lose representation in Congress therefore also stand to lose critical federal resources as a result.

123. All Plaintiffs will further suffer financial harm because Defendants’ decision to exclude undocumented immigrants from the apportionment base will deter participation in the ongoing decennial census, undermining the Census Bureau’s efforts to count immigrants and their families, and depriving Plaintiffs of their fair share of census-derived federal funds.

124. Plaintiffs are home to some of the hardest-to-count communities in the nation, including significant populations of authorized and undocumented immigrants.¹⁷ Many of these immigrants live in mixed-status families, with U.S. citizen children, siblings, or spouses. These

¹⁶ *See, e.g.,* Chicago Municipal code § 2-8-300; D.C. Code § 1-1011.01; Mass. Const. Amend. art. CI, §§ 1, 2, arts. CIX, CXVII, CXIX; Nev. Const. art. IV, § 5, art. XV, § 13; Tex. Const. art. 3, § 26; Va. Code Ann. § 30-265; Vt. Const. Ch. II, §§ 13, 18, 73; Vt. Stat. tit. 17, § 1902; Wash. Const. art. II, § 43; Wash. Rev. Code §§ 29A.76.010, 44.05.090.

¹⁷ Jeffrey S. Passel & D’Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Research Center (Nov. 27, 2018), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2019/03/Pew-Research-Center_2018-11-27_U-S-Unauthorized-Immigrants-Total-Dips_Updated-2019-06-25.pdf.

households are already less likely to respond to the census questionnaire; this Administration's ongoing efforts to target immigrants—including Defendants' failed efforts to add a citizenship question to the decennial census—have engendered substantial fear within these communities.¹⁸

125. The COVID-19 pandemic has further hampered efforts to ensure that all people—including hard-to-count populations—are counted. For example, the census relies upon non-response follow up operations (NRFU) to contact potential respondents and increase the census response rate. But NRFU operations were suspended and delayed during the pandemic, and the Government Accountability Office has raised concerns that even when resumed, these efforts will be less effective in light of the virus.¹⁹

126. Defendants' decision to exclude undocumented immigrants from the apportionment base was announced just weeks before Census Bureau enumerators were finally scheduled to go into the field to encourage households to respond to the census,²⁰ creating confusion and further increasing the risk of an undercount.

¹⁸ See, e.g., Alexandra Schmidt, *Citizenship question is gone. Michigan immigrants still distrust the Census*, (Mar. 2, 2020), <https://www.bridgemi.com/michigan-government/citizenship-question-gone-michigan-immigrants-still-distrust-census> (noting ongoing “fear among immigrants about what the government will do with information collected in the count”).

¹⁹ See U.S. Government Accountability Office, *2020 Census: COVID-19 Presents Delays and Risks to Census Count* <https://www.gao.gov/products/GAO-20-551R#summary>.

²⁰ U.S. Census Bureau, *2020 Census Operational Adjustments Due to COVID-19*, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (last visited July 24, 2020).

127. The announcement of Defendants' decision was intended to promote fear and deter participation in the census by immigrants and their families, including through the President's remarks that he "will not stand" for efforts to "conceal the number" of immigrants.²¹

128. The Census Bureau has repeatedly emphasized that "[e]veryone counts," citizens and noncitizens alike.²² But Defendants' decision and actions to exclude undocumented immigrants from the apportionment base do the opposite. Excluding undocumented immigrants from the apportionment count communicates to immigrants that their census responses are less valuable and less important than those of citizens.

129. Many federal programs rely on the population figures collected in the decennial census to distribute federal funds among states and local governments. At least 320 federal domestic financial assistance programs rely on census data to allocate money; in fiscal year 2016, these programs "allocated about \$900 billion using census-derived data." *New York*, 351 F. Supp. 3d at 596. These programs support essential services for Plaintiffs, including healthcare, public education, social services, and infrastructure development. The reduction in census participation caused by Defendants' announcement that they will exclude undocumented immigrants from the apportionment base will harm Plaintiffs by depriving them of their statutory fair share of federal funding and removing crucial resources for important government services.

130. Finally, by deterring immigrants and their families from responding to the decennial census, Defendants' decision to exclude undocumented immigrations from the apportionment base will degrade the quality of census data. As census self-response rates

²¹ President Donald Trump, *Statement from the President Regarding Apportionment* (July 21, 2020), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/>.

²² See, e.g., Census Bureau, *Setting the Record Straight*, <https://2020census.gov/en/news-events/rumors.html>.

decline, the quality of the data—including information relating to population subgroups and their characteristics—worsens. But Plaintiffs “rely on accurate data to perform essential governmental functions,” including to draw school zones, deploy health care resources, and make infrastructure decisions. *Id.* at 600. Defendants’ decision will therefore undermine Plaintiffs’ interests in using accurate census data to perform critical governmental functions.

VI. Defendants have not identified any reliable method to accurately enumerate the population of undocumented immigrants.

131. Defendants cannot reliably exclude undocumented immigrants from the apportionment count. Just months ago, the Federal Government represented in separate litigation that there is a “lack of accurate estimates of the resident undocumented population” on a state-by-state basis.²³

132. Although a previous executive order suggests that the Census Bureau may rely on administrative records to identify *noncitizens*, *see* 84 Fed. Reg. at 33,821, many noncitizens are lawfully present; and administrative records cannot provide sufficiently reliable or accurate information about whether noncitizens are *undocumented*, particularly for actual enumeration and apportionment purposes. Indeed, administrative records are “weak in their coverage of undocumented aliens because programs typically require documentation that many undocumented aliens do not have.”²⁴ The limited administrative records available with respect to undocumented immigrants are incomplete, outdated, and often inaccurate.

²³ Decl. of Census Bureau Senior Advisor Enrique Lamas, Defs.’ Supp. Rule 26(a)(1) Disclosures and Rule 26(a)(2)(C) Disclosures, *Alabama v. Dep’t of Commerce*, No. 2:18-cv-00772-RDP (N.D. Ala. Mar. 13, 2020).

²⁴ John L. Czajka, *Can Administrative Records Be Used to Reduce Nonresponse Bias?*, 645 *Annals Am. Acad. Pol. & Social Sci.* 171, 175 (2013).

133. For example, the Department of Homeland Security (DHS) recently acknowledged that determining immigration status from their records is “challenging,” given the “the decentralized nature of admission and immigration information, as well as the lack of a nationwide departure control system.”²⁵ DHS has acknowledged that time lags between collecting and reporting data mean that “data accuracy issues may arise.”²⁶ Even when used in combination, existing administrative records are inadequate to ascertain reliably whether individuals are undocumented.

134. Although the federal government has already suggested that they may resort to “statistical modeling” to estimate the undocumented population in furtherance of the Presidential Memorandum, the Census Bureau has not yet “formulated a methodology,”²⁷ and Defendants have not articulated how such statistical modeling will comport with their constitutional obligation to conduct an “actual Enumeration.” U.S. Const. art. 1, § 2, cl. 3.

135. Despite Defendants’ failure to identify any reliable method to accurately enumerate the population of undocumented immigrants, Defendants have already decided to report that population to the President and to exclude that population from the tabulation of total population reported to Congress. Defendants’ commitment to proceeding on this course of action without regard to the unreliability or inaccuracy of their underlying enumeration demonstrates that they have prejudged the decision, violates their statutory obligations to report

²⁵ Department of Homeland Security, *Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau*, 2, 11 (Dec. 20, 2019), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-dhs079-sharingwithcensus-december2019.pdf>.

²⁶ *Id.* at 6.

²⁷ Hansi Lo Wang (@hansilowang), Twitter (July 22, 2020, 10:58 AM), <https://twitter.com/hansilowang/status/1285952274410409985>.

total population, and confirms the irrational and arbitrary nature of their decision and actions to exclude undocumented immigrants from the actual enumeration and apportionment base.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**(U.S. Constitution article I, section 2, clause 3;
U.S. Constitution amend. XIV, sec. 2)**

136. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

137. The Constitution requires that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2; *see id.* art. I, § 2, cl. 3.

138. Undocumented immigrants are persons. *Plyler*, 457 U.S. at 210 (“Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term.”).

139. Defendants’ decision to exclude undocumented immigrants from the apportionment base for the purpose of reapportionment of Representatives following the 2020 Census, as well as any action they take to implement or further that decision, violates the constitutional command to apportion Representatives “counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

140. Defendants’ violation causes ongoing harm to Plaintiffs and their residents.

SECOND CLAIM FOR RELIEF

(U.S. Constitution amend. V—Due Process Clause)

141. Plaintiff States incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

142. Under the equal protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution, the federal government cannot deny to any person the equal protection of its laws. The Due Process Clause specifically prohibits the federal government from discriminating against individuals on the basis of race, ethnicity, and national origin. U.S. Const. amend. V.

143. Defendants' decision to exclude undocumented immigrants from the apportionment base is motivated by discriminatory animus toward Hispanics and immigrant communities of color. This animus is reflected in Defendants' repeated statements vilifying these communities.

144. The highly unusual chronology of events, sharp departure from centuries of past practice, articulation of a pretextual reason for Defendants' now-enjoined efforts to demand citizenship information on the decennial census questionnaire, and disproportionate burden of Defendants' decision on Hispanics and immigrant communities of color further indicate that Defendants' decision is motivated by unconstitutional discriminatory purpose.

145. By excluding undocumented immigrants from the apportionment base, Defendants intend to reduce political power, influence, and funding resources among Hispanic and immigrant communities as compared to non-Hispanic whites.

146. Defendants' violation causes ongoing harm to Plaintiff States and their residents.

THIRD CLAIM FOR RELIEF

(U.S. Constitution amend. X)

147. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

148. The Tenth Amendment prohibits the federal government from coercing states and localities to legislate or promote policies that capitulate to federal interests.

149. Defendants' decision to exclude undocumented immigrants from the apportionment count punishes Plaintiffs for refusing to assist in the enforcement of federal immigration law, in an attempt to coerce Plaintiffs to change their policies. 85 Fed. Reg. at 44,680.

150. The Tenth Amendment requires the federal government to respect the equal sovereignty of the sovereign states.

151. Without adequate justification, Defendants' decision to exclude undocumented immigrants from the apportionment count impermissibly targets certain states for unfavorable treatment because of their refusal to assist in the enforcement of federal immigration law. 85 Fed. Reg. at 44,680.

152. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

FOURTH CLAIM FOR RELIEF

(Administrative Procedure Act, 5 U.S.C. § 706)

153. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

154. The Administrative Procedure Act provides that the Court "shall" "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

155. Defendants' decision to exclude undocumented immigrants from the apportionment base, as well as any action they take to implement or further that decision, is arbitrary and capricious because it is contrary to the evidence before the agency and fails to consider important aspects of the problem, including that Defendants lack data reliably to exclude undocumented immigrants from the apportionment base.

156. Defendants' decision and any implementing actions they undertake are also not in accordance with law because the Census Act requires the Secretary to tabulate and report to the President a tabulation of "total population by States . . . as required for apportionment of Representatives in Congress." 13 U.S.C. § 141(b).

157. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Declare that Defendants' decision to exclude undocumented immigrants from the apportionment base following the 2020 Census, as well as any action they take to implement or further that decision, is unauthorized by and contrary to the Constitution and laws of the United States;

2. Declare that Defendants' decision to exclude undocumented immigrants from the apportionment base following the 2020 Census is intentionally discriminatory in violation of the equal protection component of the Due Process Clause of the Fifth Amendment;

3. Declare that Defendants' decision and any implementing actions they take are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A);

4. Enjoin Defendants and all those acting on their behalf from excluding undocumented immigrants from the apportionment base following the 2020 Census, or taking any action to implement or further such a policy;

5. Issue an order holding unlawful, vacating, and setting aside the decision to exclude undocumented immigrants from the apportionment base, as well as any action taken to implement or further that decision;

6. Issue a writ of mandamus compelling the Secretary of Commerce to tabulate and report to the President the total population by States under 13 U.S.C § 141(b) based solely on the total number of persons in each State, including undocumented immigrants, without providing any information about the number of undocumented immigrants in each State.

7. Issue a writ of mandamus compelling the President to transmit to Congress pursuant to 2 U.S.C. § 2a(a) a statement of the whole number of persons in each State, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, based on the total number of residents of each state, including undocumented immigrants.

8. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees; and

9. Grant such other and further relief as the Court deems just and proper.

DATED: July 24, 2020

Respectfully submitted,

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* Application for *pro hac vice* admission forthcoming

Exhibit 1

Federal Register

Vol. 85, No. 142

Thursday, July 23, 2020

Presidential Documents

Title 3—

Memorandum of July 21, 2020

The President

Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the “whole number of persons in each State,” which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is “the President’s personal transmittal of the report to Congress” that “settles the apportionment” of Representatives among the States, and the President’s discretion to settle the apportionment is more than “ceremonial or ministerial” and is essential “to the integrity of the process” (*Franklin v. Massachusetts*, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the “persons in each State, excluding Indians not taxed,” to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State’s boundaries at the time of the census. Instead, the term “persons in each State” has been interpreted to mean that only the “inhabitants” of each State should be included. Determining which persons should be considered “inhabitants” for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are “persons” who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically “in” a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an “inhabitant” includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

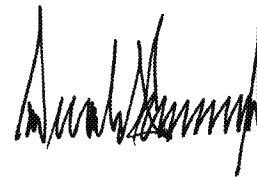
Sec. 3. Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 FR 5525 (Feb. 8, 2018).

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
Washington, July 21, 2020

[FR Doc. 2020-16216
Filed 7-22-20; 2:00 pm]
Billing code 3510-07-P

From: Cannon, Michael (Federal) [MCannon@doc.gov]
Sent: 6/1/2020 9:01:33 PM
To: Olson, Stephanie (Federal) [SOlson@doc.gov]
Subject: FW: draft analysis - submitted vs House passed
Attachments: comparison of census draft and House-passed language.docx; ATT00001.htm

CUI//PRIVILEGE//FED ONLY

FYI

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From: Foti, Anthony (Federal) <AFoti@doc.gov>
Sent: Monday, June 1, 2020 8:50 PM
To: Cannon, Michael (Federal) <MCannon@doc.gov>
Cc: Ahmad, Ali M <ali.m.ahmad@census.gov>
Subject: Fwd: draft analysis - submitted vs House passed

With attachment.

Anthony Foti
Performing the delegated duties of the
Assistant Secretary for Legislative and Intergovernmental Affairs
U.S. Department of Commerce
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202-482-1148

Begin forwarded message:

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>
Date: June 1, 2020 at 6:22:15 PM EDT
To: "Foti, Anthony (Federal)" <AFoti@doc.gov>
Cc: "Stanley, Christopher J" <christopher.j.stanley@census.gov>
Subject: draft analysis - submitted vs House passed

Foti- you think this works?

From: Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]
Sent: 6/1/2020 9:40:34 PM
To: Olson, Stephanie (Federal) [SOlson@doc.gov]; Cannon, Michael (Federal) [MCannon@doc.gov]; Foti, Anthony (Federal) [AFoti@doc.gov]
Subject: Fwd: draft analysis - submitted vs House passed
Attachments: Analysis of 2020 Census Provisions in House Passed Legislation.docx; ATT00001.htm

Begin forwarded message:

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>
Date: June 1, 2020 at 8:23:08 PM EDT
To: Michael Walsh <MWalsh@doc.gov>
Cc: Anthony Foti <AFoti@doc.gov>
Subject: Re: draft analysis - submitted vs House passed

b(5) - DP/AC

I'm sorry this is going so late.

Ali Ahmad, Associate Director
Communications Directorate
U.S. Census Bureau

O: 301-763-8789 | M: **b(6)**

Ali.M.Ahmad@census.gov

census.gov | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: Ali Mohammad Ahmad (CENSUS/ADCOM FED)
Sent: Monday, June 1, 2020 6:51 PM
To: Michael Walsh <MWalsh@doc.gov>
Cc: Anthony Foti <afoti@doc.gov>
Subject: Fwd: draft analysis - submitted vs House passed

Here's what was sent. If this doesn't work I can hop on computer and fix.

Begin forwarded message:

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>
Date: June 1, 2020 at 6:20:39 PM EDT
To: Anthony Foti <AFoti@doc.gov>
Cc: "Christopher J Stanley (CENSUS/OCIA FED)" <christopher.j.stanley@census.gov>
Subject: draft analysis - submitted vs House passed

Foti- you think this works?

From: Keller, Catherine (Federal) [CKeller@doc.gov]
Sent: 8/18/2020 2:37:56 PM
To: Brebbia, Sean (Federal) [SBrebbia@doc.gov]
CC: Olson, Stephanie (Federal) [SOlson@doc.gov]
Subject: FW: ATTORNEY CLIENT / WORK PRODUCT / DELIBERATIVE PROCESS PRIVILEGED FW: Here's the National Urban League complaint
Attachments: US_DIS_CAND_5_20cv5799_COMPLAINT_for_Declaratory_and_Injunctive_Relief_Fi.pdf

+ Sean

From: DiGiacomo, Brian (Federal)
Sent: Tuesday, August 18, 2020 2:08 PM
To: Kourkouvelis, Aristidis (Federal) <AKourkouvelis@doc.gov>; Olson, Stephanie (Federal) <SOlson@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>
Subject: Here's the National Urban League complaint

See attached.

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17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 NATIONAL URBAN LEAGUE; LEAGUE OF
WOMEN VOTERS; BLACK ALLIANCE FOR
20 JUST IMMIGRATION; HARRIS COUNTY,
TEXAS; KING COUNTY, WASHINGTON;
21 CITY OF LOS ANGELES, CALIFORNIA;
CITY OF SALINAS, CALIFORNIA; CITY OF
22 SAN JOSE, CALIFORNIA; RODNEY ELLIS;
and ADRIAN GARCIA,

23 Plaintiffs,

24 v.

25 WILBUR L. ROSS, JR., in his official capacity
as Secretary of Commerce; U.S. DEPARTMENT
26 OF COMMERCE; STEVEN DILLINGHAM, in
his official capacity as Director of the U.S.
27 Census Bureau; and U.S. CENSUS BUREAU,

28 Defendants.

CASE NO. 20-cv-5799

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This lawsuit challenges the unconstitutional and illegal decision by Secretary of
3 Commerce Wilbur Ross, and Census Bureau (the “Bureau”) Director Steven Dillingham, to
4 sacrifice the accuracy of the 2020 Census by forcing the Census Bureau to compress eight and a
5 half months of vital data-collection and data-processing into four and a half months, against the
6 judgment of the Bureau’s staff and in the midst of a once-in-a-century pandemic.

7 2. The Census Bureau’s staff spent most of the past decade developing a final
8 operational plan for the 2020 Census that reflected the Bureau’s understanding of the best
9 methods for counting everyone once and in the right place (the “Final Operational Plan”). In
10 April 2020, as the COVID-19 pandemic spread throughout the country, the Census Bureau
11 revised its plan to account for both the difficulties of census-taking during a pandemic and the
12 Bureau’s constitutional and statutory obligation to achieve a fair and accurate count (the
13 “COVID-19 Plan”). To achieve both ends, the Department of Commerce and the Census Bureau
14 delayed the counting process, shifted the timeframe for conducting and completing its data-
15 collection operation, and increased the time for conducting data-processing, while, crucially,
16 preserving the same amount of time for each step of those operations.

17 3. On August 3, 2020, the Department of Commerce and the Census Bureau
18 suddenly and without explanation reversed course and replaced the Bureau’s COVID-19 Plan
19 with a new one (the “Rush Plan”). The Bureau’s Rush Plan requires the Bureau to complete eight
20 and a half months of data-collection and data-processing in half the time. It ignores the multi-
21 month delay in census data-collection that the COVID-19 pandemic caused. It compels a final
22 date for delivering apportionment data to the President that Bureau officials have repeatedly
23 asserted they cannot meet. And it threatens a massive undercount of the country’s communities
24 of color and the municipalities, cities, counties, and states where they live. Under these
25 circumstances, the Bureau’s new plan to rush the 2020 Census violates, among other things, the
26 federal government’s legal obligations to secure an accurate count and statutory prohibitions on
27 arbitrary, capricious, and pretextual federal government action.

28 4. The federal government’s attempt to rush the census count poses a grave threat to

1 all the vital functions that rely on census data, from reapportioning the United States House of
2 Representatives and redrawing state and local electoral districts, to equitably distributing over
3 \$1.5 trillion annually in federal funds that support basic needs such as food, health care, and
4 education. Undercounted cities, counties, and municipalities will lose representation in Congress
5 and tens of millions of dollars in funding. And communities of color will lose core political
6 power and vital services. In contrast to these dire stakes, the immediate solution to this problem
7 is simple: set aside and enjoin implementation of the impossibly-shortened Rush Plan, which is
8 based on an unexplained change of position, and allow the Census Bureau to implement the plan
9 that it had designed to fulfill its constitutional duties during the pandemic.

10 5. The COVID-19 pandemic upended all 2020 Census field operations, many of
11 which the Census Bureau designed to enumerate populations that it has long struggled to count,
12 including racial and ethnic minorities, non-English speakers, and undocumented persons. Among
13 the disrupted census operations was the largest, most time-consuming operation undertaken to
14 count the country’s hard-to-count communities—the “Non-Response Follow Up” operation.
15 During Non-Response Follow Up, the Bureau sends its employees to knock on the doors of
16 households that have not yet responded to the census and perform other vital data-collecting
17 functions.

18 6. The Bureau’s staff responded to the pandemic—and the impossibility of
19 conducting house visits during widespread lockdowns—by making necessary adjustments to the
20 timeline in the Final Operational Plan. This revised operational plan, the COVID-19 Plan issued
21 on April 13, 2020, was intended to ensure that hard-to-count communities would be enumerated
22 and the health and safety of Bureau employees and the public would be protected. This plan
23 adjusted the deadlines of, but did not shorten the time for, critical operations. Under this plan—
24 which experts and census stakeholders alike endorsed as a scientifically sound approach for
25 minimizing the pandemic’s potential damage to the accuracy of the count—the Bureau extended
26 its data-collection deadlines to October 31, 2020 and its data-processing deadlines into the
27 second quarter of 2021. Critically, the COVID-19 Plan delayed door-knocking by three months,
28 pushing it from May–July 2020 to August–October 2020. But the COVID-19 Plan

1 acknowledged that the Bureau must spend the same amount of time—around eleven and a half
2 weeks—on door-knocking, just as it had planned to do before the pandemic. The COVID-19
3 Plan also incorporated the same methods and techniques contemplated in the Final Operational
4 Plan that the Bureau had spent years developing. Indeed, the only respect in which the COVID-
5 19 Plan altered the amount of time devoted to operations set out in the Final Operational Plan
6 was a requirement that the Bureau spend *more* time than originally planned *processing* the data it
7 collected—that is, performing the necessary work to transform over 100 million individual
8 census forms into high-quality, reliable, and legitimate data. This additional investment in data-
9 processing reflected daunting new challenges the COVID-19 pandemic posed to an accurate
10 count, including massive displacements of people that would introduce problems of duplicate
11 responses, responses without unique census identifiers, and other complex data issues.

12 7. The Department of Commerce and the Census Bureau also recognized that the
13 impact of COVID-19 had made it impossible to meet certain statutory deadlines for reporting
14 census results to Congress. Commerce Secretary Wilbur Ross and Census Bureau Director
15 Steven Dillingham announced that the Bureau was seeking relief from Congress to formally
16 extend two statutory deadlines: first, the deadline for reporting the state-population totals used to
17 calculate the congressional apportionment to the President, which Congress was asked to extend
18 from December 31, 2020 to April 30, 2021; and, second, the deadline for reporting redistricting
19 data to the states, which Congress was asked to extend from March 31, 2021, to July 31, 2021.
20 Commenting on the statutory-deadline extensions, President Trump publicly stated on April 13,
21 2020, “I don’t know that you even have to ask [Congress]. This is called an act of God. This is
22 called a situation that has to be. They have to give in. I think 120 days isn’t nearly enough.”
23 Hansi Lo Wang, *Trump Officials Ask to Delay Census Data for Voting Districts, House Seats*,
24 NPR (Apr. 13, 2020), [https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-](https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats)
25 [census-data-for-voting-districts-house-seats](https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats).

26 8. Recognizing that more time was necessary to complete an accurate census, and
27 consistent with the President’s statement, the Bureau proceeded immediately under its COVID-
28 19 Plan. The Bureau delayed its door-knocking operation to late summer, with the declared

1 intention of completing it by October 31, 2020. And recognizing that a successful census is
2 dependent on all levels of government working together, the Bureau publicized this plan to the
3 public, as well as to government and non-profit partners involved in the years-long and multi-
4 million-dollar public education campaign to ensure public trust and encourage public
5 participation in the census.

6 9. Throughout the summer, Bureau officials repeatedly stated that the pandemic had
7 rendered it impossible for the Bureau to complete a reasonably accurate count by December 31,
8 2020. But to comply with its constitutional obligations, the Bureau continued collecting data on
9 the timelines set in the COVID-19 Plan, which itself extended the Bureau's data-processing
10 timelines into 2021.

11 10. On August 3, 2020—in the face of a pandemic that has only grown worse and in
12 disregard of the Census Bureau's constitutional and statutory duties to conduct an actual
13 enumeration of the entire population—Secretary Ross and Director Dillingham abruptly
14 abandoned the COVID-19 Plan. Without explanation, they announced the new Rush Plan for the
15 2020 Census, including shortening the Bureau's data-collection operation by one month to
16 September 30, 2020, and requiring the Bureau to process and report the apportionment data to
17 President Trump by December 31, 2020. The Rush Plan cuts a crucial four weeks from the data-
18 collection operation. And it disregards the Bureau's own prior conclusions that such rushed
19 processing renders it impossible to fulfil its constitutional obligation to ensure reasonable quality
20 and accuracy of 2020 Census data.

21 11. Defendants' decision to abandon the COVID-19 Plan in favor of the Rush Plan
22 does not satisfy the Supreme Court's clear command that any decision relating to the census bear
23 a "reasonable relationship" to producing an accurate count. *See Wisconsin v. City of N.Y.*, 517
24 U.S. 1, 20 (1996). As demonstrated by Defendants' own prior statements, the challenged decision
25 cannot be justified by any legitimate interest in conducting an accurate census, and in fact will
26 introduce several inaccuracies in the count, chief among them major undercounts of communities
27 of color.

28 12. The reason for this abrupt change of position is not apparent on the face of the

1 press release announcing the Rush Plan or any other subsequently issued statements or
2 publications from the federal government. The Bureau has refused requests from Congress and at
3 least one Plaintiff in this action to provide one.

4 13. The announcement of the Rush Plan did reference two developments that
5 occurred between the adoption of the COVID-19 Plan and the announcement of the Bureau's
6 intent to adopt the Rush Plan. But neither of these developments can justify Defendants' actions.
7 First, the announcement refers to the Secretary of Commerce's direction to the Bureau to comply
8 with the statutory deadline of December 31, 2020 for completing the apportionment count. But
9 this statutory deadline cannot justify an unconstitutional decision to cut short crucial operations
10 and fail to satisfy its constitutional obligation. A statutory deadline, particularly one that was set
11 without a global pandemic in mind, cannot override the federal government's constitutional duty
12 to accomplish an accurate census; there is "nothing sacred in the due date of the filing [of
13 apportionment data], especially when the work of the Census Bureau . . . is incomplete." *Carey*
14 *v. Klutznick*, 637 F. 2d 834, 837 (2d Cir. 1980). Moreover, the Bureau was cognizant of this
15 deadline even as it designed and implemented the COVID-19 Plan, including delaying crucial
16 field operations by several months. And Bureau officials have repeatedly made clear that because
17 of the impediments introduced by COVID-19, together with the multi-month delay, it is *already*
18 too late to satisfy these pre-COVID-19 deadlines.

19 14. Second, both the text of the Rush Plan announcement and the timing of the
20 decision suggest that the federal government's motivation for the Rush Plan is to facilitate
21 another illegal act: suppressing the political power of communities of color by excluding
22 undocumented people from the final apportionment count. On July 21, 2020—just a few weeks
23 earlier—President Trump issued a Presidential Order titled "Memorandum Excluding Illegal
24 Aliens From the Apportionment Base Following the 2020 Census" (the "Apportionment
25 Exclusion Order")—which expressly stated the President's determination to exclude
26 undocumented people from the population count used for apportionment. To increase the chance
27 that the President can fully effectuate the Apportionment Exclusion Order, he must receive the
28 population totals while he is still in office, and he ordered the Secretary of Commerce to provide

1 him with 2020 decennial census information by December 31, 2020 to carry out his objective.

2 15. The President’s Apportionment Exclusion Order (currently being challenged as
3 unconstitutional and unlawful in a number of lawsuits filed in jurisdictions around the country,
4 including in this District) represents only the most recent of Defendants’ serial attempts to
5 manipulate the 2020 Census to suppress the political power of communities of color. These
6 attempts started with a campaign to introduce a historically unprecedented and untested
7 citizenship question onto the 2020 Census questionnaire to advantage—in the words of a
8 deceased Republican redistricting consultant—“Republicans and non-Hispanic whites.” Michael
9 Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship*
10 *Question*, N.Y. Times (May 30, 2019), [https://www.nytimes.com/2019/05/30/us/census-](https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html)
11 [citizenship-question-hofeller.html](https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html). Since the Supreme Court blocked the question, Defendants
12 have looked for other means to achieve that same end, including collecting data on citizenship
13 from administrative records and, now, cutting the census short.

14 16. Plaintiffs are local governments, civil rights and civic organizations, and
15 individuals whose communities will almost certainly be inaccurately represented and
16 underrepresented in the final census count if the administration succeeds in truncating census
17 data-collection and data-processing.

18 17. Plaintiffs seek declaratory relief affirming that Defendants’ actions violate the
19 Enumeration Clause and the Administrative Procedure Act. Plaintiffs additionally seek to set
20 aside and enjoin implementation of the illegal Rush Plan, thereby permitting the Bureau to
21 implement the preexisting COVID-19 Plan it carefully designed to ensure a complete and
22 accurate count. This relief will allow the Bureau to conduct the 2020 Census on the timeline it
23 has repeatedly asserted is necessary to complete a full, fair, and accurate count.

24 18. Without such relief, Plaintiffs and the communities they represent will suffer
25 irreparable harm for at least another decade, until the next census is conducted.

26 **JURISDICTION AND VENUE**

27 19. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1346(a), and
28 1361.

20. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) and (c)(1). Defendants are United States officers or agencies sued in their official capacities, a substantial part of the events or omissions giving rise to this action have occurred or will occur in this district, and one or more Plaintiffs reside in this district.

21. This Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

22. The proper intradistrict assignment for this action is the San Jose Division, in light of the location of Plaintiffs City of San Jose and members of the League of Women Voters.

PARTIES

I. Plaintiffs

23. The National Urban League (“Urban League”) is a civil-rights organization with over 90 affiliates serving 300 communities in 37 states and the District of Columbia. Founded in 1910, the National Urban League is headquartered in New York City. The mission of the National Urban League is to help African Americans and others in underserved communities achieve their highest human potential and secure economic self-reliance, parity, power, and civil rights.

24. For the 2020 Census, the Urban League has expended substantial resources developing programs designed to encourage self-response and cooperation with Census Bureau offices in historically undercounted communities. Specifically, the organization has engaged in efforts to educate the public about the census through various methods, including virtual town halls, production and distribution of toolkits, workshops for locally based get-out-the-count organizations, and publication and upkeep of a website, www.MakeBlackCount.org, to disseminate critical information about the census. The Urban League has also worked with Census Bureau regional offices to encourage enumerator recruitment, and the organization uses social media to encourage 2020 Census participation.

25. Plaintiff Black Alliance for Just Immigration (“BAJI”) is a nonprofit organization organized and existing under the laws of California, with offices and members across the country, including in Oakland, California, Miami, Florida, Atlanta, Georgia, and New York City.

1 BAJI collaborates with African Americans and Black immigrants to organize and advocate for
2 equal and just laws in their communities. BAJI campaigns to advance racial justice and provides
3 partner organizations with varied assistance—particularly on immigration policy—and it spends
4 significant resources educating its partner organizations, individuals, and other constituents
5 through presentations, workshops, publications, technical assistance, and trainings. BAJI is a
6 membership organization, and its members either pay dues or volunteer their time to support the
7 organization. Members also actively participate in BAJI’s self-governance and decision-making
8 at the local level.

9 26. For the 2020 Census, BAJI has worked to ensure non-responsive households in
10 Black and immigrant communities are counted. BAJI has hired additional staff dedicated to
11 engaging local communities on the census, and has engaged in outreach using social media and
12 mailers to bolster self-response. In addition, since the outbreak of the COVID-19 pandemic,
13 BAJI staff regularly participate in webinars and virtual events to provide the public more
14 information about the census, with a specific focus on encouraging participation in Black and
15 immigrant communities.

16 27. The League of Women Voters is a nonprofit civic organization that encourages
17 informed and active participation in government. Founded in 1920, the League of Women Voters
18 is headquartered in Washington, D.C. The League of Women Voters has over 800 state and local
19 affiliates, located in all 50 states and in 764 specific communities, including affiliates with
20 members in San Francisco and Monterey County, California, Detroit, Michigan, Miami, Florida,
21 Philadelphia, Pennsylvania, and New York City. The League of Women Voters seeks to
22 empower voters and defend democracy. The League of Women Voters has over 65,000 members
23 nationwide, and its members either pay dues or volunteer their time to support the organization.

24 28. The League of Women Voters has engaged in significant efforts to ensure
25 historically undercounted communities are enumerated during the 2020 Non-Response Follow
26 Up operation. Prior to the outbreak of COVID-19 in the United States, the League of Women
27 Voters and its affiliates participated in public events across the country aimed at providing
28 information about the census to undercounted communities. Since March of this year, the League

1 of Women Voters has shifted to a digital public-education campaign, encouraging education and
2 participation through social media, email listservs, webinars, and blog posts. Affiliates in
3 Kansas, South Carolina and Maine are also participating in state Complete Count Committees
4 that seek to increase awareness of the 2020 Census, improve participation, and coordinate with
5 Census Bureau officials.

6 29. Harris County, Texas is a political subdivision of the State of Texas. With over
7 4.7 million residents, Harris County is the third largest county in the United States. The county's
8 population is over 43% Latino, 20% Black, over 7% Asian, and over 28% non-Hispanic White.
9 During the 2010 Census, 65.1% of households in Harris County self-responded to the census. As
10 of August 14, 2020, 58.3% of households in Harris County had self-responded to the 2020
11 Census. This response rate in Harris County was well below the national response rate on that
12 date, 63.6%.

13 30. For the 2020 Census, officials in Harris County engaged in extensive efforts to
14 encourage participation in the County. County officials formed a Complete Count Committee
15 with city officials in Houston that engaged in public education about the census, and built
16 partnerships with local Census Bureau officials to coordinate outreach efforts. In addition, in
17 2019, the County approved a budget of nearly \$4 million dollars to conduct outreach during the
18 2020 Census. To that end, the County has contracted with vendors to conduct surveys about the
19 opinions and attitudes of non-responsive populations and develop a digital advertising campaign
20 on Facebook and Instagram to encourage 2020 Census participation. And the County receives
21 substantial federal funding tied to census data.

22 31. King County is a political subdivision of the State of Washington. Over 2.2
23 million people live in King County, making it the most populous county in Washington. As of
24 August 14, 2020, 26.1% of households in King County had not responded to the 2020 Census.
25 The county has large populations of historically undercounted communities. For instance,
26 according to the Department of Housing and Urban Development, King County had nearly
27 12,000 residents experiencing homelessness, the third highest total of any locale in the country.
28 The Seattle metro area, which includes King County, is estimated to have 140,000

1 undocumented immigrant residents.

2 32. King County worked in partnership with local cities to provide \$1.17 million to
3 community-based organizations serving historically undercounted communities. Specifically,
4 King County sought to fund organizations that work with communities that are Limited English
5 Proficient. Through this funding, these organizations produced public education materials related
6 to the 2020 Census, and developed campaigns to get-out-the-count. And King County, too,
7 receives substantial federal funding tied to census data.

8 33. The City of Los Angeles, California is a municipal corporation organized and
9 existing under the laws of the State of California, and is a charter city pursuant to Article XI of
10 the California Constitution. The City is home to roughly 4 million people, and is located in the
11 county recognized by the Census Bureau as the hardest to count in the nation. The city's
12 population is a large contributor to the County's hard-to-count status as more than half of the
13 City's residents live in census tracts that are hard to count. As of August 14, 2020, only 53.8% of
14 the City's households had responded to the 2020 Census—well below the statewide average of
15 65.1% and even further below the City's own 2010 self-response rate of 68 percent.

16 34. As a result of its hard-to-count status, Los Angeles has engaged in years of
17 planning and devoted significant resources to developing a strategy for an accurate count,
18 tailored to the unique challenges of the City's population. To fund these efforts, the City has
19 overseen distribution of roughly \$2 million dollars to community-based organizations and the
20 investment of almost \$1.5 million of both City general fund and grant money in its own efforts.
21 And the City of Los Angeles also receives substantial federal funding tied to census data.

22 35. The City of Salinas, California is a political subdivision of the State of California.
23 Salinas is the most populous city in and the government seat of the County of Monterey. The city
24 is home to more than 150,000 people, including 38.5% of the county's "hard-to-count"
25 population. As of August 14, 2020, 57.2% of all households in Salinas have responded to the
26 2020 Census, which is 422nd out of all 482 California cities. The current response rate is 7.9
27 percentage points below California's statewide average for self-responses and more than 10
28 percentage points below Salinas's self-response rate from the 2010 Census.

1 36. Salinas has dedicated significant resources to funding and staffing its “Census
2 Action Team,” which is composed of city staff and representatives from the County of
3 Monterey’s “Complete Count Committee,” as well as community-based organizations, school
4 districts, and local businesses. The city’s population is more than 75% Latino, and more than 1 in
5 5 households have limited English-language proficiency. As part of its outreach, the Salinas
6 Census Action Team engages religious and community organizations, such as local food banks,
7 to assist with enumeration efforts in the Latino community and all communities of color as these
8 organizations are able to assist with trust and communication barriers that can make these groups
9 hard to count. The City of Salinas also receives substantial federal funding tied to census data.

10 37. The City of San Jose is a political subdivision of the State of California. San Jose
11 has over 1 million residents, making it the largest city in Northern California, and the tenth
12 largest city in the United States. San Jose’s population is 32% Latino, and 35% Asian, and nearly
13 40% of residents are foreign born. As of August 14, 2020, 28% of households in San Jose had
14 not responded to the census. San Jose has large populations of historically undercounted
15 communities. For instance, according to the Department of Housing and Urban Development, in
16 2019, San Jose had over 6,000 residents experiencing homeless. In addition, the San Jose metro
17 area is estimated to have over 150,000 undocumented immigrant residents.

18 38. The City of San Jose has engaged in extensive public-education and get-out-the-
19 count efforts during the 2020 Census. San Jose has formed a Complete Count Committee with
20 Santa Clara County, and nearly 90 community-based organizations. The Committee focuses on
21 raising awareness of the census in historically undercounted communities. San Jose also
22 disseminates information about the census to the public through city departments and offices.
23 San Jose also worked closely with the Census Bureau to recruit qualified bilingual enumerators.
24 The City of San Jose receives substantial federal funding tied to census data.

25 39. Plaintiff Rodney Ellis is the Commissioner for Precinct One on the Harris County
26 Commissioners Court. He is a resident and citizen of Harris County, where he is registered to
27 vote and regularly exercises his right to vote. Commissioner Ellis regularly drives on roads and
28 highways in Harris County.

1 40. Plaintiff Adrian Garcia is the Commissioner for Precinct Two on the Harris
2 County Commissioners Court. He is a life-long resident and citizen of Harris County, where he
3 is registered to vote and regularly exercises his right to vote. Commissioner Garcia also regularly
4 drives on roads and highways in Harris County.

5 **II. Defendants**

6 41. Defendant Wilbur L. Ross is the Secretary of the U.S. Department of Commerce
7 and is sued in his official capacity. Secretary Ross oversees the U.S. Department of Commerce
8 and the Census Bureau. Congress has delegated the responsibility for carrying out the decennial
9 census to the Secretary of Commerce. 13 U.S.C. § 141(a).

10 42. Defendant U.S. Department of Commerce is a cabinet agency within the
11 Executive Branch responsible for administering the decennial census.

12 43. Defendant Steven Dillingham is the Director of the U.S. Census Bureau and is
13 sued in his official capacity.

14 44. Defendant U.S. Census Bureau is an agency within the Department of Commerce
15 responsible for planning and administering the decennial census. 13 U.S.C. § 2.

16 **FACTUAL ALLEGATIONS**

17 **I. Defendants' Constitutional and Statutory Obligations.**

18 45. Under the United States Constitution, the federal government must conduct an
19 "actual Enumeration" of the population once every ten years. U.S. Const. art. I, § 2.

20 46. The population totals produced by the decennial enumeration are used to
21 apportion congressional representatives to the various states. *Id.* Census figures are also used in
22 state and local redistricting and in the distribution of federal funds to communities across the
23 United States.

24 47. The Enumeration Clause requires that decisions relating to the census bear a
25 "reasonable relationship" to the constitutional purpose of the enumeration. *Wisconsin*, 517 U.S.
26 at 20.

27 48. Similarly, the Census Act imposes a mandatory duty on the Secretary of
28 Commerce to "conduct a census that is accurate and that fairly accounts for the crucial

1 representational rights that depend on the census and the apportionment.” *Dep’t of Commerce v.*
2 *New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

3 49. Consequently, the Secretary of Commerce and the Census Bureau are
4 constitutionally obligated to make decisions in conducting the census that are reasonably related
5 to achieving a fair and accurate calculation of the population of the United States.

6 **II. The Census Bureau’s Pre-COVID-19 Operational Plans for the 2020 Census.**

7 50. For the 2020 Census, the Census Bureau spent the better part of a decade
8 designing operations to fulfill its constitutional and statutory mandate, including: soliciting and
9 incorporating feedback from seasoned experts, advisors, and community groups; testing various
10 features of its data-collection and data-processing operations; and ensuring that its decisions for
11 conducting the census reflected sound, scientifically based judgment.

12 51. To this end, the Bureau created an operational plan to guide its efforts, including
13 its efforts to collect data from census respondents and to process that data into usable forms for
14 constitutionally and statutorily mandated purposes, including reapportionment and redistricting.

15 52. On December 31, 2018, the Bureau promulgated the final version of its
16 operational plan, which the Bureau called “Version 4.0” (hereinafter referred to as the “Final
17 Operational Plan”). *See* U.S. Census Bureau, Final Operational Plan (Dec. 2018),
18 [https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf)
19 [docs/2020-oper-plan4.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf). In the Final Operational Plan, the Census Bureau stated that its goal
20 for the 2020 Census is to “count everyone once, only once, and in the right place.”

21 53. Under the Paperwork Reduction Act, the Office of Management and Budget must
22 review and approve the plans for any federal survey, including the decennial census, to ensure
23 that those surveys meet government standards, minimize respondent burden, and maximize the
24 utility of the collected information. 44 U.S.C. § 3504(c).

25 54. The Office of Management and Budget formally reviewed and approved the
26 Census Bureau’s pre-COVID-19 plans for the decennial census, including the Final Operational
27 Plan.

28 55. The Final Operational Plan includes over 200 pages of detailed and transparent

1 conclusions for achieving the 2020 Census’s objective of an accurate count.

2 56. The Final Operational Plan reflects the conclusions of various experts including
3 survey methodologists, statisticians, demographers, geographers, linguists, and mathematicians.

4 57. The Final Operational Plan states that it “reflects and supports evidence-based
5 decision-making” about the operations necessary to gather and process census responses from
6 every household in the country.

7 58. The Final Operational Plan states that it was “informed through research, testing,
8 and analysis conducted from 2012 through 2018.”

9 59. The Bureau conducted at least fifteen tests between 2012 and December 31, 2018,
10 when it published its Final Operational Plan.

11 60. Career Bureau staff developed the Final Operational Plan following substantial
12 consultation with outside experts and census stakeholders, including members of the Census
13 Scientific Advisory Committee and the National Advisory Committee.

14 61. The Census Bureau also produced a series of “detailed operational plans,” which
15 supplement the Final Operational Plan, and provide more parameters for the individual
16 operations that, together, comprise the 2020 Census.

17 62. The detailed operational plans likewise reflect the conclusions of various subject-
18 matter experts regarding how to complete an accurate count.

19 63. The Bureau’s Final Operational Plan contains several major categories of
20 operations. Two of those categories are particularly important for purposes of this lawsuit: data-
21 collection and data-processing.

22 64. “Data-collection” refers to operations through which the Bureau obtains
23 information from and about all the people living in the United States.

24 65. “Data-processing” refers to operations through which the Bureau fills in any gaps
25 in the personal information that it collects from people, transforms the resulting data into usable
26 forms, checks those results for accuracy and other aspects of data quality, and publishes those
27 results, among other things.

28 66. The Bureau must thoroughly, fully, and correctly perform both categories of

1 operations—collection and processing—to achieve its stated goal of counting everyone once,
2 only once, and in the right place.

3 **A. Census Data Collection**

4 67. During the census, the Bureau attempts both to determine the number of people in
5 the country and their characteristics, such as their race and ethnicity.

6 68. Although the Census Bureau planned to deploy many methods during the 2020
7 Census to collect counts and characteristics from households around the country, the Bureau
8 contemplated, in both the Final Operational Plan, and in the supplemental detailed operational
9 plans, that three methods would account for the overwhelming majority of census responses: the
10 “Self-Response” method; the “Update Leave” method; and the “Non-Response Follow Up”
11 method. *See* U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Non-*
12 *Response Follow Up Operation* (July 15, 2019), [https://www2.census.gov/programs-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf)
13 [surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf)
14 [plan_v20.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf).

15 69. The Self-Response method was the “primary methodology for the 2020 Census.”
16 Under this method, heads of households would provide their 2020 Census responses directly to
17 the Census Bureau by mailing back a paper census form, filling out a digital form on the
18 Bureau’s online census portal, or calling into telephone hotlines to provide their responses to
19 Bureau employees operating those hotlines.

20 70. The Update Leave method was the methodology for reaching housing units that
21 could not receive physical mail or did not have verifiable mailing addresses. Under this method,
22 Bureau employees would travel throughout both rural and urban areas, leaving invitations to
23 participate and paper census questionnaires at these housing units, so that the people living in
24 those locations could respond themselves.

25 71. The Self-Response method and the Update Leave method are crucial for obtaining
26 accurate information about the number of people in the country and their characteristics, because
27 data people report about themselves and the members of their housing units is the highest quality
28 data that the census collects.

1 72. But for the tens of millions of households that do not report their personal data
2 through the Self-Response or Update Leave method, the Bureau’s next-best source of personal
3 data is data it collects directly from people through the Non-Response Follow Up method.

4 73. As part of the Non-Response Follow Up method, the Bureau sends its employee
5 enumerators directly to housing units so that they can attempt to speak with a person occupying
6 each unit and obtain information about everyone who should be counted in that unit.

7 74. The Bureau requires enumerators to record their responses for each household
8 through iPhones that the Bureau specifically contracted and customized for this purpose. The
9 enumerators’ iPhones include software designed to lead enumerators consistently and reliably to
10 solicit information from people at their doors. The enumerators’ iPhones also include software to
11 ensure that any data collected from housing units remains confidential as it is being transmitted
12 to the Bureau. The limited supply of these customized iPhones places a limit on the number of
13 enumerators that the Bureau can deploy in the field.

14 75. The Bureau’s Detailed Operational Plan for Non-Response Follow Up, which
15 supplements the Final Operational Plan, sets out a specific protocol for conducting Non-
16 Response Follow Up.

17 76. Under the Detailed Operational Plan, each housing unit assigned for a visit from
18 an enumerator was eligible for up to six “contact days.” A “contact day” could include more than
19 one attempted contact per day.

20 77. The Bureau concluded it could pursue less than six contact days only under
21 certain scenarios.

22 78. One scenario that would allow the Bureau to pursue fewer than six contact days
23 was the existence of high-quality administrative records for the housing unit. The Census Bureau
24 has collected data from federal administrative agencies, such as the Social Security
25 Administration, the Internal Revenue Service, and the Department of Housing and Urban
26 Renewal, among others, as well as data from states, which it uses to provide information about
27 the count and characteristics of non-responsive households.

28 79. If the Bureau had located administrative data from federal and/or state

1 administrative records and concluded that those records contained accurate demographic data for
2 the occupants of a housing unit, the Bureau’s enumerators would attempt only one contact with
3 that unit. If—during that contact attempt—the enumerator did not succeed in finding a live
4 person at the unit, then the Bureau would use the information in the administrative records to fill
5 in the census responses for that unit during the data-processing phase of the 2020 Census.

6 80. A second scenario that would allow the Bureau to pursue less than six contact
7 days would arise if the Bureau identified a proxy—a person such as a neighbor or landlord that
8 the enumerator could ask for information about the occupants of the housing unit in question.
9 After a third failed contact attempt, a unit would become eligible for being counted through
10 proxy.

11 81. Proxies can produce many types of data. For instance, proxies are useful for
12 helping the Bureau identify whether a housing unit is vacant—and thus should be marked
13 “vacant” in the Master Address File that the Bureau uses to keep track of the overwhelming
14 majority of housing units that it must enumerate—or non-existent—and thus should be deleted
15 from the Master Address File. For the 2020 Census, the Bureau is planning to use administrative
16 records, such as the United States Postal Service’s directory of non-deliverable addresses, to
17 identify vacant housing, but proxies are generally more accurate for this purpose. Finally, proxies
18 provide vital data for other operations that the Bureau undertakes during its data-processing
19 phase, described further below.

20 82. If the Bureau is unable to enumerate a household after six contact days, in most
21 cases, it will resort to less accurate methods for determining the count and characteristics of the
22 household during its data-processing phase, described below.

23 83. The Bureau performs several other vital operations in addition to door-knocking
24 during the Non-Response Follow Up period, including a series of operations to ensure the quality
25 of the data that it collects in the field.

26 84. During the Non-Response Follow Up process, the Bureau: follows up with people
27 who self-responded to the census online but did not enter their unique census identification
28 number to ensure that they are counted in the right place (a process known as “Field

1 Verification”); and corrects information reported erroneously or omitted from previously
2 submitted census forms (a process known as “Coverage Improvement”).

3 85. In addition, the Bureau re-collects census responses in select instances to ensure
4 that the original submissions were accurate (a process known as “Self-Response Quality
5 Assurance”). This operation protects against enumerators falsifying the information that they
6 provide to the Bureau. Specifically, the Bureau conducts quality control reinterviews of a sample
7 of households. This component is designed to deter and detect cases where enumerators have
8 provided false information about the housing units they are assigned to canvass.

9 86. Quality control reinterviews are part of a broader set of protocols that the Bureau
10 has developed to guard against factors that endanger the accuracy of the count. Non-Response
11 Follow Up is thus important not only for collecting information, but also for ensuring that the
12 information that is collected is accurate. These two components—gathering data and ensuring its
13 accuracy—must both occur for the Bureau to get a fair and accurate count.

14 87. The Bureau anticipated that approximately 60% of housing units nationally would
15 respond to the 2020 Census through Self-Response and Update Leave, potentially making up to
16 40% of housing units targets for Non-Response Follow Up.

17 88. A Non-Response Follow Up universe of 40% of the housing units in the country
18 would have been the largest follow up universe on a percentage basis since at least 1970.

19 89. The Census Bureau did not anticipate that the Non-Response Follow Up universe
20 in 2020 would mirror the demographic makeup of the nation’s population as a whole.

21 90. Instead, the Census Bureau anticipated that the Non-Response Follow Up
22 universe in 2020 would contain a disproportionate number of people who belong to communities
23 that the Bureau calls “hard-to-count.”

24 91. The Final Operational Plan describes hard-to-count populations as including, but
25 not limited to, the following populations: young children; highly mobile persons; racial and
26 ethnic minorities; non-English speakers; low-income persons; persons experiencing
27 homelessness; undocumented immigrants; persons who have distrust in the government; lesbian,
28 gay, bisexual, transgender, and questioning/queer (LGBTQ) persons; persons with mental and

1 physical disabilities; and persons who do not live in traditional housing.

2 92. Historically, these populations have had low self-response rates and have, thus,
3 made up disproportionate shares of households that must receive contact days during Non-
4 Response Follow Up.

5 93. Consequently, the Final Operational Plan acknowledges, “[t]he NRFU Operation
6 is entirely about hard-to-count populations.”

7 94. The Final Operational Plan also acknowledges that hard-to-count populations may
8 require more outreach than the Non-Response Follow Up method would normally provide, and
9 the Bureau designed its Final Operational Plan accordingly.

10 95. The Final Operational Plan states that “[w]hile most cases receive a maximum of
11 six attempts, cases in hard-to-count areas may receive more than six attempts to achieve a
12 consistent response rate for all geographic areas.”

13 96. Accurate data about the size, location, and characteristics of communities of color
14 is necessary to equitably distribute political power through congressional reapportionment and
15 redistricting at the state and local levels, enforce civil-rights laws that affect basic needs like
16 housing and employment, and conduct effective research, including on pressing issues like
17 public health.

18 **B. Census Data-Processing**

19 97. After collection activities are complete, the Census Bureau must process the data.

20 98. Census data-processing cannot begin until census data-collection concludes.

21 99. Census data is unusable for its intended purposes until it has been processed.

22 100. The Census Bureau’s data-processing operations transform tens of millions of
23 census responses into usable products, including the population totals used to reapportion seats in
24 the U.S. House of Representatives and to create electoral districts.

25 101. The Bureau uses its data-processing operations to, among other things, ensure that
26 data received from different data-collection methods are all in a single format allowing them to
27 be processed together.

28 102. The Bureau uses its data-processing operations to “unduplicate responses”—

1 meaning to resolve conflicts of information among multiple forms attributable to the same
2 housing unit.

3 103. The Bureau uses its data-processing operations to determine the final status of a
4 housing unit—such as vacant or inhabited—and determine the total number of people that should
5 be attributed to any apparently inhabited unit that was not counted through Self-Response,
6 Update Leave, or Non-Response Follow Up.

7 104. The Bureau also uses its data-processing operations to ensure that Bureau data
8 products accurately report respondents' characteristics, such as age, race, and ethnicity.

9 105. The Bureau uses administrative records and statistical imputation during the data-
10 processing phase to fill in both missing people and their characteristics. But administrative
11 records—especially low-quality administrative records—and statistical imputation are generally
12 less accurate than self-response data.

13 106. For many households, administrative data provides only low quality information,
14 replete with inaccuracies and incomplete information. This is especially the case for particular
15 communities that are underrepresented in administrative records, including communities of
16 color, immigrants, and low-income families. Use of this low-quality data to fill in missing
17 information for non-responsive households produces less accurate information.

18 107. Imputation involves the Bureau using information from surrounding responsive
19 households to infer the count and characteristics of a non-responsive household. Imputation thus
20 assumes the existence of other data points gathered through other data-collection methods—such
21 as self-response, proxies, and administrative records—and generates more accurate results when
22 it can be triangulated against those data points. The processes that the Bureau uses to collect and
23 process self-response data, proxy data, and administrative records are thus critical and
24 inextricably linked to the Bureau's ability to impute data accurately.

25 108. At various phases of the Bureau's data-processing operations, Census Bureau
26 personnel must review the quality of files in-process before those files can be sent to the
27 subsequent steps in the data-processing operation. These reviews include personnel with subject-
28 matter expertise from several different divisions of the Bureau.

1 109. The Bureau’s data-processing operations help ensure that people are not missed,
2 that other people are not counted multiple times, and that people’s characteristics are accurately
3 reported. These processes help eliminate or reduce undercounts, among other kinds of data-
4 quality issues.

5 **C. The Final Operational Plan’s Original Timeline for the 2020 Census**

6 110. The Bureau’s Final Operational Plan called for data-collection to run from
7 January 21, 2020, to July 31, 2020, for a total of more than six months.

8 111. In that window, the Self Response method was scheduled to run from March 12,
9 2020 to July 31, 2020, and the Update Leave method was scheduled for March 15, 2020 to April
10 17, 2020.

11 112. The Bureau also scheduled several special operations to occur early in its census
12 taking process. The Service-Based Enumeration, which counts people experiencing
13 homelessness, was scheduled for March 30, 2020 to April 1, 2020, and Group Quarters
14 Enumeration, which counts people living in group housing such as nursing homes, was
15 scheduled from April 2, 2020 to June 5, 2020.

16 113. The Bureau scheduled the Non-Response Follow Up method to run from May 13,
17 2020 to July 31, 2020, for a total of approximately eleven and a half weeks.

18 114. The Bureau scheduled up to five months—from July 31, 2020 to December 31,
19 2020—to process census data for the congressional reapportionment report.

20 115. The Bureau also scheduled an additional three months—from January 1, 2021 to
21 March 30, 2021—to process census data for redistricting.

22 116. The Bureau’s timelines for implementing the Final Operational Plan reflect the
23 Bureau’s scientifically informed understanding of the time necessary to complete its operations
24 and generate an accurate count.

25 **III. The Census Bureau’s COVID-19 Plan.**

26 **A. COVID-19 Disrupts the 2020 Census**

27 117. On January 21, 2020, the Bureau began 2020 Census data-collection in remote
28 Alaska.

1 118. On March 10, 2020, the Bureau began to accept self-responses on its website.

2 119. Shortly thereafter, many parts of the nation rapidly began to shut down due to the
3 COVID-19 pandemic.

4 120. The Census Bureau quickly concluded that it could not continue to engage in
5 operations safely. On March 18, 2020, the Bureau announced that it would suspend all field
6 operations for two weeks in order to “help protect the health and safety of the American public.”
7 Press Release, U.S. Census Bureau, *U.S. Census Bureau Director Steven Dillingham on*
8 *Operational Updates* (Mar. 18, 2020), [https://www.census.gov/newsroom/press-](https://www.census.gov/newsroom/press-releases/2020/operational-update.html)
9 [releases/2020/operational-update.html](https://www.census.gov/newsroom/press-releases/2020/operational-update.html).

10 121. On March 28, 2020, the Bureau announced yet another two-week suspension until
11 April 15, 2020, as the coronavirus pandemic made it impossible to engage in operations.

12 122. The suspension disrupted several field operations, including Update/Leave
13 method, the Service Based Enumeration counting people experiencing homelessness, and the
14 Group Quarters Enumeration counting people living in group housing.

15 123. In addition, the Bureau halted all hiring and training of the hundreds of thousands
16 of enumerators it needs to conduct Non-Response Follow Up. This included halting any and all
17 background checks and fingerprinting of enumerators that were conditionally hired at that time.

18 124. The Bureau also decreased office staff at regional centers responsible for
19 processing mail-in self-response forms and at the Bureau’s call centers.

20 **B. Changes to the Final Operational Plan in the COVID-19 Plan**

21 125. On April 13, 2020, the Bureau issued an adjustment to its Final Operational Plan
22 to account for the long-term impact of the COVID-19 pandemic. The new plan included a shifted
23 timeline for data-collection and data-processing operations that corresponded with the delays in
24 operations that the pandemic has caused (the “COVID-19 Plan”).

25 126. Adjustments to plans approved by the Office of Management and Budget under
26 the Paperwork Reduction Act must be re-submitted for approval. 44 U.S.C. § 3507(h)(3). The
27 Census Bureau submitted the COVID-19 Plan to the Office of Management and Budget on April
28 30, 2020. The changes were approved on May 11, 2020.

1 127. The COVID-19 Plan was designed to “[e]nsure a complete and accurate count of
2 all communities,” “[p]rotect the health and safety of the American public and Census Bureau
3 employees,” and “[i]mplement guidance from federal, state, and local authorities regarding
4 COVID-19.” Press Release, U.S. Census Bureau, *2020 Census Operational Adjustments Due to*
5 *COVID-19 Fact Sheet* (Apr. 27, 2020).

6 128. The COVID-19 Plan reflected the conclusions of various experts for how best to
7 proceed with completing an accurate count during the current pandemic. These experts include
8 survey methodologists, statisticians, demographers, geographers, linguists, and mathematicians.

9 129. Under the COVID-19 Plan, the Bureau suspended 2020 Census field operations
10 for several months, including those operations that were designed to ensure a full count of
11 traditionally undercounted communities.

12 130. The COVID-19 Plan provided that the Bureau would start the nationwide Non-
13 Response Follow Up operation on August 11, 2020, and continue the door-knocking process
14 through October 31, 2020.

15 131. Thus, the COVID-19 Plan delayed the start of most door-knocking by three
16 months while maintaining the same amount of time spent undertaking the process—
17 approximately eleven and a half weeks—as the Final Operational Plan had required.

18 132. Under the COVID-19 Plan, the Bureau also delayed the start of other operations
19 that enumerate traditionally undercounted populations, including the enumeration of the
20 country’s homeless population, which the Bureau shifted from March 30, 2020 to September 22,
21 2020.

22 133. And the COVID-19 Plan permitted households to submit self-response data to the
23 Bureau until October 31, 2020, extending the deadline under which private persons were able to
24 submit their responses to be counted by more than one month.

25 134. The Bureau also granted itself one additional month to process data under its
26 COVID-19 Plan, extending the data-processing leg of its operations to nine months given the
27 pandemic. Under this plan, the Bureau would have up to six months to process the data for the
28 apportionment count (between October 31, 2020 and April 30, 2021) and three months to process

1 the data for redistricting (between April 30, 2021 and July 31, 2021).

2 135. The Bureau’s timelines for implementing the COVID-19 Plan reflect a
3 scientifically informed understanding of the time necessary to appropriately and fully complete
4 its operations and generate an accurate count.

5 **C. Expert and Stakeholder Response to the COVID-19 Plan**

6 136. The Census Bureau solicited feedback on the COVID-19 Plan from relevant area
7 experts and interested stakeholders, including state and local governments and national and
8 community-based non-profit partners.

9 137. For instance, four former Census Bureau Directors—who served under both
10 Democratic and Republican administrations—issued a statement saying that they had “discussed
11 these operational and schedule adjustments with senior career leadership at the Census Bureau.”
12 Press Release, Vincent Barabba et al., *Statement by Former U.S. Census Bureau Directors* (Apr.
13 14, 2020), [https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html)
14 [Bureau-Directors-04.html](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html).

15 138. These four former Census Bureau Directors further asserted: “Based on (1) our
16 extensive experience in planning, executing, and often adjusting operations of previous decennial
17 censuses, and (2) our firm conclusion that the extension of the field operations reflect careful
18 analysis by the technical, scientific, and operational staff at the Census Bureau, we support the
19 decision and urge Congress to act in concert with it.” Press Release, Vincent Barabba et al.,
20 *Statement by Former U.S. Census Bureau Directors* (Apr. 14, 2020),
21 [https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html)
22 [Directors-04.html](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html).

23 139. Prominent civil-rights groups endorsed the COVID-19 Plan. Vanita Gupta,
24 President and CEO of The Leadership Conference on Civil and Human Rights and The
25 Leadership Conference Education Fund, stated that her organization “support[ed] the Census
26 Bureau’s updated timeline.” Press Release, Leadership Conference Education Fund, *Census*
27 *Timeline Must Protect Health, Ensure Fair Count* (Apr. 13, 2020),
28 <https://civilrights.org/edfund/2020/04/13/census-timeline-must-protect-health-ensure-fair-count/>.

1 **D. Implementation of the COVID-19 Plan**

2 140. When announcing the COVID-19 Plan, Secretary Ross and Director Dillingham
3 issued a statement indicating that the Bureau requested that Congress extend by 120 days the
4 December 31, 2020 statutory deadline for reporting the state-population totals to the President
5 for purposes of calculating the state apportionments, and extend by 120 days the March 30, 2021
6 statutory deadline for delivering redistricting data to the states.

7 141. That same day, President Trump suggested this request was unnecessary, stating:

8 142. “I don’t know that you even have to ask them. This is called an act of God. This is
9 called a situation that has to be. They have to give in. I think 120 days isn’t nearly enough.”

10 Hansi Lo Wang, *Trump Officials Ask to Delay Census Data for Voting Districts, House Seats*,
11 NPR (Apr. 13, 2020), [https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-](https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats)
12 [census-data-for-voting-districts-house-seats](https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats).

13 143. Indeed, the Census Bureau did not wait for Congress to act before beginning
14 implementation of the COVID-19 Plan. And the Bureau continued implementation of the
15 COVID-19 Plan for over three months through the end of July 2020.

16 144. For instance, the Census Bureau field operations remained suspended through
17 May 2020.

18 145. The Bureau only began re-opening a few limited operations, such as the Update
19 Leave method, on a phased basis through mid-June 2020, over two months after the operation
20 was originally planned to occur in the Final Operational Plan.

21 146. The Bureau did not undertake any Non-Response Follow Up operations in most
22 of the country between May 13, 2020 and July 31, 2020, the timeframe originally set out in the
23 Final Operational Plan.

24 147. Instead, while the Bureau “soft-launched” door-knocking in select regions of the
25 country in mid-July 2020, the COVID-19 Plan did not call for door-knocking across the country
26 until August 11, 2020, at the earliest.

27 148. The Bureau ultimately opened six area census offices for Non-Response Follow
28 Up on July 16, 2020, six more on July 23, 2020, thirty-five on July 30, 2020, and forty additional

1 offices on August 6, 2020.

2 149. The remaining 161 stateside offices remained unopened until August 9, 2020,
3 including offices in many states and localities with relatively low response rates such as the
4 entire southeastern United States, Texas, New Mexico, Arizona, and Southern California.

5 150. All along the Bureau continually communicated to the public, and to important
6 local partners, including local governments and national and community based non-profit
7 organizations, that self-responses would be accepted until October 31, 2020, and that Non-
8 Response Follow Up would continue until at least that date.

9 151. Census partners, stakeholders, and state and local governments relied on the new
10 deadlines set forth in the COVID-19 Plan to redirect their outreach efforts.

11 152. For example, Plaintiffs Urban League and BAJI, publicized the October 31, 2020
12 deadline, letting their constituents, members and local organizations know that households had
13 until that time to self-respond. Urban League representatives informed coalition partners
14 participating in the Black Census Roundtable of the new deadlines, and spoke of the deadlines on
15 webinars and other public events. Officials at BAJI publicized the deadlines at public events,
16 including webinars in July 2020, and as part of the organization's social media campaign.

17 153. Similarly, officials in City of Los Angeles, Harris County, King County, City of
18 San Jose, and City of Salinas, publicized the new deadline while conducting 2020 Census
19 outreach efforts.

20 154. These public education efforts were significant because they were directed at the
21 general public and at local non-profits that do not primarily work on census issues. The latter
22 often rely on information about the census provided by Plaintiff national non-profits and local
23 governments when communicating with their constituents. Plaintiffs, by disseminating the
24 October 31, 2020 deadline for nearly three months to the public, were largely successful in
25 spreading the understanding that communities had until at least that time to complete the count.

26 155. For example, the City of Los Angeles announced this date on its own social media
27 platforms and in a social media toolkit that it developed for partner organizations. Los Angeles is
28 deeply concerned that residents have already received information about the October 31, 2020

1 self-response date and, as a result, will fail to respond before the newly shortened deadline,
2 especially given the Bureau's own minimal efforts at explanation and outreach around the new
3 deadline.

4 156. Finally, the level of self-response during the 2020 Census, and the ongoing
5 COVID-19 pandemic, provided further evidence for the necessity of continued implementation
6 of the COVID-19 Plan.

7 157. Under its Final Operational Plan, for example, the Census Bureau had planned to
8 spend eleven and a half weeks canvassing a Non-Response Follow Up universe comprised of
9 39.5% of households nationally.

10 158. As of August 9, 2020, the first date of nationwide Non-Response Follow Up, the
11 national self-response rate was 63.2%, meaning that nearly 37% of households nationwide had
12 not yet responded to the census.

13 159. Several cities with large percentages of traditionally undercounted populations,
14 have even lower response rates. For instance, as of August 14, 2020, the response rate in the City
15 of Detroit was 48.9%, Miami was 49.9%, Philadelphia was 52.3%, Los Angeles was 53.8%,
16 Houston was 54.4%, and New York City was 55.6%.

17 160. The United States had 24,156 new coronavirus cases on April 13, 2020, the day
18 the Bureau announced its COVID-19 Plan. On August 3, 2020, the United States had
19 approximately 50,000 new coronavirus cases.

20 161. With COVID-19 limiting the willingness of people to apply for enumerator
21 positions, the areas where the Bureau can safely send enumerators to knock on doors, and the
22 willingness of the public to interact with enumerators, the Non-Response Follow Up operation
23 continues to face far more complications than the Final Operational Plan anticipated.

24 162. Given these conditions of low response rates and increased coronavirus spread,
25 the Bureau can reasonably expect that it will need to engage in a Non-Response Follow Up
26 operation at least as comprehensive and time-consuming as the operation laid out in the Final
27 Operational Plan.

28 163. Due to significant delays in operations resulting from the implementation of the

1 COVID-19 Plan, the Bureau itself has recognized that it would be impossible to produce fair and
2 accurate apportionment numbers to the President by December 31, 2020.

3 164. On May 27, 2020, Tim Olson, head of field operations for the 2020 Census, stated
4 during a May 26, 2020 webinar organized by the National Congress of American Indians that,
5 “[w]e have passed the point where we could even meet the current legislative requirement of
6 December 31st. We can’t do that anymore.” Nat’l Conf. of Am. Indians, *2020 Census Webinar:
7 American Indian/Alaska Native*, YouTube (May 26, 2020), [https://www.youtube.com/
8 watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689](https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689).

9 165. On July 8, 2020, Al Fontenot, Jr., Associate Director for Decennial Census
10 Programs and a top Census Bureau official, affirmed that the Bureau is “past the window of
11 being able to get” accurate counts to the President by December 31, 2020. U.S. Census Bureau,
12 *Operational Press Briefing – 2020 Census Update* at 21 (July 8, 2020),
13 [https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-
14 transcript-july8.pdf](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf).

15 **IV. The Census Bureau’s New Rush Plan.**

16 **A. The Announcement of the Rush Plan**

17 166. On August 3, 2020, at the behest of the Secretary of Commerce, Director
18 Dillingham abruptly and without explanation abandoned the COVID-19 Plan and announced the
19 Rush Plan.

20 167. The Rush Plan drastically shortens the timelines for multiple operations set out in
21 the COVID-19 Plan.

22 168. The Rush Plan took the form of a short press release on the Census Bureau’s
23 website. The press release included a statement from Director Dillingham, which did not provide
24 an explanation for Defendants’ decision to suddenly abandon the COVID-19 Plan that the
25 Bureau had adopted and implemented for approximately three and a half months. Nor did it
26 provide any specifics as to why the Bureau no longer believed the timelines called for in the
27 COVID-19 Plan were necessary to ensure an accurate count.

28 169. The statement noted that the Bureau was taking this action at the direction of the

1 Secretary of Commerce. But the Secretary made no statement explaining his reason for giving
2 this directive.

3 170. The Director’s statement was largely silent on specific adjustments the Bureau
4 would need to make in order to reengineer its field operations to meet its new, artificially
5 compressed schedule. The statement included proposals for enumerator “awards” and
6 maximizing enumerators’ phone and tablet usage, but it did not provide any details about
7 adjustments to the detailed operations provided in the Final Operational Plan.

8 171. The only adjustments announced under the Rush Plan were severely truncated
9 timelines for conducting data-collection and data-processing operations.

10 172. Under the Rush Plan, data-collection is now set to end on September 30, 2020,
11 one month earlier than contemplated in the Bureau’s COVID-19 Plan.

12 173. While the Bureau’s pre-COVID-19 Final Operational Plan provided 79 days for
13 the nationwide door-knocking stage of the census, and the COVID-19 Plan provided 81 days, the
14 Rush Plan provides just 52 days of nationwide door-knocking.

15 174. The Rush Plan also cuts post-collection data processing for the apportionment
16 report from up to 6 months as provided in the COVID-19 Plan, and up to 5 months as originally
17 provided in the Final Operational Plan, to less than 3 months.

18 175. The Rush Plan also shortened the time under which households can self-respond,
19 providing that self-responses delivered after September 30, 2020—which previously would have
20 been timely under the October 31, 2020 deadline—will no longer be counted.

21 176. While the Rush Plan requires the Bureau to accelerate its operations to complete
22 the 2020 Census by the same deadline contemplated in the Final Operational Plan, it ignores the
23 multiple-month pause in operations, beginning in mid-March 2020, caused by the initial outbreak
24 of COVID-19 in the United States.

25 177. The decision to rescind the COVID-19 Plan and adopt the Rush Plan was
26 announced without consultation with important stakeholders.

27 178. As noted above, as late as July 8, 2020, senior Bureau officials were still
28 confirming that it was impossible to complete an accurate count by December 31, 2020.

1 179. In addition, until July 30, 2020, just four days before the Bureau announced its
2 decision to abandon the COVID-19 Plan, the Bureau was informing respondents on its website
3 that it would engage in Non-Response Follow-Up until October 31, 2020 and that non-
4 responsive households would have until that date to self-respond. Those references were deleted
5 from the website on or about July 31, 2020 and were replaced with the shortened timeframe after
6 the August 3, 2020 announcement.

7 180. An official at the Government Accountability Office confirmed that Bureau
8 officials told his office that they were given “hours rather than days or weeks” to adjust their
9 plans to finish counting by September 2020. Hansi Lo Wang, *‘Not Enough Time’: Census*
10 *Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11, 2020),
11 [https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results)
12 [count-could-botch-results](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results).

13 181. While the Census Bureau’s decisions, even during the COVID-19 emergency,
14 have often involved consultations with scientific advisory committees, the Committee on
15 National Statistics in the National Academies of Science, other external experts and local
16 government officials, and the thousands of organizations partnering with the Bureau to conduct
17 crucial outreach to historically undercounted communities, no such consultation was made
18 before the Bureau announced its abandonment of the COVID-19 Plan.

19 182. Census stakeholders immediately denounced the Rush Plan, including
20 stakeholders who had endorsed the COVID-19 Plan.

21 183. The same four former Census Bureau Directors who endorsed the COVID-19
22 Plan issued a statement saying that “our expert opinion is that failing to extend the deadlines to
23 April 30, 2021 will result in seriously incomplete enumerations in many areas across our
24 country.” Press Release, Former Census Bureau Directors, *On the Importance of Extending the*
25 *2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration of the United*
26 *States* (Aug. 4, 2020), [https://www.documentcloud.org/documents/7013550-Aug-4-2020-](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html)
27 [Statement-By-Former-U-S-Census-Bureau.html](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html).

28 184. These four former Census Bureau Directors further asserted: “The Census Bureau

1 will not be able to carry out the NRFU fully and will be forced to take steps such as fewer in-
2 person visits and rely instead on the use of administrative records or statistical techniques on a
3 much larger scale tha[n] in previous census. The end result will be under-representation of those
4 persons that NRFU was expected to reach and, at even greater rates for traditionally hard-to-
5 count populations and over-representation of all other populations with potentially extreme
6 differential undercounts.” Press Release, Former Census Bureau Directors, *On the Importance*
7 *of Extending the 2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration*
8 *of the United States* (Aug. 4, 2020), [https://www.documentcloud.org/documents/7013550-Aug-](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html)
9 [4-2020-Statement-By-Former-U-S-Census-Bureau.html](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html).

10 185. The President of the American Statistical Association, the world’s largest
11 professional organization of statisticians, issued a statement saying “[t]here is no scientific
12 rationale to curtail the data-collection period for this constitutionally mandated activity, and the
13 premature cessation of census enumeration will produce flawed counts.” Letter from Rob
14 Santos, President of the American Statistical Association, to Mitch McConnell, U.S. Senate
15 Majority Leader (Apr. 5, 2020), [https://www.amstat.org/asa/files/pdfs/POL-](https://www.amstat.org/asa/files/pdfs/POL-CensusSenateAugust.pdf)
16 [CensusSenateAugust.pdf](https://www.amstat.org/asa/files/pdfs/POL-CensusSenateAugust.pdf).

17 186. Nearly 450 nonpartisan philanthropic organizations who “rely on accurate census
18 data to help identify community needs and to prioritize grantmaking” issued a letter to Secretary
19 Ross and Director Dillingham urging the Bureau to revert to its COVID-19 Plan. Letter from
20 U.S. Philanthropy Leaders to Wilbur Ross, Secretary of the U.S. Dep’t of Commerce (Aug. 5,
21 2020), [https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-](https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-on-Census-Being-Cut-Short-8-5.pdf)
22 [on-Census-Being-Cut-Short-8-5.pdf](https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-on-Census-Being-Cut-Short-8-5.pdf).

23 187. Prominent civil-rights groups condemned the Rush Plan. Vanita Gupta, President
24 and CEO of The Leadership Conference on Civil and Human Rights and The Leadership
25 Conference Education Fund, stated that “[c]urtailing operations is an obvious ploy to guarantee
26 the Census Bureau won’t be able to finish counting millions of people—especially those hit
27 hardest by the pandemic.” Press Release, Leadership Conference on Civil and Human Rights,
28 *Trump Plans to Sabotage 2020 Census by Cutting Short Operations* (July 31, 2020),

1 [https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-](https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-operations/)
2 [operations/](https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-operations/).

3 188. And the Census Bureau's own field workers have confirmed the impossibility of
4 this new timeline, explaining that the Rush Plan means that it will not be an accurate count for
5 the next 10 years.

6 **B. The Rush Plan Fails to Appropriately Account for Key Factors Affecting the**
7 **2020 Census**

8 189. The Rush Plan fails to account for several important factors that affect the 2020
9 Census Non-Response Follow Up operation.

10 190. *First*, the Rush Plan does not adequately account for the large number of
11 households in the Non-Response Follow Up universe.

12 191. Under the Rush Plan, the Census Bureau must attempt to count approximately the
13 same number of households during Non-Response Follow Up as it anticipated counting in its
14 pre-COVID-19 Final Operational Plan, but the Bureau will have four weeks less than provided in
15 that plan to complete the operation. In other words, the Bureau must now try to complete the
16 same amount of work in just 65% of the time it had originally scheduled to complete that work.

17 192. Over 37% of households nationwide are non-responsive, and several states have
18 even higher percentages of households in the Non-Response Follow Up universe, including New
19 Mexico (46.1%), South Carolina (42.4%), Texas (41.3%), and Georgia (40.8%).

20 193. While soft-launches of Non-Response Follow Up began in select locations in
21 mid-July 2020, the operation did not begin in any of these states, with large amounts of non-
22 responsive households, until August 9, 2020.

23 194. Within states, and in particular cities and localities, there are even higher Non-
24 Response Follow Up workloads. For instance, in Plaintiff Harris County, enumerators must still
25 visit over 41% of households. In the City of Los Angeles, over 46% of households remain to be
26 enumerated. The self-response rate in Los Angeles is approximately 14 percentage points below
27 the final self-response rate the City attained during the 2010 Census. Counting in these
28 jurisdictions also did not begin until August 9, 2020.

1 195. Moreover, given the time constraints placed by the Rush Plan, counting will need
2 to be conducted while these jurisdictions, in many places, struggle to control a surge in COVID-
3 19 cases.

4 196. While the Bureau announced on August 11, 2020 that it is now “training census
5 takers to follow up with households by phone” in light of the pandemic, that change in Non-
6 Response Follow Up operations was not anticipated in the Final Operational Plan. Press
7 Release, U.S. Census Bureau, *Door-to-Door Visits Begin Nationwide for 2020 Census* (Aug. 11,
8 2020), [https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-](https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-nationwide.html)
9 [nationwide.html](https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-nationwide.html).

10 197. Given the traditionally low response rates for phone surveys in the wireless era,
11 following up by phone is unlikely to materially increase response rates.

12 198. A recent Census Bureau survey running in parallel with the 2020 Census
13 demonstrates the difficulty in obtaining responses via phone or email. This spring, the Bureau
14 began conducting a “Household Pulse Survey” to measure household experiences under the
15 COVID-19 pandemic. This survey solicited participation through emails and text messages. Over
16 the first twelve weeks of this survey, response rates were meager, ranging from 1.3% to 3.8%.

17 199. *Second*, the Rush Plan does not account for the staffing challenges that the Bureau
18 is currently experiencing, many of which are directly related to the ongoing pandemic.

19 200. As demonstrated in the soft-launch of Non-Response Follow Up in select locales,
20 the Bureau is already experiencing staffing shortages and retention problems with enumerators.

21 201. In the midst of the ongoing pandemic, prospective enumerators, many of whom
22 are elderly and at high risk of contracting a severe COVID-19 related illness, are less willing to
23 engage in the required door-to-door canvassing.

24 202. Indeed, Tim Olson, head of field operations for the 2020 Census, stated at a July
25 8, 2020 press briefing that “[a]bout a third of our [enumerator] applicants [are] older persons
26 considered high risk of the virus.” U.S. Census Bureau, *Operational Press Briefing – 2020*
27 *Census Update* at 21 (July 8, 2020), [https://www.census.gov/content/dam/Census/](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf)
28 [newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf).

1 203. And Deborah Stempowski, the Census Bureau’s Assistant Director for Decennial
2 Programs, noted the Bureau’s difficulty retaining enumerators in early August 2020, confirming
3 that potential enumerators were “a little hesitant because of the COVID environment.” Mike
4 Schneider, *Census Bureau Drop-Outs Complicate Door-Knocking Efforts*, Associated Press
5 (Aug. 8, 2020), [https://www.usnews.com/news/us/articles/2020-08-08/census-bureau-drop-outs-](https://www.usnews.com/news/us/articles/2020-08-08/census-bureau-drop-outs-complicate-door-knocking-efforts)
6 [complicate-door-knocking-efforts](https://www.usnews.com/news/us/articles/2020-08-08/census-bureau-drop-outs-complicate-door-knocking-efforts).

7 204. In testimony before Congress on July 28, 2020, Director Dillingham confirmed
8 that the Bureau believed that “the pandemic is estimated to increase the number of no shows to
9 training sessions, as well as the number of employees who complete training but decline to show
10 up for work.” *Id.*

11 205. According to reports from census-operations staff working in the field, these
12 predictions have come to pass. One census field supervisor working in the mid-Atlantic noted
13 that, given the new rushed timeline and lack of sufficient staff, “[w]e’re just sending bodies out
14 regardless of whether they’re ready or not.” Hansi Lo Wang, *‘Not Enough Time’: Census*
15 *Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11, 2020), [https://www.npr.org/](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results)
16 [2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results).

17 206. In addition to enumerator low-count and hesitancy, another source of staffing
18 issues involves delays in processing background checks on enumerator applicants and in
19 enumerator onboarding.

20 207. A June 2020 GAO report on the 2020 Census delays COVID-19 has caused, and
21 the risks the pandemic has exacerbated, noted that the Bureau “will have to quickly hire and
22 onboard sufficient staff to conduct its operations” to reach adequate staffing levels. U.S. Gov’t
23 Accountability Office, *COVID-19 Presents Delays and Risks to Census Count* (June 2020),
24 <https://www.gao.gov/assets/710/707456.pdf>.

25 208. That same report also noted that, once potential enumerators accept a job offer
26 from the Bureau, the new hires “must wait a minimum of 60 days before they can begin training,
27 a time period during which they must complete fingerprinting and a background check.” *Id.*

28 209. Reports from recently hired enumerators confirm that the Bureau is facing these

1 technical challenges as well, under the compressed timeline. One recent hire in Boulder,
2 Colorado noted that he lost six potential days of door-knocking because he was unable to
3 complete the Bureau's online training module.

4 210. Thus, under the Rush Plan, the Bureau will not be able to hire and train sufficient
5 enumerators.

6 211. Even if it were possible for the Bureau to hire all of the enumerators it will need,
7 the Bureau would also need time and funding to obtain additional equipment for any additional
8 enumerators it hires beyond its initial estimates of equipment. For example, the Bureau would
9 need more of the iPhones discussed above that the Bureau specifically contracted and
10 customized for 2020 Census enumerators.

11 212. With fewer enumerators in the field, in addition to training and equipment issues,
12 the Bureau cannot ensure that non-responsive households receive the requisite number of visits,
13 as contemplated in the Final Operational Plan.

14 213. While the Bureau had a \$2 billion contingency fund prior to the existence of the
15 COVID-19 pandemic, it has already used \$1.5 billion of that fund addressing pandemic-related
16 issues. The remaining \$500 million will be needed to further respond to the pandemic, and, in
17 any event, is nowhere near the \$1 billion that the administration claims that the Bureau would
18 need to conduct adequate Non-Response Follow Up operations under the Rush Plan.

19 214. Thus, instead of providing additional enumerators, the Bureau's Rush Plan will
20 likely result in a smaller number of enumerators shouldering larger-than-planned workloads.
21 Increasing workloads for enumerators over a short period of time can result in errors and
22 inaccuracies in counting but it cannot make up for the time lost to the Rush Plan.

23 215. *Third*, the Rush Plan fails to account for factors relevant to efficient enumeration,
24 such as the time when enumerators visit households.

25 216. For instance, under the Final Operational Plan, enumerators visit households at
26 specific times of day and on specific days of the week, depending on when residents are likely to
27 answer.

28 217. Under the Rush Plan, enumerators will be under pressure to complete their work

1 in a tightly constrained timeframe. As a result, ensuring that non-responsive households receive
2 the requisite number of enumerator visits at the most opportune times for enumeration may
3 become exceedingly difficult, if not impossible. Instead, the Rush Plan increases the likelihood
4 that households will either receive visits at less opportune times, or simply receive fewer visits
5 altogether.

6 218. *Fourth*, the Rush Plan fails to account for the additional crucial operations that
7 enumerators must conduct, as contemplated in the Bureau's final plans for the 2020 Census.
8 Apart from visiting households upwards of six times, enumerators also engage in a host of
9 additional quality control activities.

10 219. As noted above, enumerators are expected to visit the households of persons that
11 self-responded to the census online but did not enter the unique identifier provided on census
12 mailers. This "non-ID processing" is necessary to verify the address information provided by
13 respondents. While this process only requires a single visit to a household, it nevertheless must
14 be completed in the compressed timeline provided for under the Rush Plan.

15 220. Similarly, the Bureau must conduct quality control reinterviews of a sample of
16 households during Non-Response Follow Up. This operation is designed to deter and detect
17 enumerator falsification. Detecting such falsifications will be especially important under the
18 Rush Plan where individual enumerators must shoulder a heavier workload. The use of
19 enumerators to conduct these reinterviews will, under the Rush Plan, place additional strain on
20 the Bureau's already stretched labor resources.

21 221. Cutting any one of these functions will cause errors and inaccuracies to affect the
22 final 2020 Census data. By reversing the COVID-19 Plan and shortening the timeframe for
23 conducting Non-Response Follow Up by a month, the Bureau will likely need to make cuts to
24 one or more of these operations.

25 222. By reducing the amount of time and resources necessary to perform the kinds of
26 quality-control measures that the Bureau originally planned for Non-Response Follow Up, the
27 Rush Plan actively dismantles processes that the Bureau has specifically developed over the
28 course of time as checks against falsified census responses. The Rush Plan thus threatens census

1 accuracy not only by reducing the Bureau's time to *collect* data, but also by reducing the
2 Bureau's time to ensure that the data it has collected has been collected *properly* and *truthfully*.

3 223. *Fifth*, the Rush Plan fails to account for the other field operations enumerators
4 will need to conduct at the same time as they attempt to speed through door-knocking operations.

5 224. Under the Final Operational Plan, the Bureau planned to finish specialized
6 operations for counting people experiencing homelessness, and people living in group housing in
7 April 2020, before engaging in nationwide door-knocking. After suspending operations due to
8 COVID-19, the Bureau moved these operations to September 2020, well-before the October 31,
9 2020 deadline the Bureau set for completing the Non-Response Follow Up operation.

10 225. The new Rush Plan requires the Bureau to conduct these specialized operations at
11 the same time as it is scrambling to complete Non-Response Follow Up. This will further stretch
12 the Bureau's limited resources and increase the likelihood of missing information.

13 **C. The Rush Plan Also Fails to Appropriately Account for Factors that Will Affect**
14 **Post-Collection Data Processing**

15 226. The Rush Plan fails to account for the additional strain on data-processing
16 operations resulting from the consequences of the COVID-19 pandemic.

17 227. Following the outbreak of COVID-19 in the United States in mid-March 2020,
18 colleges and universities across the country closed, and students moved out of campus and off-
19 campus housing. Similarly, many residents of cities, especially those living in COVID-19
20 hotspots, moved to locations where the virus was less prevalent. In a recent study, three percent
21 of people surveyed reported that they had moved permanently or temporarily as a result of the
22 pandemic.

23 228. This significant movement of people coincided with Census Day, April 1, 2020,
24 and will lead to confusion about what residence should be listed on responses.

25 229. It is likely that the Bureau will receive an increased amount of duplicate
26 responses, which will, in turn, require more time and Bureau resources to review and correct.

27 230. The Rush Plan also fails to account for the Bureau's inability to timely obtain and
28 process all the administrative-records data crucial for completing an accurate count.

1 231. The Bureau relies principally on Title 26 data—that is, tax returns that individuals
2 file with the Internal Revenue Service (“IRS”)—for the administrative records it uses to fill in
3 missing people and their characteristics.

4 232. Because this year’s tax filing deadline was July 15, 2020, and the IRS generally
5 requires three months to transfer Title 26 data to the Census Bureau, the Bureau will not possess
6 all the Title 26 data it is planning to use until mid-October 2020, at the earliest. Once the Bureau
7 has possession of that Title 26 data, it will have to undertake a time-consuming round of
8 additional review and processing, further delaying its ability to use the data for its planned
9 purposes. These delays will compel the data-processing phase of 2020 Census operations to
10 proceed more slowly than the Rush Plan contemplates or would allow.

11 233. Ultimately, the solution to alleviate each of these problems was articulated in the
12 COVID-19 Plan: provide the Bureau’s limited number of enumerators with additional time to
13 conduct the data-collection operations necessary to ensure a complete and accurate census, and
14 provide Bureau staff with additional time to conduct the data-processing operations necessary to
15 ensuring the same. The Rush Plan fails to address these issues or explain why the Bureau’s prior
16 conclusions were incorrect..

17 **D. The Rush Plan Does Not Account for Federal Statistical Guidelines**

18 234. In replacing the COVID-19 Plan with the Rush Plan, Defendants departed from
19 federal government statistical standards that promote the accuracy of information collected and
20 disseminated by the agencies.

21 235. The Bureau’s failure to follow these standards further emphasizes its inability to
22 conduct an adequate count in the time and under the conditions that the Rush Plan provides.

23 236. Under the Paperwork Reduction Act, the Office of Management and Budget is
24 responsible for coordinating the federal statistical system, including the development and
25 implementation of “Governmentwide policies, principles, standards, and guidelines” “concerning
26 [] statistical collection procedures and methods.” 44 U.S.C. § 3504(e)(3) (A).

27 237. The Office of Management and Budget is responsible for issuing guidelines that
28 provide “procedural guidance to Federal agencies for ensuring and maximizing the quality,

1 objectivity, utility and integrity of information (including statistical information) disseminated by
2 Federal agencies.” Consolidated Appropriations Act, FY 2001, Pub. L. No. 106-554, § 515,
3 114 Stat. 2763 (2000).

4 238. One such guideline issued by the Office of Management and Budget provides
5 specific standards to agencies like the Census Bureau, in ensuring the quality and utility of
6 federal statistical surveys, such as the decennial census. Office of Mgmt. & Budget, Standards
7 and Guidelines for Statistical Surveys § 2 (2006).

8 239. Under these standards, agencies are required to develop “realistic timetable[s]”
9 for surveys. *Id.* § 1.2.

10 240. The Bureau failed to take this basic requirement into account when it decided to
11 implement the Rush Plan. The Rush Plan compresses the timeline for counting operations despite
12 evidence of staffing shortages and heavier workload. The Plan attempts to accomplish a task—
13 speedy delivery of results by December 31, 2020—that the Bureau has already deemed
14 “impossible.”

15 241. The standards also require agencies, including the Census Bureau, to “[e]ncourage
16 respondents to participate to maximize response rates and improve data quality.” Office of
17 Mgmt. & Budget, Standards and Guidelines for Statistical Surveys § 2.3.2. This standard
18 requires that the Census Bureau “[e]nsure that the data collection period is of adequate and
19 reasonable length.”

20 242. Again, the Rush Plan does not account for this standard. The Final Operational
21 Plan and the COVID-19 Plan provided for over eleven weeks of Non-Response Follow Up, and
22 up to five and six months, respectively, of post-collection data processing for the apportionment
23 report. The Rush Plan, on the other hand, cuts the time allotted for counting by four weeks,
24 without explaining how it will encourage more efficiency in collecting responses than the plan it
25 reversed.

26 243. The standards also require the Bureau to plan for “an adequate number of contact
27 attempts” to the respondent and to establish protocols for minimizing enumerator falsification,
28 including “reinterviewing respondents.” Office of Mgmt. & Budget, Standards and Guidelines

1 for Statistical Surveys, Directive No. 2, § 2.3.3.

2 244. With the Rush Plan significantly cutting the time available to conduct Non-
3 Response Follow Up, it is expected that the Bureau will need to cut particular Non-Response
4 Follow Up processes. This includes reducing the number of housing unit visits it earlier deemed
5 necessary to enumerate a non-responsive household, or cutting back on enumerator reinterviews.
6 Either decision will conflict with the Bureau's obligation to abide by federal statistical standards.

7 **E. The Rush Plan Will Produce Low Quality and Inaccurate Data**

8 245. Ultimately, Defendants' decision to rush completion of the 2020 Census will
9 produce a significantly less accurate census than the COVID-19 Plan.

10 246. By cutting down the time allotted for door-knocking, the Rush Plan will result in
11 fewer contact days by enumerators to non-responsive households, and less data collected by
12 enumerators about those households.

13 247. The concerns about inaccuracy resulting from shortening time for Non-Response
14 Follow Up are real and verified. A GAO review of the 2010 Non-Response Follow Up operation
15 determined that local census offices with "higher percentages" of "less complete house-hold
16 data" were more likely to have completed their Non-Response Follow Up in 53 days or less as
17 compared to those offices that took a longer period of time. U.S. Gov't Accountability Office,
18 *2010 Census: Data Collection Operations Were Generally Completed as Planned, but Long-*
19 *Standing Challenges Suggest Need for Fundamental Reforms* (Dec. 2010),
20 <https://www.gao.gov/new.items/d11193.pdf>.

21 248. As noted above, after the Bureau exhausts attempts to enumerate households
22 through methods that render more accurate results, such as self-response and enumerator
23 interviews, the Bureau turns to less accurate sources of data and statistical methods as a last
24 resort to fill in missing information.

25 249. By curtailing Non-Response Follow Up, the Rush Plan will force the Bureau to
26 resort to less accurate methods of data collection, well before the exhaustion of more accurate
27 methods. Consequently, the Rush Plan will lead to the production of lower-quality information.

28 250. For instance, under the Final Operational Plan, the Bureau would not consider

1 low-quality administrative data before conducting the requisite number of contact days for a
2 particular type of housing unit. By reducing the number of enumerator contact days, the Rush
3 Plan will lead to reliance on these types of lower-quality data sources prior to exhausting the
4 more accurate methods contemplated in the Final Operational Plan. Consequently, the Rush Plan
5 will lead to more inaccuracies in the data.

6 251. Based upon past practices, the Bureau may also use whole-count imputation to
7 calculate missing household data but to an extent and in ways not used previously. Imputation
8 involves the Bureau using information from surrounding responsive households to infer the
9 count and characteristics of a non-responsive household.

10 252. In previous censuses, the Bureau imputed upwards of 2.0% of households left
11 over after exhausting its Non-Response Follow Up efforts. Under the time constraints of the
12 Rush Plan, the Bureau will need to turn to imputation before exhausting its in-person
13 enumeration efforts. One former Census Bureau Director estimates that, under the Rush Plan, the
14 Bureau may end up imputing up to 10% of households.

15 253. Since data produced through the Bureau's current imputation methods are less
16 accurate than data collected from enumerator interviews, Defendants' decision to rush
17 completion of the 2020 Census will result in significantly less accurate total-population data than
18 would have been produced under the COVID-19 Plan. This decline in accuracy will affect both
19 the census's calculations of the total number of people living in the country and the census's
20 recording of the characteristics of those people, and such inaccurate data will not meet the
21 constitutional minimum for conducting the decennial enumeration or satisfy the "strong
22 constitutional interest in accuracy" of the Census. *Utah v. Evans*, 536 U.S. 452, 478 (2002).

23 254. The Rush Plan will likely exacerbate the quality problems associated with
24 imputation by compromising the Bureau's ability to collect the other kinds of data—such as self-
25 responses, proxies, and administrative records—that it requires to impute most accurately. As
26 noted above, imputation does not occur in isolation from the Bureau's other data sources, but in
27 concert with them. With less data drawn from these other sources and less accurate data drawn
28 from these other sources, the quality of the Bureau's imputation will decline.

1 255. The Rush Plan will also disrupt the post-collection data processing operations,
2 described above. As noted by Secretary Ross and Director Dillingham in mid-April 2020,
3 following Non-Response Follow Up the Bureau engages in “lengthy, thorough and scientifically
4 rigorous” data processing, which is essential to ensuring an accurate census.

5 256. In announcing the new plan to rush the completion of the 2020 Census, Director
6 Dillingham stated that the Bureau would “streamline” these operations in order to meet the
7 December 31, 2020 deadline.

8 257. While the Director has not specified what this “streamlining” means for post-
9 collection operations, the bottom line is that the Bureau cannot fully engage in the operations as
10 contemplated in its Final Operational Plan on the shortened timeframe. As a result, the Bureau
11 will have to cut or reduce its efforts to review and process collected data to ensure accuracy.

12 **F. The New “Rush” Plan Will Create Confusion that Plaintiffs Will Be Forced to**
13 **Spend Time and Money Counteracting**

14 258. The new plan to rush completion of the 2020 Census also creates additional
15 confusion about census operations at a critical moment in the census-taking process.

16 259. The Census Bureau’s abrupt change will require groups and local governments
17 engaging in Get Out the Count campaigns, including Plaintiff localities and Plaintiff
18 organizations, to expend resources to correct confusion about the last date for counting in the
19 2020 Census.

20 260. As noted above, Plaintiff organizations and localities engaged in extensive public
21 information campaigns that publicized the October 31, 2020 deadline.

22 261. The Rush Plan requires Plaintiffs to expend additional resources in order to
23 update existing public materials, distribute new materials, and engage in more public-facing
24 efforts to educate the public, their constituents, their members and/or constituents, and local
25 organizations that the self-response period for the census ends on September 30, 2020.

26 262. For instance, in Harris County, officials ordered a mailing to constituents
27 informing them that they had until October 31, 2020 to respond to the census. That order
28 occurred before the August 3, 2020 decision to implement the Rush Plan. In light of the new

1 plan, the officials were forced to order stickers to cover the reference to October 31, 2020 on the
2 mailer and to dedicate office staff to spend time affixing those stickers and updating the mailer.
3 Similarly, Plaintiffs the City of Los Angeles, BAJI, and Urban League must update
4 advertisements on social media to correct previous communications that referenced the October
5 31, 2020 deadline.

6 263. Apart from correcting misinterpretations arising from earlier statements Plaintiffs
7 made in reliance on the Bureau's COVID-19 Plan, Plaintiffs must now also engage in more,
8 unanticipated outreach to educate the public about the Census Bureau's Rush Plan decision. With
9 one month less of counting, there is now increased urgency for non-responsive households to
10 self-respond. As a result, Plaintiffs are developing new plans to reach more households and
11 encourage more census participation.

12 **G. The New "Rush" Plan Will Lead to Undercounting of Minorities**

13 264. The new plan to rush completion of the 2020 Census will exacerbate
14 undercounting of Black, Latino, and Native American communities.

15 265. As noted above, Non-Response Follow Up, is specifically designed to ensure that
16 traditionally hard-to-count communities, including Black, Latino, and Native American
17 communities are fully counted. By cutting Non-Response Follow Up short, the administration is
18 disrupting the operation most essential to ensuring an accurate count for these communities.

19 266. For the 2020 Census, Black, Latino and Native American populations make up a
20 disproportionate share of the population in tracts with the lowest self-response rates in the United
21 States. For instance, as of July 23, 2020, one in five residents living in census tracts with the
22 lowest self-response rates was Black, and one in four was Hispanic, far larger proportions than
23 Black and Hispanic shares of the general population.

24 267. Consequently, Black, Latino, and Native American households will make up a
25 disproportionate share of the Non-Response Follow Up universe.

26 268. Given the challenges of the shortened Non-Response Follow Up timeline, Black,
27 Latino, and Native American households have a high likelihood of being missed, or inaccurately
28 enumerated through administrative records and imputation. As noted above, these alternative

1 methods for enumeration will result in lower quality data for these groups.

2 269. The problem, however, is even more serious because it replicates and exacerbates
3 problems the Census Bureau has found in prior censuses and has striven to correct in subsequent
4 censuses. Data from previous censuses shows that Black, Latino, and Native Americans have
5 historically been undercounted. Over-reliance on alternative methods of data to enumerate a
6 disproportionate share of the population in these groups will further exacerbate potential
7 undercounting in these groups during the 2020 Census.

8 270. Accurate data about the size, location, and characteristics of communities of color
9 is necessary to equitably distribute political power through congressional reapportionment and
10 redistricting at the state and local levels, enforce civil-rights laws that affect basic needs like
11 housing and employment, and conduct effective research, including on pressing issues like
12 public health.

13 271. Truncating Non-Response Follow Up will exacerbate undercounts of
14 communities of color in at least two ways: first, by missing members of those communities
15 entirely; or, second, by recording their characteristics incorrectly, such that the census results
16 will not register them as members of communities of color. In either instance, data regarding
17 communities of color will be inaccurate. This inaccuracy then deprives communities of color of
18 federal funding, all the material support that flows from federal funding, the protections of the
19 law, and political power at the federal, state, and local levels.

20 **H. The New Rush Plan Has No Legitimate Justification**

21 272. In announcing the Rush Plan, Defendants provided no express justification.
22 Defendants stated in passing, however, that reporting of apportionment data to the President by
23 December 31, 2020 is required by statute.

24 273. But there is “nothing sacred in the due date of the filing [of apportionment data],
25 especially when the work of the Census Bureau . . . is incomplete.” *Carey v. Klutznick*, 637 F. 2d
26 834, 837 (2d Cir. 1980).

27 274. The Supreme Court thus determined that the government can and should
28 substitute apportionment counts that have already been filed and certified with “newer, more

1 accurate version[s].” *Utah v. Evans*, 536 U.S. 452, 462 (2002).

2 275. Defendants have also recognized that, in the event of a conflict between the two,
3 the constitutional requirement of a fair and accurate enumeration, rather than the statutory
4 deadline, is the controlling legal requirement. With the COVID-19 pandemic threatening the
5 health and safety of communities across the country, Defendants adjusted 2020 Census
6 operations in the COVID-19 Plan, shifting the timeline by several months. Defendants did not
7 wait for Congress to act to implement this plan, recognizing that the Plan was necessary to
8 protect enumerators and respondents, and to ensure an accurate count.

9 276. Because of those delays, as the Bureau itself recognized, it was no longer possible
10 for Defendants to produce data by December 31, 2020 that fulfilled their constitutional and
11 statutory mandate. Specifically, the Bureau could not simultaneously pursue an accurate 2020
12 Census, and speed through completion of census-taking in order to report numbers to the
13 President by the end of the year.

14 277. Several senior officials charged with actually conducting the 2020 Census
15 confirmed the impossibility of this task throughout the summer, including approximately four
16 weeks before Defendants’ abruptly announced their decision to adopt the Rush Plan.

17 278. The statutory deadline at issue is not mandated by the Constitution. Taking the
18 modest additional time necessary to ensure an accurate census, should not prevent a timely
19 reapportionment, as elections for congressional seats impacted by reapportionment will not occur
20 until 2022.

21 279. Ultimately, Defendants cannot sacrifice their mandatory *constitutional* obligation
22 to make decisions reasonably related to producing an accurate count in order to comply with a
23 pro forma *statutory* deadline. Congress clearly could not, for instance, satisfy its constitutional
24 obligations by providing the Census Bureau with a single week in which to conduct the census.
25 Strictly adhering to the December 31, 2020 deadline, as applied in extraordinary circumstances
26 of the ongoing pandemic, would be equally unconstitutional.

27 **I. Implementation of the Apportionment Exclusion Order**

28 280. Defendants have not yet sought to justify their motivation for adopting the Rush

1 Plan, and it cannot be justified on the basis of artificial statutory deadlines. Instead, the timing of
2 the abandonment suggests that the decision was influenced by a desire to implement the
3 President’s Executive Memorandum excluding undocumented immigrants from the
4 apportionment count, thereby undercutting the contribution of communities of color to the
5 calculations for equal representation for purposes of congressional apportionment
6 (the “Apportionment Exclusion Order”).

7 281. In late June 2020, the White House took the unprecedented step of adding two
8 political appointees to Census Bureau staff with unspecified job duties. Neither appointee had an
9 expertise in statistics, and both had a demonstrated history of partisan activity. These unusual
10 appointees had previously engaged with the Census Bureau on questions about changing
11 operations and methodology.

12 282. In mid-July 2020, White House officials reportedly asked congressional
13 appropriators to include \$1 billion in the next coronavirus stimulus bill for the purpose of
14 completing the 2020 Census by the December 31, 2020 deadline.

15 283. This abrupt change in policy coincided with and was motivated by the President’s
16 July 21, 2020 issuance of the unconstitutional Apportionment Exclusion Order declaring that it is
17 the policy of the United States to remove undocumented persons from the apportionment count,
18 and requiring the Secretary of Commerce to produce estimates of the number of undocumented
19 persons in the United States when reporting total population counts to the President. As noted,
20 the Apportionment Exclusion Order is currently being challenged as unconstitutional and
21 unlawful in a number of lawsuits filed in jurisdictions around the country, including in this
22 District.

23 284. Shortening the census timeline increases the likelihood that, regardless of the
24 outcome of the November 2020 election, this President will have the opportunity to implement
25 his Apportionment Exclusion Order. Delaying reporting until spring—as the COVID-19 Plan
26 issued by the Census Bureau and Department of Commerce previously did—leaves open the
27 possibility that the President will no longer be in office when data is provided, and thus will be
28 unable to effectuate the Apportionment Exclusion Order.

1 285. Defendants did not justify their sudden, unexplained reversal of position with any
2 evidence that Bureau officials had been wrong in stating, repeatedly, that it would be impossible
3 to produce accurate counts by December 31, 2020. There is also no evidence that the decision to
4 cut short counting operations was driven by the scientifically based judgment of Bureau
5 personnel or external experts.

6 286. To the extent that Defendants' are motivated by a desire to implement the
7 President's Apportionment Exclusion Order, that motivation is improper. It bears no reasonable
8 relationship to the achievement of a fair and accurate census, and, under the circumstances
9 currently facing the count, implementing the Apportionment Exclusion Order will undermine
10 that goal.

11 287. Moreover, that Memorandum is just the latest attempt by the President and
12 Secretary Ross to manipulate the census along racial and ethnic lines. Beginning in 2017,
13 Secretary Ross attempted to add an untested citizenship question to the 2020 Census, claiming
14 that the question was necessary to better enforce the Voting Rights Act. In reality, the
15 administration was seeking block-level citizenship data so states could draw district lines in a
16 manner that would disadvantage Black and Latino communities.

17 288. Defendant Ross's decision was litigated, and enjoined by three district courts.
18 One of those cases ultimately ended up before the Supreme Court. There the Court found that
19 Defendant Ross's stated Voting Rights Act rationale to support the addition of a citizenship
20 question to the 2020 Census was "contrived" and vacated Defendant Ross's decision. *Dep't of*
21 *Commerce v. New York*, 139 S. Ct. 2551, 2575-76 (2019).

22 289. On July 5, 2019, following the Supreme Court's decision, President Trump
23 confirmed the real rationale—and fully justified the Supreme Court's holding that the
24 administration's rationale for this census decision was pretextual—when he stated that the
25 administration sought a citizenship question, not to enforce the Voting Rights Act, but rather "for
26 districting" and "for appropriations." Remarks by President Trump Before Marine One
27 Departure (July 5, 2019), [https://www.whitehouse.gov/briefings-statements/remarks-president-](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/)
28 [trump-marine-one-departure-51/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/).

1 290. Indeed, further evidence that Defendants’ actions were pretextual arose from files
2 of a prominent redistricting strategist, Thomas Hofeller. In 2015, Hofeller prepared a study titled
3 “The Use of Citizen Voting Age Population in Redistricting.” In the study, Hofeller
4 recommended adding a citizenship question to the census so that states could use citizen voting-
5 age population rather than total population to redistrict. This change in the redistricting base, in
6 Hofeller’s words, would be advantageous to “Non-Hispanic Whites” and would undercut the
7 political power of Hispanics.

8 291. It was later revealed that Hofeller was involved in drafting portions of the
9 memorandum from the Department of Justice to Defendant Commerce seeking addition of a
10 citizenship question on the 2020 Census, including sections relating to the pretextual reason for
11 requesting the question. *See* Ex. 8 to NYIC Pls.’ Mot. for Sanctions at 124-31, *New York v. U.S.*
12 *Dep’t of Commerce*, No. 1:18-cv-2921-JMF (S.D.N.Y. July 16, 2019), ECF No. 635-1; Defs.’
13 Opp. to Letter Mot. to Compel at 3, *New York v. U.S. Dep’t of Commerce*, No. 1:18-cv-2921-
14 JMF (S.D.N.Y. Oct. 30, 2018), ECF No. 451.

15 292. Shortly after the Supreme Court’s decision, President Trump issued an executive
16 order, demanding executive agencies provide the Census Bureau with administrative records
17 sufficient to allow the Bureau to determine “the number of citizens and noncitizens in the
18 country.” Exec. Order No. 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019). The
19 Executive Order explicitly states that the reason this data is necessary is to design “legislative
20 districts based on the population of voter-eligible citizens,” instead of total population. *Id.* at
21 33,823-84.

22 293. In light of that history, the Apportionment Exclusion Order, and the near-
23 contemporaneous decision to cut counting operations short represent yet another attempt by the
24 administration to manipulate the 2020 Census and potentially undercut the political power of
25 communities of color. Defendants cannot rely on this memorandum as justification to support
26 their decision to undermine the accuracy of the census.

27 **V. Harm to Plaintiffs.**

28 294. Plaintiffs and Plaintiff non-profits’ members and/or constituents reside in locales

1 that will suffer harm as a result of Defendants' decision because that decision is very likely to
2 cause these locales to be more disproportionately undercounted in the 2020 Census than they
3 otherwise would have been.

4 295. On August 9, 2020, at the beginning of the Non-Response Follow Up operation,
5 Plaintiff City of Los Angeles, had a response rate of just 53.1%, which was significantly lower
6 than the 64.5% statewide response rate in California on that same date.

7 296. The Urban League, League of Women Voters, and BAJI have affiliates,
8 constituents, and members in major cities across the United States. This includes cities where
9 response rates were lower than their corresponding statewide response rates on the first day of
10 Non-Response Follow Up including San Francisco (61.4%) and Monterey (60.5%) as compared
11 to California (64.5%), Miami (49.6%) as compared to Florida (60.1%), Philadelphia (52%) as
12 compared to Pennsylvania (65.5%), Detroit (48.7%) as compared to Michigan (68.9%), and New
13 York City (54.9%) as compared to New York State (58.9%).

14 297. Plaintiffs Ellis and Garcia are residents of Houston, Texas. The response rate in
15 Houston at the beginning of Non-Response Follow Up was 54%, which was lower than the
16 statewide response rate for Texas on that date, 58.2%.

17 298. As noted above, Defendants' decision will result in fewer enumerations through
18 Non-Response Follow Up, increased reliance on low-quality administrative data, and increased
19 imputation. Consequently, Defendants' decision will result in cities' with higher rates of non-
20 response (1) having less accurate data; and (2) experiencing higher rates of undercounting.

21 299. Because these cities have a higher proportion of households in the Non-Response
22 Follow Up universe than their corresponding states, these cities have a substantially higher
23 likelihood of being undercounted because of Defendants' decision than surrounding communities
24 in their states. These disproportionate undercounts will cause Plaintiffs to suffer both fiscal and
25 representational harm.

26 **A. Funding Harms**

27 300. The Rush Plan will result in loss of federal funding for Plaintiffs Harris County,
28 City of Salinas, and the City of Los Angeles and the communities where members of Plaintiff

1 non-profits reside, including Miami, Detroit, Philadelphia and New York.

2 301. Over 130 programs and 675 billion dollars are allocated to states and localities on
3 the basis of census-derived information. This includes funding to states for federal transportation
4 planning purposes, education, and healthcare.

5 302. Many important federal programs, including Title I Grants under the Every
6 Student Succeeds Act, require states to distribute funds to localities on the basis of census-
7 derived information.

8 303. State Education Agencies must allocate Title I Grants, at least in part, on the
9 number of children aged 5-17 living in poverty in a local education agency's jurisdiction.

10 304. Given that members of Plaintiff non-profits reside in cities that are likely to be
11 more undercounted under the Rush Plan relative to surrounding communities in their states,
12 including San Francisco, Miami, Detroit, Philadelphia, and New York City, Defendants' decision
13 will likely deprive the communities where these members reside of Title I Grant funding they
14 would have otherwise received. Similarly, Defendants' decision places Plaintiffs Ellis and
15 Garcia's community at higher risk of deprivation of Title I Grant funding.

16 305. Several additional federal programs require states to use census-derived
17 information to distribute funds directly to cities and counties, based on their share of a relevant
18 population. For instance, the Low Income Home Energy Assistance Program, the Workforce
19 Innovation and Opportunity Act program, and the Community Services Block Grant Program, all
20 require states to distribute funds to cities and counties, at least in part, on the proportion of a
21 state's low-income residents living in those cities and counties. This data is derived from
22 information collected during the decennial census.

23 306. Both Harris County and the City of Los Angeles receive funds under these
24 programs. Consequently, disproportionate undercounting of Harris County and the City of Los
25 Angeles, as compared to their states, is likely to result in loss of funds under these and similar
26 programs.

27 307. Several federal funding programs provide funding directly to cities and counties
28 based on census-derived information. For instance, the Community Development Block Grant

1 program, and the Emergency Solutions Grant, allocate funding to cities and counties based, at
2 least in part, on their share of the overall population count relative to other metropolitan areas.

3 308. Of cities with over 500,000 people, the City of Los Angeles had the fourth lowest
4 response rate in the country, just behind Detroit and Philadelphia. Consequently, Los Angeles
5 will likely lose Community Development Block Grant funds because of Defendants' decision.

6 309. Similarly, members of Plaintiff non-profits live in major metropolitan areas with
7 some of the lowest response rates in the country, such as Miami, Detroit and Philadelphia.
8 Defendants' decision will likely deprive these members' communities of funding under the
9 Community Development Block Grant program.

10 310. Finally, the allocation of federal transportation including the Surface
11 Transportation Block Grant Program, and the Metropolitan and Statewide Nonmetropolitan
12 Transportation Planning Programs are based on the population of urbanized areas in a state
13 compared to those of other states, as determined by the decennial census.

14 311. Plaintiffs Ellis and Garcia regularly drive on highways and roads in Texas.
15 Disproportionate undercounting of urbanized areas in Texas during the 2020 Census will result
16 in reduced transportation funding for Texas under federal transportation programs.

17 **B. Representational Harm**

18 312. Defendants' decision will also likely result in representational harm to individual
19 Plaintiffs and to the members of Plaintiff organizations.

20 313. Plaintiffs Ellis and Garcia reside in Houston, Texas. In terms of self-response
21 rates, Texas ranks 39th in the United States. Approximately four million Texas households are in
22 the Non-Response Follow Up universe, which is more households than any state other than
23 California.

24 314. Consequently, Defendants' decision will not only cause a substantial undercount
25 in Texas, but that undercount will likely be disproportionate as compared to other states. Texas
26 will likely be deprived of its fair share of representation in the next congressional apportionment.

27 315. As a result, Defendants' decision is likely to result in reduction of voting power
28 and representation for Plaintiffs Ellis and Garcia, because it will likely cause the loss of a seat in

1 Texas, and will result in fewer Representatives spread out over the state of Texas.

2 316. As for Plaintiff City of Los Angeles, at least one study has predicted that, were
3 California to lose a congressional seat because of the final census count, that seat is very likely to
4 come from a district that includes portions of South Los Angeles, thus reducing the city's
5 representational delegation.

6 317. Defendants' decision will also cause Plaintiff Ellis and members of Plaintiff non-
7 profits to experience a loss of intrastate voting power.

8 318. By causing disproportionate undercounting of communities in Houston, Detroit,
9 Philadelphia, and Miami, as compared to their corresponding states, Defendants' decision will
10 result in drawing of district lines that do not accurately represent the population of the state, and
11 disadvantage Plaintiffs Ellis and Garcia, and members of Plaintiff organizations that live in
12 undercounted communities.

13 **C. Inaccurate Data**

14 319. Plaintiff local governments will suffer harm from the adverse impact Defendants'
15 decision will have the accuracy of population counts produced by the Census Bureau. Plaintiff
16 local governments often rely on accurate information collected by the Census Bureau for crucial
17 public planning purposes, including planning for how to respond to emergencies.

18 320. For example, local governments often rely on a Social Vulnerability Index to
19 identify communities that are at high risk during a particular emergency. Government officials
20 rely on this index to determine where to allocate resources before and during emergencies. A
21 Social Vulnerability Index use census data to identify specific populations that may be
22 vulnerable to a particular emergency, including data relating to age, housing density, income
23 status, and race and ethnicity. Inaccurate census data would make disaster planning and
24 emergency response more difficult, and could disrupt important public programs.

25 321. In Harris County, officials used the Center for Disease Control's Social
26 Vulnerability Index to inform decisions about proper distribution of COVID-19 Relief Funds.
27 The funds were allocated to provide relief to Harris County residents most impacted by the
28 global pandemic. That Social Vulnerability Index, which was based on census data, was used to

1 identify census tracts with the most vulnerable residents, and applications from residents from
2 those tracts were prioritized and given higher chances of acceptance for funds. Without accurate
3 census data, Harris County would struggle to ensure that crucial relief funds were reaching the
4 communities most in need of them.

5 322. Similarly, King County relies on accurate census data to inform its public-policy
6 decision making. For instance, the county uses census data to plan public-transit service, and to
7 ensure priority populations have transit access, and to site public health clinics.

8 323. The low-quality data and undercounting that Defendants' decision will cause will
9 also harm Plaintiffs. For instance, undercounting of Black, Latino, Native American, and
10 immigrant communities will negatively affect the Urban League, League of Women Voters and
11 BAJI by undermining these organizations' core missions of promoting equal and just laws and
12 empowering vulnerable communities through building coalitions and initiating campaigns with
13 African Americans and Black immigrants, and fostering racial, economic, and social equality for
14 the communities they serve.

15 **D. Expending Additional Resources**

16 324. Plaintiff organizations, the Urban League, the League of Women Voters, and
17 BAJI, and Plaintiff local governments, City of San Jose, Harris County, King County, City of
18 Salinas, and City of Los Angeles will need to expend additional resources and divert resources
19 from planned programs and projects in order to address the adverse consequences of Defendants'
20 decision to abandon the COVID-19 Plan, and implement the Rush Plan.

21 325. Plaintiffs' planned efforts to ensure the effective enumeration of historically
22 undercounted communities were based on the understanding that the Census Bureau would
23 implement the Non-Response Follow Up operation contemplated in the Final Operational Plan
24 and adjusted in the COVID-19 Plan.

25 326. The abrupt reversal of the COVID-19 Plan, and the implementation of curtailed
26 Non-Response Follow Up in the Bureau's Rush Plan will adversely affect Plaintiffs' plans.

27 327. Plaintiff organizations and local governments will likely need to adjust plans, and
28 divert resources from other planned activities and programs in order to ensure the communities

1 they serve are adequately counted. Specifically, Plaintiffs will need to recruit and train staff to
 2 engage in increased and expanded outreach to potential non-responsive households in order to
 3 make up for fewer enumerator visits, or to other aspects of the Non-Response Follow Up
 4 program, such as the reinterview process.

5 328. For instance, Plaintiff BAJI is planning significant adjustments to its 2020 Census
 6 outreach plans in light of Defendants' decision, that include diversion of resources from other
 7 sources, and significant expenditures. In order to engage in effective outreach, BAJI needs
 8 organizing staff dedicated to civic engagement. With Non-Response Follow Up occurring from
 9 August 11, 2020 through October 31, 2020, BAJI anticipated that it could spread its staffing
 10 resources over that timeframe to ensure it was meeting its goals within the organization's budget.
 11 However, on a shorter timeframe, BAJI needs additional staff on a shorter timeframe, which will
 12 require adjusting the organization's budget and priorities for the next several months.

13 329. The adjustment is also challenging for BAJI as the organization caters to
 14 immigrant communities with a variety of language needs. Increasing staffing on a short
 15 timeframe poses significant challenges for the organization, because it must locate staff that can
 16 communicate with the particular community that the organization is targeting for outreach
 17 efforts.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Enumeration Clause, and Fourteenth Amendment (U.S. Const. art. I, § 2; U.S. Const. amend. XIV, § 2)

21 330. Plaintiffs incorporate by reference the allegations set forth in the preceding
 22 paragraphs.

23 331. Under the Enumeration Clause of the U.S. Constitution, Congress, and, by
 24 delegation, the Secretary of Commerce, must conduct an "actual Enumeration" of the population.
 25 This clause requires that decisions relating to census-taking "bear a reasonable relationship to the
 26 accomplishment of an actual enumeration of the population." *Wisconsin v. City of N.Y.*, 517 U.S.
 27 1, 20 (1996).

28 332. The COVID-19 pandemic severely disrupted the 2020 Census, resulting in

1 months of suspended operations and significant delays in crucial counting processes. Moreover,
 2 the public-health crisis continues to impact census operations, as the Bureau struggles to retain
 3 enumerators and engage in door-knocking in communities experiencing surges of the virus.

4 333. To navigate this emergency, the Bureau took necessary action to adjust its
 5 operational timelines in the COVID-19 Plan while seeking to maintain the operations and
 6 processes included in the Final Operational Plan that had been designed to help ensure a
 7 complete and accurate count.

8 334. Abruptly and without explanation, on August 3, 2020, Defendants abandoned the
 9 COVID-19 Plan and implemented the Rush Plan. The Rush Plan does not “bear a reasonable
 10 relationship to the accomplishment of an actual enumeration of the population.” After delaying
 11 all operations for months, the Bureau and its staff repeatedly recognized that it was impossible to
 12 produce counts consistent with their duties to ensure a full, fair, and accurate count by December
 13 31, 2020. Indeed, current conditions demonstrate that it is infeasible to obtain a fair and accurate
 14 count by the end of the year. Nevertheless, the Defendants abandoned their constitutionally
 15 mandated pursuit of fair and accurate data, in favor of the speed of the Rush Plan, and the
 16 inaccurate data it will produce.

17 335. Under these circumstances, the decision to curtail crucial 2020 Census operations
 18 violates the Enumeration Clause of the United States Constitution.

19 336. These constitutional violations have caused, are causing, and will continue to
 20 cause harm to Plaintiffs as alleged above, and there is a substantial likelihood that the requested
 21 relief will redress this harm.

22 **SECOND CLAIM FOR RELIEF**
 23 **Violation of Administrative Procedure Act—Arbitrary and Capricious**
 24 **(5 U.S.C. § 706(2)(A))**

25 337. Plaintiffs incorporate by reference the allegations set forth in the preceding
 26 paragraphs.

27 338. The APA, 5 U.S.C. § 706(2), provides that a court shall hold unlawful and set
 28 aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
 accordance with law. The Rush Plan is final agency action because it marks the consummation

1 of the agency's decision-making process, and it is one by which rights or obligations have been
2 determined, or from which legal consequences will flow. *Bennett v. Spear*, 520 U.S. 154, 177-78
3 (1997).

4 339. In determining whether an action violates the APA, courts consider whether the
5 agency examined relevant data and articulated a satisfactory explanation for its decision,
6 including formulating a rational connection between the facts found and the choice made. *Motor*
7 *Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

8 Where an agency wishes to depart from an earlier decision, it must acknowledge that change and
9 any reliance interests its previous actions engendered. *See Perez v. Mortg. Bankers Ass'n*, 575
10 U.S. 92, 105-06 (2015).

11 340. The Bureau spent several years developing its Final Operational Plan for the 2020
12 Census. That plan carefully determined the required length of each operation, including the
13 appropriate length for data-collection and data-processing. It also included details about the
14 implementation of the various operations.

15 341. The COVID-19 pandemic disrupted census operations, and the Bureau responded
16 by adjusting its operations in its COVID-19 Plan. That plan involved retaining the details and the
17 length of time of various operations laid out in the Final Operational Plan, but shifting the
18 timeline for counting several months into the future to account for both the necessity of those
19 operations and the public-health emergency.

20 342. The Bureau began implementing the plan, and critical operations were suspended
21 and delayed through the summer. Bureau officials publicly and expressly recognized that it was
22 no longer possible to comply with the December 31, 2020 deadline if the Bureau intended to
23 fulfill its constitutional and statutory obligation of producing reasonably accurate population
24 counts.

25 343. Without explanation and without citing any evidence, Defendants suddenly
26 changed their position and issued a new plan with shortened timelines. Among other things, that
27 change conclusively changed the legal rights and obligations of private households, who now
28 have substantially less time to respond if they wish to be counted in the 2020 Census. Defendants

1 have provided no evidence to support rescinding the COVID-19 Plan, have failed to
2 acknowledge or explain their departure from their previous conclusions as to the length of time
3 necessary for an accurate census, and have cited no evidence that they could obtain accurate
4 counts on the shortened timeframe. Defendants' unexplained and unjustifiable reversal is
5 precisely the sort of arbitrary and capricious agency action that the Administrative Procedure Act
6 forbids.

7 344. Defendants' decision also fails to account for several factors relevant to the
8 decision, including the multiple-month long suspension in operations and delay of crucial census
9 operations, the staffing shortages facing the Bureau, the meticulously designed and tested
10 technical requirements for effective enumeration included in the Bureau's Final Operational
11 Plan, and the various quality-control measures the Bureau must engage in to ensure that its
12 reported data is accurate.

13 345. Consequently, Defendants' action is arbitrary and capricious.

14 346. This unlawful action has caused, is causing, and will continue to cause harm to
15 Plaintiffs as alleged above, and there is a substantial likelihood that the requested relief will
16 redress this harm.

17 **THIRD CLAIM FOR RELIEF**
18 **Violation of Administrative Procedure Act—Pretext**
19 **(5 U.S.C. § 706)**

20 347. Plaintiffs incorporate by reference the allegations set forth in the preceding
21 paragraphs.

22 348. Under the Administrative Procedure Act, agencies are required to disclose the
23 “genuine justification[] for important decisions.” *Dep’t of Commerce*, 139 S. Ct. at 2569, 2575-
24 76. Courts will not accept “contrived reasons” provided by agencies as that would defeat the
25 purpose of judicial review. *Id.* at 2576. Moreover, agencies cannot simply avoid providing
26 reasoning for their decision-making altogether.

27 349. Defendants have decided to cut crucial operations in order to produce 2020
28 Census population results to the President by December 31, 2020. In announcing that decision,
Defendants provided no legitimate justification for abandoning the COVID-19 Plan and

1 implementing the Rush Plan.

2 350. Any attempt by the Defendants to rely on the reporting deadline provided under
3 the Census Act as justification for their decision is mere pretext. 13 U.S.C § 141(b).

4 351. For months, Defendants implemented the COVID-19 Plan, the timeline for which
5 necessarily assumed the statutory deadlines could not defeat the constitutional duty to conduct an
6 accurate enumeration, as applied to the extraordinary circumstances at hand. Defendants made
7 significant adjustments, including months-long delays of census operations, on the assumption
8 that the Bureau could and would conduct a full and robust count through the end of October 31,
9 2020. Since mid-April 2020, Defendants have expressly and publicly recognized that the Bureau
10 could not provide a complete and accurate count by December 31, 2020. And President Trump
11 maintained that the statutory deadlines need not be followed.

12 352. Defendants' reversal of position on the 2020 Census timeline appears driven by
13 Defendants' efforts to ensure implementation of the President's unconstitutional Apportionment
14 Exclusion Order, which attempts to exclude undocumented persons from the apportionment
15 count and continues a long-running pattern of racially discriminatory and improperly politically
16 motivated conduct of the 2020 Census.

17 353. In light of these considerations, Defendants' purported justification is pretextual
18 and, thus, arbitrary and capricious under the Administrative Procedure Act.

19 354. Defendants' unlawful action has caused, is causing, and will continue to cause
20 harm to Plaintiffs as alleged above, and there is a substantial likelihood that the requested relief
21 will redress this harm.

22 **PRAYER FOR RELIEF**

23 355. Plaintiffs respectfully request that this Court:

24 356. Declare that Defendants' promulgation of the Rush Plan, and corresponding
25 revocation of the COVID-19 Plan is unconstitutional under the Enumeration Clause, and
26 unlawful under the Administrative Procedure Act.

27 357. Vacate the Rush Plan, thereby reinstating the COVID-19 Plan.

28 358. Enjoin Defendants from implementing the Rush Plan or otherwise unlawfully

1 interfering with the COVID-19 Plan.

2 359. Award Plaintiffs costs, expenses, and reasonable attorneys' fees.

3 360. Award any other relief the Court deems just and proper.

4

5 Dated: August 18, 2020

LATHAM & WATKINS LLP

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By: /s/ Sadik Huseny

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ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: August 18, 2020

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NATIONAL URBAN LEAGUE; BLACK ALLIANCE FOR JUST IMMIGRATION; LEAGUE OF WOMEN VOTERS; HARRIS COUNTY, TEXAS; KING COUNTY, WASHINGTON; CITY OF LOS ANGELES, CALIFORNIA; CITY OF SALINAS, CALIFORNIA; and CITY OF SAN JOSE, CALIFORNIA; RODNEY ELLIS, and ADRIAN GARCIA

(b) County of Residence of First Listed Plaintiff New York City, NY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Steven M. Bauer / Sadik Huseny Latham & Watkins LLP 505 Montgomery Street, Suite 2000, San Francisco, CA 94111-6538

DEFENDANTS

WILBOKL ROSS, JR., in his official capacity as Secretary of Commerce; U.S. DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, and STEVEN DILLINGHAM, in his official capacity as Director of the U.S. Census Bureau

County of Residence of First Listed Defendant Washington County, D.C. (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Administrative Procedure Act, 5 U.S.C. 701 et seq. Brief description of cause: Action to set aside unlawful agency action as arbitrary, capricious, and not in accordance with law, and declare Defendants' actions unconstitutional.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Judge Lucy H. Koh DOCKET NUMBER 5:20-cv-05167-LHK; 5:20-cv-05169-LHK

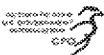
IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/18/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sadik Huseny

**DEPARTMENT OF COMMERCE****Bureau of the Census****[Docket Number 150409353-5353-01]****2020 Decennial Census Residence Rule and Residence Situations****AGENCY:** Bureau of the Census, Department of Commerce.**ACTION:** Notice and Request for Comment.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) requests public comment on the 2010 Census Residence Rule and Residence Situations. The Residence Rule is applied to living situations to determine where people should be counted during the decennial Census. Specific Residence Situations have been included with the Residence Rule to illustrate how the Rule is applied. The Census Bureau is currently reviewing the 2010 Residence Rule and Residence Situations, to determine if changes should be made to the Rule and/or if the situations should be updated for the 2020 Census. The Census Bureau anticipates publishing the final 2020 Census Residence Rule and Residence Situations in late 2017.

DATES: To ensure consideration during the decision-making process, comments must be received by July 20, 2015. The Census Bureau anticipates publishing a summary of comments received in response to this Federal Register notice in late 2015. The Census Bureau will then publish the final 2020 Census Residence Rule and Residence Situations in late 2017.

ADDRESSES: Direct all written comments regarding the 2010 Census Residence Rule and Residence Situations to Karen Humes, Chief, Population Division, U.S. Census Bureau, Room 5H174, Washington, DC 20233; or Email [POP.2020.Residence.Rule@census.gov].

FOR FURTHER INFORMATION CONTACT: Population and Housing Programs Branch, U.S. Census Bureau, 6H185, Washington, DC 20233, telephone (301) 763-2381; or Email [POP.2020.Residence.Rule@census.gov].

SUPPLEMENTARY INFORMATION:**A. Background**

The Census Bureau is committed to counting every person in the 2020 Census. Just as important, however, is the Census Bureau's commitment to counting every person in the correct place. The fundamental reason that the decennial census is conducted is to fulfill the Constitutional requirement (Article I, Section 2) to apportion the seats in the U.S. House of

Representatives among the states. Thus, for a fair and equitable apportionment, it is crucial that people are counted in the right place during the 2020 Census.

The Census Act of 1790 established the concept of "usual residence" as the main principle in determining where people are to be counted. This concept has been followed in all subsequent censuses. Usual residence has been defined as the place where a person lives and sleeps most of the time. This place is not necessarily the same as the person's voting residence or legal residence.

Every decade the Census Bureau undertakes a review of the decennial residence rule guidance to ensure that the concept of usual residence is interpreted and applied in the decennial census as intended, and that these interpretations are in keeping with the intent of law, which directs the Census Bureau to enumerate people at their usual residence. This review also serves as an opportunity to identify new or changing living situations resulting from societal change, and create or revise the residence rule guidance where those situations are concerned.

Determining usual residence is straightforward for most people. However, given our Nation's wide diversity in types of living arrangements, the usual residence for some people is not as apparent. A few examples are people experiencing homelessness, people with a seasonal/second residence, people in prisons, people in the process of moving, people in hospitals, children in shared custody arrangements, college students, live-in employees, military personnel, and people who live in workers' dormitories. For these "residence situations," the Census Bureau has provided guidance on how to interpret the usual residence concept to determine where to count those people.

The Census Bureau is requesting public comment on the 2010 Residence Rule (section "B") and on the 2010 Residence Situations (section "B," numbers 1-21, including all subparagraphs under each numbered section) to determine if changes should be made to the Rule and/or if the situations should be updated for the 2020 Census. The 2010 Residence Rule and Residence Situations are described in the next sections of this Federal Register notice.

B. The Residence Rule and Residence Situations for the 2010 Census of the United States

The Residence Rule was used to determine where people should be

counted during the 2010 Census. The Rule said:

- Count people at their usual residence, which is the place where they live and sleep most of the time.
- People in certain types of facilities or shelters (i.e., places where groups of people live together) on Census Day should be counted at the facility or shelter.
- People who do not have a usual residence, or cannot determine a usual residence, should be counted where they are on Census Day.

The following sections describe how the Residence Rule applied for people in various living situations.

1. People Away From Their Usual Residence on Census Day

a) People away from their usual residence on Thursday, April 1, 2010 (Census Day), such as on a vacation or a business trip, visiting, traveling outside the U.S., or working elsewhere without a usual residence there (for example, as a truck driver or traveling salesperson)—Counted at the residence where they live and sleep most of the time.

2. Visitors on Census Day

a) Visitors on Thursday, April 1, 2010 (Census Day), who will return to their usual residence—Counted at the residence where they live and sleep most of the time.

b) Citizens of foreign countries who are visiting the U.S. on Thursday, April 1, 2010 (Census Day), such as on a vacation or a business trip—Not counted in the census.

3. People Who Live in More Than One Place

(a) People living away most of the time while working, such as people who live at a residence close to where they work and return regularly to another residence—Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep more than anywhere else, if time is equally divided, or if usual residence cannot be determined, they are counted at the residence where they are staying on Thursday, April 1, 2010 (Census Day).

(b) People who live at two or more residences (during the week, month, or year), such as people who travel seasonally between residences (for example, snowbirds)—Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If

time is equally divided, or if usual residence cannot be determined, they are counted at the residence where they are staying on Thursday, April 1, 2010 (Census Day).

(c) *Children in shared custody or other arrangements who live at more than one residence*—Counted at the residence where they live and sleep most of the time. If time is equally divided, they are counted at the residence where they are staying on Thursday, April 1, 2010 (Census Day).

4. People Without a Usual Residence

(a) *People who cannot determine a usual residence*—Counted where they are staying on Thursday, April 1, 2010 (Census Day).

(b) *People at soup kitchens and regularly scheduled mobile food vans*—Counted at the residence where they live and sleep most of the time. If they do not have a place they live and sleep most of the time, they are counted at the soup kitchen or mobile food van location where they are on Thursday, April 1, 2010 (Census Day).

(c) *People at targeted non-sheltered outdoor locations*—Counted at the outdoor location where people experiencing homelessness stay without paying.

5. Students

(a) *Boarding school students living away from their parental home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools*—Counted at their parental home rather than at the boarding school.

(b) *College students living at their parental home while attending college*—Counted at their parental home.

(c) *College students living away from their parental home while attending college in the U.S. (living either on-campus or off-campus)*—Counted at the on-campus or off-campus residence where they live and sleep most of the time.

(d) *College students living away from their parental home while attending college in the U.S. (living either on-campus or off-campus) but staying at their parental home while on break or vacation*—Counted at the on-campus or off-campus residence where they live and sleep most of the time.

(e) *U.S. college students living outside the U.S. while attending college outside the U.S.*—Not counted in the census.

(f) *Foreign students living in the U.S. while attending college in the U.S. (living either on-campus or off-campus)*—Counted at the on-campus or off-campus residence where they live and sleep most of the time.

6. Movers on Census Day

(a) *People who move into a residence on Thursday, April 1, 2010 (Census Day), who have not been listed on a questionnaire for any residence*—Counted at the residence they move into on Census Day.

(b) *People who move out of a residence on Thursday, April 1, 2010 (Census Day), and have not moved into a new residence on Thursday, April 1, 2010, and who have not been listed on a questionnaire for any residence*—Counted at the residence from which they moved.

(c) *People who move out of a residence or move into a residence on Thursday, April 1, 2010 (Census Day), who have already been listed on a questionnaire for any residence*—If they have already been listed on one questionnaire, do not list them on any other questionnaire.

7. People Who Are Born or Die on Census Day

(a) *Babies born on or before 11:59:59 p.m. on Thursday, April 1, 2010 (Census Day)*—Counted at the residence where they will live and sleep most of the time, even if they are still in the hospital on April 1, 2010 (Census Day).

(b) *Babies born after 11:59:59 p.m. on Thursday, April 1, 2010 (Census Day)*—Not counted in the census.

(c) *People who die before Thursday, April 1, 2010 (Census Day)*—Not counted in the census.

(d) *People who die on Thursday, April 1, 2010 (Census Day)*—Counted in the census if they are alive at any time on April 1, 2010.

8. Nonrelatives of the Householder

(a) *Roomers or boarders*—Counted at the residence where they live and sleep most of the time.

(b) *Housemates or roommates*—Counted at the residence where they live and sleep most of the time.

(c) *Unmarried partners*—Counted at the residence where they live and sleep most of the time.

(d) *Foster children or foster adults*—Counted at the residence where they live and sleep most of the time.

(e) *Live-in employees, such as caregivers or domestic workers*—Counted at the residence where they live and sleep most of the time.

9. U.S. Military Personnel

(a) *U.S. military personnel living in military barracks in the U.S.*—Counted at the military barracks.

(b) *U.S. military personnel living in the U.S. (living either on base or off base) but not in barracks*—Counted at

the residence where they live and sleep most of the time.

(c) *U.S. military personnel on U.S. military vessels with a U.S. homeport*—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport.

(d) *People in military disciplinary barracks and jails in the U.S.*—Counted at the facility.

(e) *People in military treatment facilities with assigned active duty patients in the U.S.*—Counted at the facility if they are assigned there.

(f) *U.S. military personnel living on or off a military installation outside the U.S., including dependents living with them*—Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

(g) *U.S. military personnel on U.S. military vessels with a homeport outside the U.S.*—Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

10. Merchant Marine Personnel on U.S. Flag Maritime/Merchant Vessels

(a) *Crews of U.S. flag maritime/merchant vessels docked in a U.S. port or sailing from one U.S. port to another U.S. port on Thursday, April 1, 2010 (Census Day)*—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel. If the vessel is docked in a U.S. port, crew members with no onshore U.S. residence are counted at the port. If the vessel is sailing from one U.S. port to another U.S. port, crew members with no onshore U.S. residence are counted at the port of departure.

(b) *Crews of U.S. flag maritime/merchant vessels engaged in U.S. inland waterway transportation on Thursday, April 1, 2010 (Census Day)*—Counted at the onshore residence where they live and sleep most of the time.

(c) *Crews of U.S. flag maritime/merchant vessels docked in a foreign port, sailing from one foreign port to another foreign port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port on Thursday, April 1, 2010 (Census Day)*—Not counted in the census.

11. Foreign Citizens in the U.S.

(a) *Citizens of foreign countries living in the U.S.*—Counted at the U.S. residence where they live and sleep most of the time.

(b) *Citizens of foreign countries living in the U.S. who are members of the diplomatic community*—Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

(c) *Citizens of foreign countries visiting the U.S., such as on a vacation or business trip*—Not counted in the census.

12. U.S. Citizens and Their Dependents Living Outside the U.S.

(a) *U.S. citizens living outside the U.S. who are employed as civilians by the U.S. Government, including dependents living with them*—Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

(b) *U.S. citizens living outside the U.S. who are not employed by the U.S. Government, including dependents living with them*—Not counted in the census.

(c) *U.S. military personnel living on or off a military installation outside the U.S., including dependents living with them*—Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

(d) *U.S. military personnel on U.S. military vessels with a homeport outside the U.S.*—Counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire.

13. People in Correctional Facilities for Adults

(a) *People in correctional residential facilities on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

(b) *People in federal detention centers on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

(c) *People in federal and state prisons on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

(d) *People in local jails and other municipal confinement facilities on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

14. People in Group Homes and Residential Treatment Centers for Adults

(a) *People in group homes intended for adults (non-correctional)*—Counted at the facility.

(b) *People in residential treatment centers for adults (non-correctional)*—Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

15. People in Health Care Facilities

(a) *Patients in general or Veterans Affairs hospitals (except psychiatric units) on Thursday, April 1, 2010 (Census Day), including newborn babies still in the hospital on Census Day*—Counted at the residence where they live and sleep most of the time. Newborn babies should be counted at the residence where they will live and sleep most of the time.

(b) *People in hospitals on Thursday, April 1, 2010 (Census Day), who have no usual home elsewhere*—Counted at the facility.

(c) *People staying in in-patient hospice facilities on Thursday, April 1, 2010 (Census Day)*—Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

(d) *People in mental (psychiatric) hospitals and psychiatric units for long-term non-acute care in other hospitals on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

(e) *People in nursing facilities/skilled nursing facilities on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

16. People in Juvenile Facilities

(a) *People in correctional facilities intended for juveniles on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

(b) *People in group homes for juveniles (non-correctional) on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

(c) *People in residential treatment centers for juveniles (non-correctional) on Thursday, April 1, 2010 (Census Day)*—Counted at the facility.

17. People in Residential School-Related Facilities

(a) *People in college/university student housing*—Counted at the college/university student housing.

(b) *Boarding school students living away from their parental home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools*—Counted at their parental home rather than at the boarding school.

(c) *People in residential schools for people with disabilities on Thursday, April 1, 2010 (Census Day)*—Counted at the school.

18. People in Shelters

(a) *People in emergency and transitional shelters (with sleeping facilities) on Thursday, April 1, 2010*

(Census Day), for people experiencing homelessness

—Counted at the shelter.
(b) *People in living quarters for victims of natural disasters*—Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

(c) *People in domestic violence shelters on Thursday, April 1, 2010 (Census Day)*—Counted at the shelter.

19. People in Transitory Locations

(a) *People at transitory locations such as recreational vehicle (RV) parks, campgrounds, hotels and motels (including those on military sites), hostels, marinas, racetracks, circuses, or carnivals*—Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If time is equally divided, or if usual residence cannot be determined, they are counted at the place where they are staying on Thursday, April 1, 2010 (Census Day).

20. People in Religious-Related Residential Facilities

(a) *People in religious group quarters such as convents and monasteries*—Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

21. People in Workers' Residential Facilities

(a) *People in workers' group living quarters and Job Corps Centers*—Counted at the residence where they live and sleep most of the time. If they do not have a residence where they live and sleep most of the time, they are counted at the facility.

Dated: May 13, 2015.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2015-12118 Filed 5-19-15; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Full-Text Log of Comment Submissions to "2020 Decennial Census Residence Rule and Residence Situations; Notice and Request for Comment," 80 Federal Register 28950 (May 20, 2015)

Comment Submission #	Full Text of Comment Submission
c1	<p>I was chairman of the last Redistricting Committee here in _____ County, a rural county in _____ and I am disappointed that we ended up with severe malapportionment because the Census Bureau counted inmates in a prison in the county as if they were residents of that neighborhood. I am now a County Commissioner and I am working very hard to correct this problem for my county, but I also know we are just one of many counties that are similarly affected.</p> <p>Thank you for the opportunity to comment on the Census Bureau’s Residence Rule and Residence Situations, especially to address where prisoners should be counted. I am writing you to share our experience of using the Census’ data for redistricting and to urge you to count incarcerated people at their home address so that counties like mine can achieve fair representation.</p> <p>As a county in _____, we are basically faced with a classic ‘Catch 22.’</p> <p>Our goal was to follow the Constitution and give equal representation to all the citizens of our County. _____, however, told us that we had to count the prison population in our count when we did our redistricting because that is what the Census showed, even though that runs counter to the state’s residence law. I realize that the Census’ definition of residence is unlikely to perfectly track the 50 state’s definitions, but let me walk you through the _____ residence law (as described by the Secretary of State’s “Guidelines for Determining Residency”) to explain why the current interpretation of the Census Residence Rule and Residence Situations fails to count people where they live:</p> <p>“1. The residence of a person is the place where the person’s habitation is fixed and is where, during periods of absence, the person definitely intends to return.”</p> <p>Now, while I’m sure that a few of our guests at the gray bar hotel will return, (recidivism is a terrible problem in this country), I can pretty much guarantee that there isn’t any one of them that “definitely intends to return.” after they get out.</p> <p>“3. A change of residence is made not only by relocation, but also by intent to remain in the new location permanently, and by demonstrating actions consistent with that intention.”</p> <p>These men have no intention of staying in our fair county one second longer than they have to. If not for the barbed wire and armed guards that place would empty out faster than the county courthouse at quitting time on a Friday afternoon.</p> <p>These men all come from outside our county. Upon release they immediately leave our county. They are not buying homes, raising families and putting down roots here. They came here, quite simply because they were forced to at gunpoint and they stay here only because of walls, wire and armed guards.</p> <p>The 2010 Census put the population of _____ County at approximately 22,000. The inmates at the _____ County Correctional Facility number approximately 2,400. When we break the county up into 6 districts, that puts 3,667 people in each district. But whichever district gets the prison block will only have 1,267 actual residents in it and 2,400 prisoners. That adds a lot of weight to the votes cast in</p>

	<p>that district.</p> <p>To be exact, we end up with the residents of one of our districts having 3 times the representation of the residents in the rest of the county.</p> <p>And the problem has only gotten worse. Previously we had 2 prisons in our county. But one prison was shut down and the other facility was expanded to take in the inmates of the closed unit as well as additional prisoners. This resulted in just one census block containing 10% of our county's population, not one of whom is allowed to vote and not one of whom even considers themselves to be a resident of _____ County.</p> <p>It is impossible to count population bloc like that in our county electoral system and still achieve equal representation among the citizens of this county.</p> <p>In Reynolds v. Sims the U.S. Supreme Court said "The weight of a citizen's vote cannot be made to depend on where he lives." Yet that is exactly what we are forced to do because of the Census. We're left with a 3 to 1 disparity in the representation of the residents in the district with the prison over the residents in other _____ County districts.</p> <p>As a County commissioner here in _____ County I am asking you to please help us correct this problem and get back to the "One Man, One Vote" ideal. Please help us to achieve fair and equal representation to all the citizens of our county, and those across this great nation by revising the Residence Rule or Residence Situations to count incarcerated people at home in the Census.</p>
c2	<p>I would like to comment on Federal Register Notice: 80 FR 28950, 2020 Decennial Census Residence Rule and Residence Situations</p> <p>My comments are related to situation 13: People in Correctional Facilities for Adults</p> <ul style="list-style-type: none"> - Many people in local jails are not sentenced (61% is a number mentioned in a report on New York local jails – outside New York city, see http://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_y.pdf). Many of these inmates are probably also included on a household questionnaire, especially when the questionnaire was returned before Census Day as they didn't anticipate being in jail that day. With the presumption of innocence, many innocent people are counted in correctional facilities and I would encourage the Census Bureau to consider counting unsentenced people at their usual place of residence and not in the jail. - Furthermore, I encourage to include a time stamp in the descriptions, for example 6AM and further include all people that are in transit to (or from) that location at that time. People can spend only part of Census day in certain location and be released or be on transit between facilities. <p>A comment not directly related to the residence rules:</p> <ul style="list-style-type: none"> - I would like to see more federal register notices like this that relate to the Decennial Census counting and publication rules. In particular I can think of <ul style="list-style-type: none"> o classification of Group Quarters o classification of vacancy status o definition of households and families, especially for situations with same-sex and unmarried partners.
c3	<p>The Lionheart Foundation submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>

	<p>The Lionheart Foundation works with thousands of prisoners throughout the United States. Also, I personally live in an urban community where many of the men and women in the community are incarcerated in small towns far from their homes. By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated this population that is disproportionately male, urban, and African-American or Latino into into just 5,393 Census blocks that are located far from the actual homes.</p> <p>In fairness to all citizens and to preserve the democracy, the growth in the prison population requires the Census to update its methodology to count people where their true home is situated. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 The Lionheart Foundation believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c4	<p>I write in regards to the Census Bureau's Notice and Request for Comment on the 2020 Decennial Census Residence Rule and Residence Situations (Docket No: 150409353-5353-01) published in the Federal Register on May 20, 2015, to determine if changes and updates are needed in advance of the 2020 Census. My office has heard from constituents regarding the impacts of Residence Rule No. 9, U.S. Military Personnel, and the need for modification.</p> <p>In advance of the 2020 Census, the Census Bureau should create a distinction between service members and their families stationed overseas at a U.S. military base and those service members temporarily deployed for contingency operations.</p> <p>The results of the 2010 Census displayed an anomaly that misrepresents the counting of deployed service members for overseas contingency operations. These service members, despite not having a change in their permanent duty station, and who return to their duty station upon completion of their deployment, were counted in accordance with Rule 9(f):</p> <p style="padding-left: 40px;">(f) U.S. military personnel living on or off a military installation outside of the U.S. including dependents living with them – Count as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire</p> <p>The Census Bureau attributes U.S. overseas population to the state on an individual's home-of-record. This practice may work well for members of the Department of State or other government agencies operating outside of the United States, but the Department of Defense fails to properly, and accurately, maintain their records. According to the "2010 Census Federally Affiliated Overseas Count Operation Assessment Report," dated March 19, 2012, "only 59 percent of the 2010 Department of Defense Records contained a home of record."</p>

As a result of using inaccurate and missing records for the tabulation of deployed service members, the surrounding military communities, which support the families of those service members, were calculated to have a lower population than what should be attributed to the community.

My constituents that reside in the region around Fort Campbell, Kentucky, experienced this first-hand following the 2010 census. Despite record home sales, increased public school enrollment, and other economic indicators supporting population growth, the population remained relatively unchanged from the 2000 Census. The only explanation for the discrepancy is the deployment of service members from Fort Campbell to Afghanistan.

Starting in late 2009 and continuing through 2010, members of the 1st, 2nd, 3rd, and 4th Brigade Combat teams of the 101st, the 101st Sustainment Brigade, the 159th and 101st Combat Aviation brigades were all deployed to sustain the military “surge” in Afghanistan. It is estimated that at least 10,000 service members were deployed at the collection time of the 2010 Census. Those service members then returned to Fort Campbell at the end of their deployment.

I request that the Census Bureau count all deployed service members at the base or port in which they were stationed prior to a short-term deployment for overseas contingency operations. This will create one consistent and logical method for counting deployed service members. By counting deployed service members according to where they actually live, the Bureau more accurately reports the population and ensures communities have the needed resources to support these soldiers and their families.

As you consider the need to update residency rules for the 2020 Census, I ask that you continue to keep in mind the impacts of inaction that could severely hinder the support efforts of communities that provide for our deployed military service members and their families.

Thank you for your time and thoughtful consideration.

c5 I am writing in opposition to the proposed Census Prison Adjustments. Current provisions state that all people in correctional facilities for adults will be counted at the facility. The proposed adjustments will alter this; people in correctional facilities will instead be counted at their previous “usual residence.” I firmly believe that the residency rules agreed to in the 2010 Decennial Census, wherein incarcerated individuals are counted at their facility, should remain the same for the foreseeable future.

Firstly, changing current standards will create unneeded confusion and expense. States which have adopted the prison adjustment as proposed – New York, Maryland, and Delaware – continue to have difficulty accounting for all prisoners accurately. Attempting to adopt this system at the Federal level will add a layer of superfluous complexity to the enumeration process. For example, accounting for prisoners incarcerated in a different state from their “usual residence” or a different state from their conviction would involve reviewing and adjusting prisoner counts. This could consequently change the numbers used in the apportionment of United States House seats in 2020. Moreover, the pre-incarceration residences of many prisoners can be difficult to establish, and in some cases may just be guessed based on where the prisoner was arrested.

Part of the issue at hand is that the effects of reapportionment and redistricting are not clearly known to individual states. It is no secret that the push to change current rules is being driven by activist groups who seek to gain politically from the proposed rule changes. This could leave the Census Bureau exposed to a conflict similar to the adjustment controversy of 2000, wherein miscounting led to the misallocation of a US congressional seat.

In summary, I urge you to oppose the residency rule changes for incarcerated individuals. We currently have a system that works, makes

	sense, and is non-partisan.
c6	<p>I am writing you this humid, hot North Carolina afternoon asking that you please reconsider the proposal to change the manner in which prisoners are counted for by the Bureau.</p> <p>I believe that the Bureau would be making a huge mistake if it were to not continue with business as it is currently done and count the prisoners in the location of their incarceration; the rules regarding residency that were established in the 2010 Decennial Census should remain the same.</p> <p>Firstly, how is the Bureau going to establish the residences of prisoners prior to their incarceration? It may seem rather easy to do; however, what about the career criminals who bounces back-and-forth between halfway houses and correctional institutions? Are you going to simply base their residence on the location of their most recent arrest?</p> <p>While I think that some may think this is a very elementary task of determining the residency of prisoners, this is just another solution in search of a problem. As we used to say in the Army, this briefs well. What I mean is that in theory this may seem easy to do but if the Bureau was to actually implement this policy, the results would be disastrous.</p> <p>Also, if the proposed rule changes take hold, it is possible that minority communities located in rural areas will be disenfranchised, and not protected as they should be per the Voting Rights Act. This could also open the door to future adjustments motivated by political gain, such as adjustments of residency rules for college students and military personnel.</p> <p>In closing, I urge you again to oppose the residency rule changes for incarcerated individuals.</p>
c7	<p>The Real Cost of Prisons Project submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Every day, we advocate on 'behalf of incarcerated women and men, so that the powers that be know there is someone paying attention, and holding them accountable. We are dedicated to making known the ideas of men and women who are incarcerated. We see firsthand the importance of an accurate count of incarcerated people.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.</p>

	<p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>New York State is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 the Real Cost of Prisons Project believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c8	<p>I represent the _____ District in the Virginia House of Delegates and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Virginia, this resulted in a single state house district where people counted in state and federal facilities account for 12% of the district's total population.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p>

	<p>But this ad hoc approach is neither efficient nor universality implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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 democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.</p>
c9	<p>I am submitting these brief comments in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge the Census Bureau to count incarcerated individuals at their home address and not at the address of the prison facility.</p> <p>I am an active user of census data for the academic analysis of redistricting plans. I also frequently serve as a consultant to state and local governments as they develop redistricting plans, and as an expert witness in litigation pertaining to redistricting plans. Given the size of the incarcerated population in United States, counting the prisoner population at the site of the prison can produce inequitable results in the redistricting process. Such results can be particularly problematic for local government electoral districts with smaller total populations, and minority groups if their electoral strength is decreased by counting group members at the site of a prison and not at their home addresses.</p> <p>An excellent example of "prison gerrymandering" in my home state of Wyoming pertains to state senate districts 3 and 6. To avoid having two incumbents in the same district, an appendage from district 6 is drawn north for 17 miles to include a prison housing approximately 500 individuals. The ideal population for a Wyoming state senate district is approximately 19,000 individuals. Thus, counting 500 non-voting prisoners at the site of the prison inflates the value of ballots cast by non-prison voters in district 6 relative to surrounding state senate districts. Simply said, this is unfair to the voters in the other 29 state senate districts. A map of district 6 can be viewed at the link below:</p> <p>(http://www2.census.gov/geo/maps/dc10map/SLD_RefMap/upper/st56_wy/sldu56006/DC10SLDU56006_001.pdf).</p>
c10	<p>Fair Elections Legal Network (FELN) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular prison facility they happen to be located at on Census day.</p> <p>FELN is a national nonpartisan voting rights and legal support organization whose mission is to remove barriers to registration and voting for traditionally underrepresented constituencies. We work to improve overall election administration through administrative, legal, and legislative reform as well as provide legal and technical assistance to voter mobilization organizations. As such, we recognize that the Bureau's use of the prison as a "residence" contradicts most state constitutions and statutes, which explicitly state that incarceration does not change a residence.</p> <p>When state and local officials use the Census Bureau's prison count data, they give extra representation to the communities that host the prisons despite the fact that those who are able to vote from prison must invariably do so by absentee ballot from their home address – not from the prison address. 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 located far from the actual homes of incarcerated people. The current definition of residence dilutes representation and is detrimental to democracy.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to count everyone in the</p>

	<p>right place in keeping with changes in society and population realities. Fair Elections Legal Network believes in a population count that accurately represents communities, thus, we urge you to count incarcerated people as residents of their home address.</p>
c11	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>I serve as an elected Town Meeting Representative in Precinct _____ in _____, _____, a community that hosts a correctional institution (_____, which actually straddles our border with the town of _____). Ever since _____ adopted a Representative Town Meeting form of government in 1971, the town charter has stipulated that our 150 Representatives in Town Meeting (RTMs) must be apportioned between the precincts (Town Meeting districts) according to the “number of inhabitants” in each precinct. In concept, this means the most populous precinct should have the most number of RTMs, while the smallest precinct by census should have the least number of RTMs. In general, for a Representative Town Meeting which is, by its very name, intended to be “representative” of the people, this form of apportionment makes sense.</p> <p>But because the Census Bureau counted people incarcerated at _____ as if they were residents of Precinct _____ (where the prison is located), Precinct _____ became the third most populous precinct in town, at least on paper. Without the prison, Precinct _____ is actually the least populous, and should therefore have the least number of RTMs. And as it is, Precinct _____ has the least number of registered voters of all precincts.</p> <p>In 2010 the Census Bureau assigned _____ prisoners at _____ to a census block in our town. So now Precinct _____ gets a bump of about three extra RTMs. This boost unfairly gives extra influence to Precinct _____ voters, who get more representation for fewer actual residents. Under state law, prisoners are not allowed to vote and, because of their incarceration, don’t typically use town services.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of our population.</p> <p>_____ is one of seven communities in _____ with a Representative Town Meeting that doesn’t adjust Census data when apportioning RTMs among precincts. The other towns are _____.</p> <p>Our problem isn’t unique; when state and local officials use the Census Bureau’s prison count data, they give extra representation to the communities, and individual precincts, that host the prisons and dilute the representation of everyone else. This is bad for democracy.</p> <p>Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c12	<p>Hi there. I am writing to comment on the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).</p> <p>First, I urge you adjust the “usual residence” rule to count incarcerated people at their home address, not where they happen to be incarcerated on census day. Second, I want to thank you for giving this apparently small technical point the attention it deserves. Details like this are what make the Census Bureau such an important and reliable source of information.</p> <p>I am a professional researcher. For the past five years I have done research at SEIU, the labor union; for five years before that I was research director at Campaign for America's Future, a think tank; for ten years before that I worked in and around the criminal justice system. It would be hard to overestimate how often I use Census data or what I use it for. But locating population for purposes of political apportionment is central and fundamental.</p> <p>As you know, the US rate of prison incarceration hovered around 100 per 100,000 up until roughly 1980. Nowadays it is closer to 500 per 100,000, without even including local jails. Along with the explosive growth in custody has come growth in racial disparities, with African American men incarcerated at roughly six times the rate of white men. Nowadays over two million people are in prison or jail – one in 100 adults, and more people than our three least populous states combined (I know that from census data; thanks!).</p>

	<p>Applying the simple usual residence rule to people in custody might once have been reasonable. But times have changed. Above all else, it affects redistricting, the fundamental purpose of the census. Jurisdictions rely on census data to draw political districts and fairly allocate voters among representative districts. Counting people in custody where they are confined – not where they actually live – introduces avoidable error. Most people in prison will return to their usual residence in far less time than a decennial census.</p> <p>Four states and over 200 counties and municipalities have enacted new rules to adjust population data when drawing government districts. The states are California, Delaware, Maryland, and New York, who represent 20% of the US population between them. Other states that have considered or are currently considering related actions include Virginia, Illinois, Texas, Georgia and Oregon. If that much of the country thinks something is wrong, it is time for the Census Bureau to act. Indeed, a deliberate national correction is far preferable to ad hoc efforts by assorted jurisdictions on their own.</p> <p>I note that the Massachusetts legislature might have made a similar adjustment, but it determined that the state constitution binds it to the state to the Census Bureau’s determinations regarding residence and it specifically requested the Census Bureau to change the rule. I expect that still other jurisdictions may have hit similar obstacles or simply haven’t dealt with the problem yet.</p> <p>Thank you for considering a change in the rule. Because the Census count is fundamental to our representative democracy, I urge you to count incarcerated people where they actually live, not where they are temporarily confined.</p>
c13	<p>Prisoners' Legal Services of New York (PLS) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). PLS urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Founded in 1976, PLS provides direct civil legal services to more than 10,000 incarcerated individuals annually. PLS provides this underserved population with legal representation on a myriad of civil legal issues such as access to adequate medical and mental health care, proper housing, education and programming, child support and visitation, challenges to disciplinary proceedings and the use of excessive force, and matters relating to jail time credit and sentence calculations. All of the work PLS does helps prepare incarcerated individuals for release and successful reintegration into society.</p> <p>Along those lines, PLS is extremely interested in ensuring that the individuals we serve are given equal and appropriate representation by representatives of the communities from which they came and to which they will return. Counting incarcerated individuals at their home address gives those who will be returning to their communities a vested interest in helping to shape the future of their community.</p> <p>In the fall of 2006, the National Research Council issued a report commissioned by the United States Census Bureau finding that counting prisoners as residents of the prisons where they were housed distorted the political process and raised legitimate concerns about the fairness of the census itself. Thus, the issue of where to count prisoners in the census is not new.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge</p>

implications for the accuracy of the Census. 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 located far from the actual homes of incarcerated people.

For instance, in New York's Livingston County, which uses weighted voting, the town of Groveland derived 62% of its population from one large prison after the 2000 census; allowing the Groveland Supervisor to exercise 107 Board of Supervisor votes instead of the 40 votes he would be entitled to without the prison. And the problem extended to the State Legislature as well; seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.

New York State is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts Legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. *See* The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).

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 PLS believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

c14 The Pennsylvania Institutional Law Project [PILP] submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

The PILP provides free civil legal assistance to the institutionalized population in Pennsylvania. We have a state law 25 P.S.2813 that sets an inmates home residence as the proper residence for voting purposes. We believe the entire country should follow our example.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.

The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

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 located far from the actual homes of incarcerated people.

	<p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>The PILP also has identified specific inaccuracies flowing from the Bureau's current method of counting incarcerated persons as follows [cite examples]. We have previously called upon the Census Bureau to change its practice as well in prior correspondence.</p> <p>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 [org name] believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c15	<p>A New PATH (Parents for Addiction Treatment & Healing) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). A New PATH urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>A New PATH (Parents for Addiction Treatment and Healing) is a non-profit advocacy organization. We advocate for treatment instead of incarceration for individuals who have been convicted of non-violent drug-related crimes, and for treatment behind bars. Our mission is to reduce the stigma associated with addictive illness through education and compassionate support and to advocate for therapeutic rather than punitive drug policies.</p> <p>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 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.</p> <p>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 A New PATH believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c16	<p>My name is _____ and I am the Coordinator Community Alliance on Prisons. We submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).</p> <p>Community Alliance on Prisons urges you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.</p> <p>Community Alliance on Prisons is a community initiative promoting smart justice policies in Hawai'i for more than a decade. This testimony is respectfully offered and always mindful that approximately 6,000 Hawai'i individuals are under the 'care and custody' of the Department of Public Safety, including 1,400 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.</p>

The disproportionate impact of the criminal justice system on Native Hawaiians accumulates at each stage of the criminal justice system. Native Hawaiians are also more likely to receive a sentence of incarceration over probation.¹

Hawai'i contracts with Corrections Corporation of America to house more than 1,400 of our incarcerated men in Saguaro Correctional Center in Eloy, Arizona. Hawaiians are over-represented in the incarcerated population that is banished from Hawai'i.

In researching Eloy, Arizona on the web, we found that the population there has increased 63.8% since the 2000 census.

Population in 2013²: 16,996 (68% urban, 32% rural).

Population change since 2000: + 63.8%

Males: 11,038 (64.9%)

Females: 5,958 (35.1%)

The **male population has increased 64.9%**. This is not difficult to believe since Corrections Corporation of America opened **Red Rock Correctional Center in 2006** with a capacity of **1,596**; **Saguaro Correctional Center in 2007** with a capacity of 1,896 and recently increased capacity by 30 beds = **1926**; and **La Palma Correctional Center in 2008** with a capacity of **3,060**.

These three prisons added 6,582 men to the “population” of Eloy – a 59.6% increase in the male population!

The tragedy of this skewed census count is that most of Hawai'i's incarcerated individuals are not from Eloy -- or even from Arizona, for that matter.

The census count is used as the basis for many of the decisions that affect Hawaiians (Kanaka Maoli), the first people of the islands; our host culture. Counting incarcerated persons where they are involuntarily housed causes harm to Hawai'i, in general and to Hawaiians, in particular. Incarcerated people in Hawaii are disproportionately Hawaiian. In the 2000 Census, 18% of the state was Native Hawaiian. A more recent figure reported in the 2010 report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*³ reported that 24% of the population is Native Hawaiian. The Department of Public Safety reports that approximately 40% of incarcerated people are of Hawaiian ancestry; yet is widely known that the population of incarcerated Native Hawaiians is approximately 60%.

This means that CCA's three prisons house almost 60% of the male population in Eloy, AZ. Federal funds are based on population, impacting Hawai'i's share of federal funds.

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

A prison cell is NOT a residence, despite being designated as such in the 2010 Census. By doing so, the Census Bureau concentrated a population that is disproportionately male and persons of color, and in our case Hawaiian, who are located far from their

actual homes and ancestral lands.

Prison-based gerrymandering violates the constitutional principle of “One Person, One Vote.”⁴ The Supreme Court requires districts to be based on equal population in order to give each resident the same access to government. But a longstanding flaw in the Census counts incarcerated people as residents of the prison location, even though they can’t vote and aren’t a part of the surrounding community.

When legislators claim people incarcerated in their districts are legitimate constituents, they give people who live close to the prison more of a say in government than everybody else. This is not fair or accurate.

We urge the Census Bureau to fix this egregious flaw that is motivated by politics, rather than thoughtful policymaking.

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 Community Alliance on Prisons believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

¹ Hawai‘i State Department of Health, Office of Health Status Monitoring, special tabulation from the Hawai‘i Health Survey, January 22, 2010. <http://hawaii.gov/dbedt/info/economic/databook/2008-individual/01/>; Hawai‘i Criminal Justice Data Center; Office of Hawaiian Affairs, “Databook 2006: Public Safety,” March 2006. www.oha.org/pdf/databook/2006/DataBook2006PublicSafety.pdf; Hawai‘i Department of Public Safety, 2008 Annual Report (Honolulu, HI: Department of Public Safety, 2008). <http://hawaii.gov/psd/administration/publications/annual-reports/department-of-public-safety/PSD-AnnualReport2008.pdf>

² <http://www.city-data.com/city/Eloy-Arizona.html#ixzz3f9dYqm2W>

³ http://www.justicepolicy.org/uploads/justicepolicy/documents/10-09_exs_disparatetreatmentofnativehawaiians_rd-ac.pdf

⁴ But it wasn’t until 1963 that “One person, one vote” became a widely articulated core principle of the Constitution when it was first spoken by Chief Justice Earl Warren’s Supreme Court. <http://www.theconstitutionproject.com/portfolio/one-person-one-vote/>

c17 Liberty County Georgia is home to Fort Stewart, 3rd Infantry Division. The population of Fort Stewart is approximately 22,000. Liberty County is very proud to be home to this great military division. However, these soldiers impact our community greatly in their utilization of our roads, court system, schools, and other infrastructure. During the last Census, April 1, 2010, the entire 3rd Infantry Division was deployed overseas to a war zone. The division redeployed to Fort Stewart completely by July 31, 2010. During this time, the number of soldiers that was deployed numbered between 13,000 and 16,000.

When the Census count was taken on April 1, 2010 we estimated that Liberty County was under counted between 11,000 and 13,000 people. We would like to note also this is the second U.S. Census that we were under counted as the 3rd Infantry Division was also deployed April 1st 1990. We are able to confirm this under count by reviewing the Command Data Summary Report that Fort Stewart produces on an annual basis. It shows the troop strength on a monthly time frame so we know how many soldiers are at Fort Stewart on any given month. A snap shot of April 1, 2010 indicates that its population was about 8,000 which included those families that lived in post housing. Once the soldiers all returned, that number on September 1, 2010 was approximately 20,000 or a difference of over 12,000 people.

The Army’s deployment rotation is normally 9 to 12 months depending on the mission. These units deploy and then come back to the same base of origination. A home station is established, they leave and return. There is a rule already in place by the Bureau, Number 9

	<p>(c) that is established for U.S. military personnel on U.S. military vessels (Navel) with a U.S. homeport. These personnel are counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport." It is our direct feeling that all military personnel, regardless of their branch affiliation, should be handled and counted in the same manner.</p> <p>In closing, the disproportionate treatment in this count methodology has and will result in direct economic loss to the county as many grant opportunities are affected. We cannot control the timing of deployments but must maintain a consistent level of service during their occurrences. We only get one shot every ten years to accurately reflect the impacts and needs of our community. Please consider changing the current rule to be consistent with all branches of the service.</p>
c18	<p>I am a senior citizen and witnessed the growth in the 1990's of ten (10) new prisons built in 'depressed areas' of New York State, during a time when crime was actually going down! Yes, it provided more jobs BUT ... WHAT IT'S ALSO DONE ... is given greater population numbers to (political) representatives in those districts ... thus the obvious imbalance of political clout! Well over 95% of the number of inmates in those prisons did not come from those districts and therefore, those numbers should <u>not</u> be considered in any census count ... unless (perhaps) counted in the districts where they came from. However, given the fact that once they're released, they can't vote anyway ... then just simply subtract their numbers from the district they're housed at!</p>
c19	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>A lot of people from my community end up in prison, and it's not fair that they get counted as if they were residents of the prison town instead of at home with us. Giving our political power to people who want to lock up more of our community members just doesn't make sense.</p> <p>Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c20	<p>In 2010, the U.S. Census Bureau counted deployed service members as part of the population of their home of record. During this time, there were approximately 10,000 service members stationed at Fort Campbell who were deployed from the installation at the time of the census. Furthermore, over 250,000 United States military personnel were temporarily deployed overseas in support of contingency operations, or for other short-term missions. Home of record is generally defined as the permanent home at the time of entry or re-enlistment into the Armed Forces as included in personnel files; when a deployment ends, soldiers return to their home base- not their original home town or home of record.</p> <p>This once a decade head count sets a baseline population upon which annual estimates are based for the next ten years. Many federal and state assistance programs use formulas based on the decennial census or derivatives from the decennial census data. With the current methodology, the communities in which these service members reside prior to deployment are deprived of potentially large sums of federal and state funding.</p> <p>By using the last duty station to count deployed service members the 2020 Census data will depict a more accurate representation of where the deployed service members live prior to deployment and in return allow the communities where these service members live access to more funding to provide services and programs for the military members and their dependents during the following ten year period.</p> <p>Thank you for consideration of this request.</p>
c21	<p>In 2010, the U.S. Census Bureau counted deployed service members as part of the population of their home of record. During this time,</p>

	<p>there were approximately 10,000 service members stationed at Fort Campbell who were deployed from the installation at the time of the census. Furthermore, over 250,000 United States military personnel were temporarily deployed overseas in support of contingency operations, or for other short-term missions. Home of record is generally defined as the permanent home at the time of entry or re-enlistment into the Armed Forces as included in personnel files; when a deployment ends, soldiers return to their home base- not their original home town or home of record.</p> <p>This once a decade head count sets a baseline population upon which annual estimates are based for the next ten years. Many federal and state assistance programs use formulas based on the decennial census or derivatives from the decennial census data. With the current methodology, the communities in which these service members reside prior to deployment are deprived of potentially large sums of federal and state funding.</p> <p>By using the last duty station to count deployed service members the 2020 Census data will depict a more accurate representation of where the deployed service members live prior to deployment and in return allow the communities where these service members live access to more funding to provide services and programs for the military members and their dependents during the following ten year period.</p> <p>Thank you for consideration of this request.</p>
c22	<p>In 2010, the U.S. Census Bureau counted deployed service members as part of the population of their home of record. During this time, there were approximately 10,000 service members stationed at Fort Campbell who were deployed from the installation at the time of the census. Furthermore, over 250,000 United States military personnel were temporarily deployed overseas in support of contingency operations, or for other short-term missions. Home of record is generally defined as the permanent home at the time of entry or re-enlistment into the Armed Forces as included in personnel files; when a deployment ends, soldiers return to their home base- not their original home town or home of record.</p> <p>This once a decade head count sets a baseline population upon which annual estimates are based for the next ten years. Many federal and state assistance programs use formulas based on the decennial census or derivatives from the decennial census data. With the current methodology, the communities in which these service members reside prior to deployment are deprived of potentially large sums of federal and state funding.</p> <p>By using the last duty station to count deployed service members the 2020 Census data will depict a more accurate representation of where the deployed service members live prior to deployment and in return allow the communities where these service members live access to more funding to provide services and programs for the military members and their dependents during the following ten year period.</p> <p>Thank you for consideration of this request.</p>
c23	<p>I am a volunteer in the Massachusetts Prison system. I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be housed on Census day.</p> <p>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 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.</p> <p>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 I believe in a population count that accurately represents</p>

	<p>communities, I urge you to count incarcerated people as residents of their home address.</p>
c24	<p>I'm writing in response to your federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).</p> <p>So many individuals in my state of Florida end up in prison. But they are not counted as if they are residents of their home town but as residents of some far off town- which in fact is mostly rural-meaning town's with very little of our state's population.</p> <p>Therefore we are now "giving" our political power to these individuals-those who benefit highly from incarcerating most individuals-- as our society's solution to problems that we "all" face. Does this serve the "best" interest of "one and all" or rather the interests of a few select?</p> <p>I urge you therefore, to count incarcerated people in their home town, and not in some distant rural town where the facility is located "on" that particular Census Day!</p>
c25	<p>Justice Strategies is submitting this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Justice Strategies urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Justice Strategies conducts research on criminal justice and immigration detention issues and supports advocates who seek practical policy solutions and more humane, effective and safe alternatives to the massive and unprecedented incarceration levels that has made the United States number one among all nations for the number of people it places in jails and prisons. The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. Since then, the nation's incarcerated population has more than quadrupled to over two million people, the vast majority of whom will ultimately return to their home communities. The manner in which this population is counted now has huge implications for the accuracy of the Census, and more importantly the very nature of what it means to be a representative democracy.</p> <p>In order to ensure the proper apportionment of local representatives to our national Congress, Article 1 Sec. 2 of the United States Constitution calls for the enumeration of the population every ten years. The "usual residence" rule violates the spirit, if not the letter, of this constitutional principle, by counting people in correctional facilities as residence of political jurisdictions where neither they, their families, nor their fellow community members are likely to live, and from which their political interests are not represented.</p> <p>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 located far from the actual homes of incarcerated people. Today, the growth in the prison population requires the Census to update its methodology, not only to safeguard the accuracy of the Census, but the political interests of the people of the United States as well.</p> <p>The inaccuracies inherent in the "usual residence" rule are not just problematic for the proper apportionment of political representation at the national level. States rely heavily on the accuracy of the US Census to do much the same, sometimes with peculiar results. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County. In New York State, after the 2000 Census, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents.</p> <p>New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes. However, New York is not the only State taking such action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach. Additionally, over 200 counties and municipalities individually adjust population data to avoid prison</p>

	<p>gerrymandering when drawing their local government districts.</p> <p>Although these ad hoc measures by localities and states are appropriate and necessary adjustments to the inaccuracies inherent in the US Census Bureau's application of the "usual residence" rule, they are neither efficient nor universally implementable. The Massachusetts legislature concluded that its state constitution did not allow it to pass similar legislation. The Massachusetts legislature sent the Bureau a resolution in 2014 urging it to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014). We urge the same.</p> <p>Justice Strategies believes in a population count that accurately represents communities. The accuracy of the US Census is a critically important linchpin of our democracy. We strongly urge you to count incarcerated people as residents of their home address.</p> <p>Thank you for the opportunity to comment on the Residence Rule and Residence Situations.</p>
c26	<p>As a member of the board of directors of the Prison Policy Initiative, and as a resident of a state in which the current Residence Rule distorted election district boundaries, I submit this comment in response to the Census Bureau's federal register notice regarding proposed changes to the Residence Rule and Residence Situations as outlined in 80 FR 28950 (May 20, 2015).</p> <p>By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a population that is disproportionately male, urban, and Black or Latino into 5,393 census blocks that are located far from the actual homes of incarcerated people. When the PL 94-171 data are used for redistricting purposes, as is almost always the case, prison populations unfairly inflate the political power of people who live near prisons.</p> <p>In my home state of North Carolina, two counties removed the prison populations tabulated in the PL 94-171 data when they conducted redistricting for local government, thereby avoiding inflating the political clout of people who lived in the county districts that contained the prisons. On the other hand, one county commission district and school district in Granville County, NC is heavily underpopulated due to the county's decision to rely on the PL 94-171 data for redistricting, which counted the people incarcerated in the county as if they resided in the county. (Granville County is home to a massive federal prison complex, the population of which was included in county election district redistricting and state legislative district redistricting.) The former are examples of the lengths to which local governments must go to adjust data effected by the Residence Rule, and the latter is an example of the political distortion that the Residence Rule causes when local governments rely on the PL 94-171 data provided by the Census Bureau.</p> <p>Thank you for the opportunity to comment on the proposed changes to the Residence Rule and Residence Situations. As a board member of an organization that has been studying the effect of the Residence Rule on prison populations and redistricting for more than a decade, and as a resident of a state in which the Residence Rule impacts election district boundaries, I respectfully urge the Census Bureau to count incarcerated people as residents of their last home address.</p>
c27	<p>I am writing in response to your May 20th federal register notice regarding the Residence Rule and Residence Situations.</p> <p>I think you should strongly consider revising the policy with regard to where general quarters populations are counted, particularly prisoners. Prisoners are often short term residents in correctional facilities with ongoing and permanent ties to their original homes. They are part of communities where they come from. When they are counted as living in prisons, and not in their real communities, it does damage to those communities. This damage occurs when federal and local officials use census data to make policy decisions, and to draw district maps. It dilutes the representation the home communities and increases the representation of the district with the prison.</p>

	<p>Further people living in prisons are disproportionately black and hispanic. When you count all of those black and hispanic people in their facilities, rather than their homes, you weaken the black and hispanic vote. This is bad for democracy.</p> <p>We live in a country with two million incarcerated people. We cannot continue distorting our democracy by misplacing all two million of them.</p>
c28	<p>We are public health physicians who have retired from the Centers for Disease Control and Prevention.</p> <p>We submit this comment in response to the Census Bureau's Federal Register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Our comments are based on public health analysis.</p> <p>We urge you to count incarcerated people at their home address, rather than at the particular correctional facility where they are located on Census Day.</p> <p>By designating a prison cell as a residence in the 2010 Census, the Census Bureau place the incarcerated people, who are disproportionately male, urban, and African-American or Latino, into the 5,393 Census blocks of the prisons where they are held, which are located far from the actual homes of the incarcerated people. When these data are used for Congressional redistricting, the incarcerated people increase the political power of the districts where prisons are located. At the same time, the political power of the home communities of the incarcerated people is diminished.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to count everyone in the right.</p> <p>Because we believe in a population count that accurately represents communities, we urge you to count incarcerated people as residents at their home addresses.</p>
c29	<p>The New Jersey Tenants Organization (NJTO) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The NJTO is the oldest, largest statewide tenant membership organization in the United States. Over the last 46 years, NJTO has changed New Jersey from one of the worst states for tenants to (arguably) the best. NJTO has been successful in establishing the basic rights of tenants to organize and be treated as human beings with the right to safe, healthy, and affordable homes, rather than just lessees at the mercy of lessors. We have also been the driving force behind the movement for municipal rent control in New Jersey.</p> <p>But our efforts to ensure fair tenant laws are hindered when communities are shortchanged on representation. When the Bureau routinely publishes redistricting data that counts our incarcerated residents as if they lived across the state, it shifts political power, and consequently shifts our legislature's priorities.</p> <p>We commend the Bureau for striving to count everyone in the right place and thank you for this opportunity to comment on the residence rules. NJTO believes our state, and the nation, needs a population count that accurately represents all communities, so we urge you to count incarcerated people as residents of their home address.</p>
c30	<p>In 2010, the U.S. Census Bureau counted deployed service members as part of the population of their home of record. During this time, there were approximately 10,000 service members stationed at Fort Campbell who were deployed from the installation at the time of the census. Furthermore, over 250,000 United States military personnel were temporarily deployed overseas in support of contingency</p>

	<p>operations, or for other short-term missions. Home of record is generally defined as the permanent home at the time of entry or re-enlistment into the Armed Forces as included in personnel files; when a deployment ends, soldiers return to their home base- not their original home town or home of record.</p> <p>This once a decade head count sets a baseline population upon which annual estimates are based for the next ten years. Many federal and state assistance programs use formulas based on the decennial census or derivatives from the decennial census data. With the current methodology, the communities in which these service members reside prior to deployment are deprived of potentially large sums of federal and state funding.</p> <p>By using the last duty station to count deployed service members the 2020 Census data will depict a more accurate representation of where the deployed service members live prior to deployment and in return allow the communities where these service members live access to more funding to provide services and programs for the military members and their dependents during the following ten year period.</p> <p>Thank you for consideration of this request.</p>
c31	<p>Colorado-CURE submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>We at Colorado-CURE are interested in ending prison gerrymandering/ensuring equal representation in the entire United States. We are a 25 year old criminal justice organization in Colorado.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as 1985, Colorado had less than 3,400 people in state prisons, by 2012 that figure was 20,462. As a percentage of our total population over that same time period, Colorado's incarceration rate has quadrupled. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a Colorado population that is disproportionately male, urban, and African-American, Latino or Native American into less than two dozen facilities that are typically located far from the actual homes of incarcerated people.</p> <p>Because Colorado has not passed legislation like California, Delaware, Maryland, and New York to adjust the Census' population totals to count incarcerated people at home for state legislative' redistricting purposes, this flawed data distorts the legislative redistricting process in Colorado.</p> <p>However unlike some other states, our state does not contain any instances of prison gerrymandering at the county level because our legislature had the forethought in 2002 to pass Senate Bill 02-007, an Act Concerning County Commissioner Redistricting which requires (emphasis added):</p> <p>Each district shall be as nearly equal in population as possible based on the most recent federal census of the United States minus the</p>

number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the Department of Corrections for the most recent fiscal year.

Each district shall be as nearly equal in population as possible based on the most recent federal census of the United States **minus the number of persons serving a sentence of detention or confinement** in any correctional facility in the county as indicated in the statistical report of the Department of Corrections for the most recent fiscal year.

(This statute only applies to county redistricting, but my understanding is that all of the relevant cities in Colorado that contain large correctional facilities have chosen to adjust their redistricting data in similar ways.)

We urge you to bring uniformity and simplicity to this process by counting incarcerated people at home in the next Census.

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 Colorado-CURE believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

c32 Ohio Voice submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Ohio Voice urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

We are the Ohio affiliate of State Voices, Ohio Voice which represents a diverse group of 5013c organizations that support civic engagement, fair representation and engagement and empowerment of underrepresented communities. We have long held a particular interest in fair representation in legislative bodies. The current system of counting incarcerated people, as a part of a legislative district where the prison is located skews and in no way is method for ensuring equal representation.

American demographics and living situations have changed since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. The number of incarcerated people currently is over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.

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 located far from the actual homes of incarcerated people. In Ohio, this process added more than 9000 people to a district by counting the prison population and this is only one example.

Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. This ad hoc approach is neither efficient nor universality implementable.

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. Because Ohio Voice believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

c33	<p>The League of Women Voters of Wisconsin submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The League supports equality in representation for all citizens in our state. In 2010 we supported legislation to amend our state constitution to exclude incarcerated, disenfranchised felons from the enumeration of population for the purposes of apportionment and redistricting of legislative, county and certain other district offices. We believe this resolution is an important step in achieving equality. However, we noted at the time that it would be preferable if the U.S. Census Bureau would change the way it counts incarcerated offenders.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the past few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. For example, Wisconsin has historically drawn legislative districts so that their population-sizes are within 2% of the average. But by counting incarcerated individuals as part of the districts in which they are incarcerated, Wisconsin awards greater political representation to districts with prisons than to those without them. To make matters worse, many of the incarcerated individuals are disenfranchised, which reduces the number of eligible voters in the prison districts and magnifies the influence of their vote.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census population totals to count incarcerated people in their home district, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>While this strategy lessens the problem in those four states, such an ad hoc approach is not an efficient solution overall nor will it work in every state. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</i></p> <p>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 the League of Women Voters of Wisconsin believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c34	<p>On behalf of the State of North Carolina, we have read the 2020 Decennial Census Residence Rule and Residence Situations Federal Register notice of May 20, 2015. We are grateful that the Census Bureau has demonstrated a continuing commitment to producing accurate data to support state government, business, and public needs. We appreciate the opportunity to review and comment on the residence rules used in conducting the decennial census.</p>

The current Census residency rules do not count the deployed military in the military communities where they usually reside: During emergency deployments this process produces flawed data that harms funding and planning in military communities. Deployed military populations must be counted in the county of the military community in which they usually reside. For these reasons, North Carolina recommends the following changes to the Census residency rules for deployed military populations:

1. Assign Last Duty Station as the primary residency field from the Defense Manpower Data Center records for deployed military. This will allocate deployed military to their supporting community, is consistent with Census counting of group quarters populations at their group quarters community, and efficiently uses established administrative records resources already used by the Census Bureau.
2. Count deployed spouses with their families. Local experience in 2010 suggests that families of deployed spouses were confused by Census instructions and did not complete their Census form, increasing the undercount of population in military communities. Changing the residency rule and instructions to count deployed spouses with their family will simplify Census participation, reduce confusion, improve data quality, and count the deployed military in their usual place of residence.
3. Work with military bases, including National Guard and Reserve facilities, to locate more accurate administrative records for counting deployed military in their communities.
4. Use administrative records to provide socioeconomic characteristic information on the deployed military population.

Census data is vital to policy, service, and economic development of communities. Changing residency rules for deployed military populations to count these populations within a county is consistent with Census processes for other types of group quarters and provides more accurate information for military communities. We appreciate the value of reliable data, and North Carolina is committed to working with the Census Bureau to improve the quality of this valuable resource.

c35 I am submitting this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility in which they happen to be located on Census day.

Since my days in the Wisconsin State Senate, I have attempted to end the gerrymandering of prisoners in order to ensure equal representation. The Wisconsin Legislature did not accept my motion to change how prisoners were counted in the census. In Wisconsin, prisoners do not remain in the communities in which they were incarcerated, but rather, they return to their home communities. The originating home communities are then penalized due to the way the census is tabulated.

The growth in the prison population over the past decades necessitates the Census Bureau to update its methodology, as it relates to incarcerated persons. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million and now the number of incarcerated people has more than quadrupled, to over two million people behind bars. This longstanding flaw in the Census counts incarcerated people as residents of the prison location, even though they cannot vote and are not part of the surrounding community. The manner in which this population is counted now has huge implications for the accuracy of the Census. When you count incarcerated people in districts as legitimate constituents, it awards people who live close to the prison more of say in government than everybody else.

Further, the designation of a prison cell as a residence in the 2010 Census concentrated 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 individuals. In Wisconsin for instance, Milwaukee County contains 18% of the state population but the state's prison population is made up of 42% of

	<p>Milwaukee County residents. Virtually all of the state's prison cells are located outside of the county. In effect, each group of 9 residents in one particular district has as much political power as 10 residents elsewhere in the state. Wisconsin has historically drawn legislative districts so that their population- sizes are within 2% of the average. However, with the way incarcerated individuals are counted, Wisconsin awards greater political representation to districts with prisons than to those without them.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state- wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Census Bureau strives to count everyone in the right place in keeping with changes in society and population realities. I urge you to count incarcerated people as residents of their home address.</p>
c36	<p>The Correctional Association of New York (CA) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The CA is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the NY State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. Utilizing a strategic model of research, policy analysis, prison monitoring, coalition building, leadership development and advocacy, the CA strives to make the administration of justice in New York State more fair, efficient and humane. The CA's three principal programs - the Prison Visiting Project, the Women in Prison Project and the Juvenile Justice Project - work to stop the ineffective use of incarceration to address social, economic and public health problems; advocate for humane prison conditions; empower people directly affected by incarceration to become leaders; and promote transparency and accountability in the criminal and juvenile justice systems.</p> <p>Ending mass incarceration requires fair representation, but the Census Bureau's current methodology systematically shifts political power to legislators with large incarcerated populations in their districts. This "constituent" bonus incentivizes legislators to support maintaining bloated prison populations.</p> <p>But this wasn't always a problem; as you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation's incarcerated population has more than quadrupled to over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated</p>

	<p>people.</p> <p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, our state passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>While we and three other states (and over 200 counties and municipalities) all individually adjust population data to avoid prison gerrymandering, it makes far more sense for the Census Bureau to count incarcerated people at home, accurately counting incarcerated people nation-wide.</p> <p>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 the Correctional Association believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c37	<p>I am writing concerning Federal Register Notice [Docket Number 150409353-5353-01] requesting comments regarding the 2020 Decennial Census Residence Rule and Residence Situations.</p> <p>I wish to begin by saying that these residence rules, developed through the Bureau's extensive experience through many decennial censuses, should remain as they are stated in the above referenced notice.</p> <p>I am particularly concerned about proposals to adjust group quarters residence rules for those incarcerated in prisons. The primary rule governing decennial census counts is that the enumeration should represent a "snapshot" of where persons are residing on Census Day, <i>not where they formerly resided</i>. Such adjustments will only open the door to further manipulation of the census counts to suit the sociological and political goals of persons proposing such rule changes.</p> <p>Furthermore, these changes could embroil the Bureau in political conflicts and decrease the confidence of the American public in the neutrality of the decennial census process. It could also decrease the participation rate in the enumeration with faulty census information. There may be a possibility that these adjustments could alter the numbers determining the reapportionment of the seats of the U. S. House among the States, and bring on unnecessary litigation.</p> <p>In 2010 Decennial Census process (New York, Maryland and Delaware) demonstrated that the procedures used yielded questionable results and, in some cases allocating inmate counts to general, rather than specific locations due to lack of sufficient information. It is also notable that the three states which engaged in prison adjustment in 2011 are Democrat-controlled states, and this adjustment would not have been done were it not advantageous to the party in power. <i>Once again, the Bureau should not act as an agent for increasing partisan advantage.</i></p> <p>The Bureau will have to deal with the issue that adjustment of individual counts for group quarter, from where they resided on Census Day to their former residence, may involve moving these counts to other states.</p> <p>Because of the expense and complexity of initiating this process on a nationwide basis, I believe such adjustments should be left up to the individual states, and not be imposed by the Federal Government.</p> <p>For these reasons, I oppose changes to the residence rules stated in the Federal Register notice, and urge the Bureau to readopt the previous rules. What is the MOTIVE behind changing it in the first place?!</p>
c38	<p>I am submitting this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.</p> <p>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 located far from the actual homes of incarcerated</p>

	<p>people. When this data is used for redistricting, prisons inflate the political power of those people who live near them, and take away the ability of people in the incarcerated peoples' home neighborhoods to fully participate in our democracy. This disturbs me hugely as a citizen.</p> <p>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 I believe in a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.</p>
c39	<p>Common Cause in Connecticut submits this comment in response to the Census Bureau 's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.</p> <p>Common Cause is an organization dedicated to strengthening our laws to protect voting rights and to ensuring that every voter has an equal say in our elections. Using the Census counts to draw state and local legislative districts enhances the weight of a vote cast by people who live near prisons at the expense of everyone else in the state or county.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people.</p> <p>In Connecticut this resulted in the majority-white residents of 7 State House districts getting significantly more representation in the legislature because each of their districts included at least 1,000 incarcerated African Americans and Latinos from other parts of the state.</p> <p>For example, State House District 59, (Enfield) claimed more than 3,300 African Americans and Latinos as constituents. But 72% of the African Americans and 60% of Latinos were not actually residents of the district, but rather were temporarily incarcerated in the Enfield, Willard, and Robinson Correctional Institutions.</p> <p>The resulting dilution of African-American and Latino political power was not limited to the 59th district: 86% of the state's prison cells are located in disproportionately white house districts.</p> <p>We have been working to pass state legislation to end this problem in the state but the U.S. Census could do this nationwide.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p>

	<p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31 2014 and the House of Representatives on August 14, 2014).</p> <p>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 Common Cause believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c40	<p>As a former member of Maine Regional School Unit 13's Board of Directors I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As a former elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of our population.</p> <p>Our Regional School Unit (RSU 13) uses a weighted voting system to apportion votes among the member towns. When we two districts consolidated to make one, we based the weighted vote system on Census Bureau estimates for 2006, we relied on Census data that counted the people incarcerated at the Maine State Prison as if they resided in the town of Thomaston. The prisoners had been moved to a neighboring town of Warren three years prior. This most unfortunate result gave every nine people in Thomaston as much of a say over our children's education as 10 residents from the other towns. This was a classic case of vote dilution.</p> <p>To some, this may seem like an academic discussion, but the distorted vote allocation has serious practical legislative consequences. In 2011, for example, a very narrow vote by the RSU 13 Board moved my town of St. George's 8th graders to an 8th and 9th grade school in Thomaston. (We have since withdrawn from the school district and this was a catalyst) The supporters of the school shift prevailed only because the representatives from Thomaston were able to cast additional votes because of the Census prisoner misallocation. It was tough to explain to my constituents why their vote was equal to that of somebody incarnated in Warren, but perhaps from New York. Simply put, it wasn't and isn't fair to the population to dilute the vote this way. I worked tirelessly to correct this matter, but it wasn't until petitions, and motions were filed trying to fix this, and finally the new number from the Census Bureau arrived. It wasn't until the new numbers arrived that this problem was finally corrected, but the damage was done.</p> <p>The RSU 13 eventually redistricted again, and this time, adjusted the Bureau's data but our reliance on the Bureau's data in the past left lasting harms. And while we solved the problem ourselves, albeit through a long drawn out exercise, and continue to apply our band-aid solution in the future, I doubt we're the only ones whose democratic institutions would benefit from more accurate data coming straight from the Census Bureau.</p> <p>Thank you for this opportunity to comment on your residence rules, all the work you do, and I urge you to count incarcerated people as residents of their home address.</p>
c41	<p>I write in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations. Thank for giving the public a chance to contribute on this matter because it is one that I feel strongly about.</p> <p>I believe in a population count that accurately represents my community, I urge you therefore to count incarcerated people at their home</p>

address, rather than at the facility that they happen to be located at on Census day.

For example a lot of people from New York City end up incarcerated in Dannemora, N.Y.S. From your Census count of 2010, as you now count it, we know Dannemora has 3, 936 *residents*. But that at least 2,800 of those '*residents*' are incarcerated men in the Clinton Correctional Facility in Dannemora.

I lived, voted, and paid my taxes in New York City when a member of my community was incarcerated in Clinton Correctional Facility in Dannemora for several years.

Neither he, nor any of his peers who came from N.Y.C. ever felt they were democratically represented by political representatives from that region. Quite simply, the political concerns of people living in N.Y.C. are very different from those of rural upstate Dannemora.

I give a tiny example from our personal experience to show how unjust the situation is as it stands. I do this because I know our situation is not unique.

One weekend when visiting said community member, I was walking back from the facility to my overnight accommodation across from the outside wall of the prison. I put some candy wrapper I had in a garbage can and walked on. I heard someone shouting, but thought nothing of it. The shouting continued and continued. I finally looked about and realized the shouting was indeed directed at me. It was a prison guard on duty high up on the tower in the prison. He told me to take my garbage out of the garbage bin because it was a private garbage bin, not for public use. I excused myself and did so, and then I asked him where I might find a public garbage bin. He thought for a moment, and then he said there were no public garbage bins in Dannemora. I asked what should I do with my garbage as I had come from NY for the weekend... He replied 'Take it back to New York City with you'.

Ms. Humes, every weekend at least 100 people from N.Y.C. visit loved ones in Dannamora. The economy of Dannemora and surrounds receives millions yearly as a result of our loved ones being incarcerated there.

Right now the Census Bureau recognizes Clinton Correctional Facility as the '*residence*' to 1000's of men from New York City. Over the years that is a count of several thousands of men from New York City who were or are counted as being '*residents*' of Dannemora.

But the political representation for our loved ones incarcerated in Dannemora did not reach to include the availability of one garbage bin being on the street for use by their families when visiting them in their '*residence*' in Dannemora.

This is only one tiny example. Most respectfully, one does not need to be a social nor political scientist to see this is not fair representation.

c42 I urge you to revise your procedures for including incarcerated people in future U.S. Censuses. The figures for incarcerated people are basic to redistricting and in areas with high prison populations, districts become unequal in voting eligible population when people who cannot vote are included in the census.

In my state, Arizona, for example, there are districts with much higher prison populations than other districts. Some of the prisons are explicitly for the purpose of housing non-citizens waiting determination of status. None of these people are eligible to register to vote, yet they must be included in determining the size of the district.

Further, incarcerated people are generally disproportionately members of minority groups. Since redistricting calls for fair representation

	<p>of minorities in districts, counting the prison population who live in otherwise largely non-minority districts leads to unfair results. I recommend that you count these people as living at their home address, not their residential address.</p> <p>In the case of non-citizens, they should not be listed as residents of the prison area. There are a few large incarceration centers in Arizona established for the explicit purpose of housing non-citizens, but they are currently included when counting total population and minority population. This makes minority representation in a few districts highly misleading when redistricting since they cannot vote, both because of their citizenship status and their incarceration status.</p> <p>Thank you for your consideration.</p>
c43	<p>Family Reconciliation Center (formerly Reconciliation, Inc.) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>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 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.</p> <p>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 Family Reconciliation Center believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c44	<p>International Citizens United for Rehabilitation of Errants (CURE) and its state and issue chapters submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). International CURE urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>International CURE is a grassroots organization dedicated to the reduction of crime through the reform of the criminal justice system (especially prison reform.). Although we are now an international organization, we were founded in Texas in 1972 and our US National and state chapters remain at the core of our mission. We write to you now on behalf of and in conjunction with those chapters because we are concerned about the U.S. Census Bureau's role, however unintentional it might be, in tilting the US electoral system in favor of those who support mass incarceration and against those who seek a just criminal justice system.</p> <p>By counting incarcerated people as if a prison cell were their residence, the Census Bureau counts incarcerated people, who are disproportionately male, urban, and African-American or Latino, in the wrong place. When this data is used for redistricting, prisons inflate the political power of those people who live near them and dilute the votes of everyone else.</p> <p>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. Because International CURE believes in a population count that accurately represents all communities, we urge you to count incarcerated people as residents of their home address in the decennial census.</p>
c45	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>A lot of people from my community end up in prison, and it's not fair that they get counted as if they were residents of the prison town instead of at home with us.</p>

	<p>Giving our political power to people who want to lock up more of our community members just doesn't make sense. Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c46	<p>The League of Women Voters of the Northwoods submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.</p> <p>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 located far from the actual homes of the incarcerated people. For example, Wisconsin has historically drawn legislative districts so that their population-sizes are within 2% of the average. But by counting incarcerated individuals as part of the districts in which they are incarcerated, Wisconsin awards greater political representation to districts with prisons than to those without them. To make matters worse, the incarcerated individuals are disenfranchised. The number of eligible voters in the prison districts are reduced and the influence of the voters in the district is magnified. When this data is used for redistricting, prisons inflate the political power of the people who live near them.</p> <p>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 League of Women Voters of the Northwoods believes in a population count that accurately represents communities and the principles of one person, one vote, we urge you to count incarcerated people as residents of their home address.</p>
c47	<p>The League of Women Voters of Dane County (Wisconsin) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.</p> <p>By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a population that is disproportionately male, urban, and minority into just 5,393 Census blocks that are located far from the actual homes of the incarcerated people. When this data is used for redistricting, it removes power, influence, and financial resources from the neighborhoods from which this population comes and to which this population will return.</p> <p>Thank you for the 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 the League of Women Voters of Dane County (Wisconsin) believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c48	<p>Californians United for a Responsible Budget (CURB) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As a statewide coalition of over 70 organizations, CURB is working to stop prison and jail construction, reduce the amount of people inside, and reinvest the saved resources into alternatives to incarceration, education, and restoring the social safety net.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p>

	<p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In California, this resulted in Los Angeles County being misrepresented. Los Angeles County contains 28% of California’s population, yet it only contains 3% of California’s state prison cells. In other words, few persons are incarcerated in Los Angeles County compared to the number of persons incarcerated that come from this county, which is 34%. According to the 2010 U.S. Census Summary, Blacks make up only 6% percent of California’s total population, yet they make up 27% of the incarcerated population.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a statewide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 CURB believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c49	<p>I am writing in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations 80FR28950 (May 20, 2015). We are a church which is a community of faith by and for prisoners. They and their families become members. We network with prisoners during their incarceration and after their release. Over the years we have been involved in the movement to have prisoners counted for the Census at their home addresses rather than in the facility where they are located.</p> <p>For years district leaders and legislators in New York State have fought to have new prisons built in their district so that the prison population would add to the population of that district. Some districts would not exist if it were not for counting the prisoners. Prisons inflate the political power of those who reside there and minimize the power of those who live in the urban centers—who are chiefly African American and Latino,</p> <p>The practice of prison gerrymandering when government districts are drawn must stop.</p> <p>Thank you for the opportunity to comment on the Residence Rule and Residence Situations as the Census Bureau strives to count everyone in the right place in keeping with changes in society and population realities.</p> <p>We at the Church of Gethsemane believe in a population count that accurately represents communities. We are asking you to count incarcerated people as residents of their home addresses.</p>
c50	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p>

	<p>A lot of people from Dallas County end up in prison, and it's not fair that they get counted as if they were residents of the prison town instead of at home with us. Giving our political power to people who want to lock up more of our community members just doesn't make sense.</p> <p>Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c51	<p>Legal Services for Prisoners with Children (LSPC) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). LSPC urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Founded in 1978, Legal Services for Prisoners with Children (LSPC) enjoys a long history advocating for the civil and human rights of people in prison, their loved ones and the broader community. Our vision of public safety is more than a lock and key. We believe that the escalation of tough-on-crime policies over the past three decades has not made us safer. We believe that in order to build truly safe and healthy communities we must ensure that all people have access to adequate housing, quality health care and education, healthy food, meaningful work and the ability to fully participate in the democratic process, regardless of their involvement with the criminal justice system.</p> <p>California law says a prison cell is not a residence. "A person does not gain or lose a domicile solely by reason of his or her presence or absence from a place while ... kept in an almshouse, asylum or prison." (California Elections Code § 2025.) But a longstanding flaw in the Census counts incarcerated people as residents of the prison location, even though they can't vote and aren't a part of the surrounding community. When legislators claim people incarcerated in their districts are legitimate constituents, they award people who live close to the prisons more say in government and dilute the representation of everyone else. This is bad for democracy.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. For example, Los Angeles County contains 28% of California's overall population, and 34% of the state's prisoners' population. However, few prisoners are actually incarcerated in Los Angeles, which contains only 3% of California state prison cells. The consequences include, counting thousands of incarcerated men and women as members of the wrong communities and enhancing the political clout of the people who live near prisons. (<i>California 2010 Census Guide</i>. Peter Wagner, Mar. 2010. Web. 08 July 2015.)</p> <p>Another problem with the prison population in California is the racial disparities between Whites, African Americans, and Latinos. African Americans are over-represented in the prison and jails population; African Americans represent 7% of our population but 27% are incarcerated. Hispanics are also over-represented in California prisons and jails; Hispanics represent 38% of our total population and 41%</p>

	<p>are incarcerated. Compared to Whites who are underrepresented in California Prisons and jails; White make up 40% of our population but represent 26% of the incarcerated population. Because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The Census Bureau needs to improve the accuracy of the data about the African-American and Latino population. (Wagner, Peter. "California Profile, Prison Policy Initiative." <i>California Profile</i>. N.p., n.d. Web. 08 July 2015.)</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a statewide approach to adjust the Census's population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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. LSPC believes in a population count that accurately represents communities, so we urge you to count incarcerated people as residents of their home address.</p>
c52	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>A lot of people from my community end up in prison, and it's not fair that they get counted as if they were residents of the prison town instead of at home with us. Giving our political power to people who want to lock up more of our community members just doesn't make sense.</p> <p>Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c53	<p>Voice of the Ex-Offender (V.O.T.E.) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>We at V.O.T.E. are interested in ending prison gerrymandering/ensuring equal representation in the entire United States. We are a membership-based organization founded and run by formerly incarcerated persons, and we believe that the communities that our members come from are the ones most impacted by the malapportionment that prison gerrymandering causes.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, due to the massive growth in the prison population, the Census needs to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. In 1980, there were less than 10,000 people incarcerated in Louisiana, but by 2012, there were approximately 40,000 people incarcerated in the state of Louisiana alone. New Orleans, where V.O.T.E. is located, incarcerates more people per capita than anywhere in the world. As a result, the manner in which the incarcerated is counted has huge implications for the accuracy of the Census and for the political representation of</p>

	<p>the communities hardest hit by incarceration. In fact, over half of Louisiana's state prison population comes from just four parishes: Orleans, Caddo, East Baton Rouge, and Jefferson.</p> <p>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 facilities that are typically located far from the actual homes of incarcerated people.</p> <p>Because Louisiana has not passed legislation like California, Delaware, Maryland, and New York to adjust the Census' population totals to count incarcerated people at home for state legislative redistricting purposes, this flawed data distorts the legislative redistricting process at the state and, even more so, at the local level. For example, twelve of Louisiana's State House Districts and ten of Louisiana's State Senate Districts drawn after the 2010 Census fail to meet constitutional population requirements without prison populations. Locally, in Allen Parish, a federal prison population is 66% of one district, and a state prison is 39% of another district. In Catahoula Parish, half of one district is incarcerated, meaning five people in that district have as much voting power as ten people in any other one of Catahoula Parish's districts.</p> <p>We urge you to bring uniformity and simplicity to this process by counting incarcerated people at home in the next Census.</p> <p>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 Voice of the Ex-Offender believes in a population count that accurately represents communities, as we did in February 2013, we once again urge you to count incarcerated people as residents of their home address.</p>
c54	<p>Colorado Common Cause submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). For purposes of the census, we urge you to count incarcerated people at their last-listed home address, rather than at the particular facility where they happen to be incarcerated on Census Day.</p> <p>Redistricting is a top issue for Colorado Common Cause. We believe districts should fairly represent their communities. When county populations include people incarcerated in area prisons, state legislators use inaccurate information when re-drawing Congressional and legislative districts. The Census Bureau, to which most states – including Colorado – refer when apportioning residents for redistricting purposes, has the power to change this practice.</p> <p>As with many other states, the majority of people incarcerated in Colorado's prisons are convicted in urban counties but incarcerated in prisons located in rural counties. For example, fifty percent of the people admitted to prison in Colorado in 2012 were convicted in the urban counties of Denver, Arapahoe, Jefferson, and El Paso, but the great majority of incarcerated people in Colorado were housed in rural counties. Fremont County, Colorado, represents the most egregious example. Only 1.23% of the Colorado Department of Corrections' 2012 public prison population had a home address in Fremont County, but the county's six state prisons are the incarcerated address for 29 percent of the state's 2012 public prison population.</p> <p>Since the African American and Hispanic/Latino populations are disproportionately incarcerated in Colorado, and these populations tend to live in the state's urban areas, these populations are also misrepresented during the census by counting their prison cell as their residence. Votes cast in these prison districts carry more weight than others as a result of the artificial residency number, while the urban districts where the prisoners are from have less; this is a fundamental unfairness we seek to redress.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations. Because Colorado Common Cause believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address</p>

	on Census Day.
c55	<i>This comment submission contains graphics and cannot be displayed in this table. It is available as Appendix Attachment c55.</i>
c56	<p>Grassroots Leadership submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Grassroots Leadership fights to end for-profit incarceration and reduce reliance on criminalization and detention through direct action, organizing, research, and public education. We are interested in ensuring fair political representation for the communities hardest hit by incarceration.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation’s incarcerated population has more than quadrupled to over 2 million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.</p> <p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York passed state legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>In addition to New York, three other states (California, Delaware, and Maryland) are taking a similar statewide approach, and over 200 counties and municipalities individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the Massachusetts state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>While Grassroots Leadership is a national organization, we have identified specific inaccuracies flowing from the Bureau’s current method of counting incarcerated persons in the state of Texas, where we are based. In two districts (District 13 near Walker County and District 8 near Anderson County), almost 12% of each district’s 2000 Census population is incarcerated. As a result, each group of 88 actual residents in these two districts is given as much political clout as 100 people elsewhere in Texas.</p>

	<p>In February 2013, we called upon the Census Bureau to change this practice, and we once again urge you to count incarcerated people as residents of their home address, ensuring a population count that accurately represents all communities.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations and your work to count everyone in the right place in light of changes in society and population realities.</p>
c57	<p>On behalf of my constituents, I am writing to support changing the Census Bureau’s residence rules to count incarcerated individuals at their homes, rather than designating prisons as their “usual residences.”</p> <p>As the prison population of the United States grows, it has become increasingly important to account for prisoners accurately in the Census. Prisons are often located in areas that otherwise have low population densities, so counting prisoners as residents of those areas is massively distorting. The current rule complicates the drawing of representative electoral districts, and it disproportionately misrepresents the residence of minority men.</p> <p>Counting prisoners at their home addresses is important in ensuring they are represented in our democracy. Prisoners’ legal residence remains their home address, and they usually return to that address when released. Those who can vote do so absentee using their home address; under Michigan law, they remain electors in their home districts. As a legislator, I can assure you that most of my colleagues do not treat prisoners brought into their districts as their constituents. Instead, prisoners are referred to the legislative office representing their home address.</p> <p>Michigan has done its best to keep misleading prison Census numbers from distorting redistricting, but the solution is far from perfect. Problems have arisen regarding federal facilities, and Michigan’s policies are different from those used in other states. In order to ensure that the same method is used to account for prisoners’ residences across the United States, I respectfully urge the Census Bureau to adjust the residence rule to count prisoners in their home districts. This change will provide better data both for social science and for drawing the electoral districts upon which our representative democracy depends.</p>
c58	<p>FairVote: The Center for Voting and Democracy submits these comments in response to the Census Bureau’s notice regarding the Residence Rule and Residence Situations, 80 Fed. Reg. 28950 (May 20, 2015) (the “Rule”). FairVote urges the Bureau to change the Rule to count incarcerated people not as residents of the facility in which they are housed during the Census but as residents of their home address or place of residence prior to incarceration.</p> <p>FairVote is a 501(c)(3) non-profit organization founded in 1992 whose mission is to advocate for fairer political representation through election reform. FairVote develops analysis and educational tools necessary to win and sustain improvements to American elections. FairVote is particularly dedicated to the principle of fair representation for every voter, and it works for reforms that promote respect for every vote and every voice in every election.</p> <p>As this comment describes, the problem of “prison gerrymandering” violates important democratic principles. Representatives are most accountable to non-voting populations when they represent their actual residences – the communities that share values and interests with those populations. When a person is incarcerated and moved to a different location, it does not mean that the representative in that location will be accountable to them; instead, it merely inflates the voting power of the community of voters in that new location while diminishing the voting power of their own home community.</p> <p>Under the current Rule, prison cells are designated as a residence. People who are incarcerated on Census Day are considered residents of the facility in which they are housed, rather than their actual homes or places of residence. As a result, a large segment</p>

of the population is classified as residing away from their actual homes and communities. This population also happens to be disproportionately male, urban, and African-American or Latino.

Since 1980, the United States' incarcerated population has more than quadrupled from less than half a million to over two million people. The rapid rise in the number of incarcerated people has major implications for the accuracy of the Census and, consequently, the accuracy of electoral districts drawn using that data.

The skewed Census data resulting from the Rule affects our political system at every level of government. Most jurisdictions rely on Census data to draw legislative districts with roughly equivalent populations. However, when the Census contains skewed residence information, districts containing prisons may be considered "equal" in size despite containing fewer residents. As a result, voters in these districts have more powerful votes than those of other districts. For example, in New York after the 2000 Census, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were actual residents of those districts. This disparity led New York State to pass legislation to which adjusts Census data to count incarcerated people at home for redistricting purposes.

The inclusion of incarcerated people as district residents has led several states, including New York, to take action. New York has passed legislation which adjusts Census data to count incarcerated people at their actual or prior residences for the purposes of redistricting. California, Delaware, and Maryland are also taking a similar state-wide approach. In addition, more than 200 counties and municipalities have all individually adjusted population data to avoid artificially inflating the population of prison districts when drawing their local government districts.

However, this type of stop-gap is neither efficient nor available for all jurisdictions. The Massachusetts legislature was unable to pass legislation similar to that of New York after it concluded that the state constitution did not allow it. As a result, in 2014, the Massachusetts legislature sent a resolution to the Bureau urging it to tabulate incarcerated persons at their home addresses.¹

FairVote appreciates having the opportunity to comment on the Residence Rule and Residence Situations. As the Bureau strives to count all people in their proper place, FairVote urges that the Residence Rule and Residence Situations be amended to require counting incarcerated people as residents of their home address or place of residence prior to incarceration.

¹ See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).

c59 I am writing, in both my personal capacity and as a coordinator of research groups on de/incarceration here at _____ and in the community in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).

Our members, situated in upstate and small town New York and active in local jail and prison research and teaching, urge the Census to record incarcerated persons in their home, originating, districts. This is commonly couched in New York and elsewhere as an issue for large cities, but as data on New York and other similar states would indicated, many prisoners return to small and rural towns—almost half of New York's released prisons return to "upstate" New York for example—well beyond the New York City metropolitan area.

If we want an accurate picture of the population we need to update the methodology of the Census. Some states have done this; it would be

	<p>very critical for the Census to change the “usual residence” rule as well. A federal standard would, moreover, provide a common basis for current state rulings which vary considerably.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations.</p>
c60	<p>Women Who Never Give-Up (“WWNG”) submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). WWNG is a 501(c)(3) nonprofit organization that confronts a wide range of criminal justice and prison-related issues. We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>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 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.</p> <p>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. Because WWNG believes in a population count that accurately represents all communities, we urge you to count incarcerated people as residents of their home address.</p>
c61	<p>The Minnesota Second Chance Coalition submits this comment in response to the Census Bureau 's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The Minnesota Second Chance Coalition is a partnership of over 50 organizations that advocate for fair and responsible laws, policies, and practices that allow those who have committed crimes to redeem themselves, fully support themselves and their families, and contribute to their communities to their full potential. An accurate count of incarcerated people is vital to ensuring fair representation that reflects our communities and advances these goals.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Minnesota, this resulted in four state house districts that derive at least 3% of their required population from prisons located in the district.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p>

	<p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 the Coalition believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c62	<p>The Council on Crime and Justice (The Council) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). The Council urges you to count incarcerated people at their home address, rather than at the address of facility where they happen to be located on Census day.</p> <p>The Council on Crime and Justice is a private, non-profit agency located in Minneapolis, MN, that has been a leader in the field of criminal and social justice for over 56 years. The Council provides an independent voice for a balanced approach to criminal justice. It has also been at the forefront of many new programs in such areas as offender services, alternative sanctions, victim's rights, and restorative justice. The Council's work seeks a criminal justice system that is equitable and just, treats people with compassion and dignity, and allows for second chances, creating a safe and thriving community.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Minnesota this resulted in four state house districts that derive at least 3% of their required population from prisons located in the district.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universal implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p>

c63	<p>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 [org name] believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p> <p>The Criminal Justice Policy Coalition submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situation, 80 FR 28950 (May 20, 2015).The Criminal Justice Policy Coalition urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As a non-profit organization dedicated to the advancement of effective, just, and humane criminal justice policy in Massachusetts, the Criminal Justice Policy Coalition has a significant interest in ending prison gerrymandering and ensuring equal representation. The current Census Bureau policy of counting incarcerated people at their particular facility constitutes a violation of justice and democracy.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Massachusetts, this resulted in roughly 10,000 people counted at their facility location rather than their actual home, which is their legal address for other purposes.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a statewide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>This ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014). In following our state’s initiative and the calls of other organizations such as the Prison Policy Initiative, we, the Criminal Justice Policy Coalition, urge the Census Bureau to count incarcerated people at their home address for the 2020 census.</p> <p>The Prison Policy Initiative also has identified specific inaccuracies at both the state and local levels flowing from the Bureau’s current method of counting incarcerated persons. Within Massachusetts, the most significant problems arise when towns rely on accurate data from the Census Bureau to assign representatives for their representative town meeting government, but the towns unknowingly use skewed numbers due to the Census Bureau methodology. For example, the town of Plymouth has a total of nine representative members, three of which are directly attributable to the Plymouth County Correctional Facility. That is, 33% of the representatives come from the incarcerated population. The same is the case in the town of Ludlow, where 5 of the 15 precinct representatives are attributable to the</p>
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	<p>Hampden County Correctional Center. Additionally, the people incarcerated in the Bristol County House of Correction and Jail, Bristol County Sheriff's Office Women's Center, and the C. Carlos Carreiro Immigration Detention Center account for 13 of the 44 representatives (30%) at Dartmouth town meeting.</p> <p>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 the Criminal Justice Policy Coalition believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c64	<p>The National Association of Criminal Defense Lawyers (NACDL) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). NACDL urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The NACDL encourages, at all levels of federal, state and local government, a rational and humane criminal justice policy for America -- one that promotes fairness for all; due process for even the least among us who may be accused of wrongdoing; compassion for witnesses and victims of crime; and just punishment for the guilty. But such justice is hard to achieve when legislators gain constituents based on the number of prisoners the Bureau counts in their district.</p> <p>As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation's incarcerated population has more than quadrupled to over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census thus the fairness of redistricting.</p> <p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met minimum population requirements because the Census counted incarcerated people as if they were upstate residents. This is just one example of the recurring systematic shift of political power away from communities most affected by incarceration to communities that host large prisons. In New York this political shift stymied reform of the harsh Rockefeller Drug Laws long after the public came to understand that these mandatory incarceration laws were both ineffective and counterproductive. In addition, communities where prisoners are most likely to come from are not recipients of the economic benefits that exist for communities that are able to count prisoners as their residents. This further impedes the economic development of communities most in need.</p> <p>As you know, four states have passed legislation to adjust their redistricting to count incarcerated people at home for redistricting purposes. But this ad hoc approach is neither efficient nor practical.</p> <p>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. Because NACDL believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home addresses.</p>
c65	<p>Cover Girls for Change submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Cover Girls for Change is a platform highlighting the voices of models, whose faces are known but whose voices are often overlooked. We seek to advocate for social change through film, documentaries, and social advocacy and to raise the voices of the voiceless. We believe that this includes the over 2 million people incarcerated in the U.S. and their families and communities.</p>

	<p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades as the incarcerated population has expanded at a rate like never before in the history of the U.S. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. Every two weeks for the last 4–5 years, I have been visiting a friend in prison. Thus, I am very familiar with the landscape of the prison system in New York, D.C., and the other places where my friend has been imprisoned. It is so clear from my experience that most prisons are located far away from the communities that incarcerated people are from. When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located.</p> <p>In New York — where Cover Girls for Change is based — after the 2000 Census, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State fortunately passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>New York is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar statewide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>We previously called upon the Census Bureau to change its practice in 2013, and we once again urge you to count incarcerated people as residents of their home address.</p> <p>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.</p>
c66	<p>On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we appreciate the opportunity to provide comments in response to the Census Bureau’s Federal Register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). The Leadership Conference considers a fair and accurate census, and the collection of useful, objective data about our nation’s people, housing, economy, and communities, among the most significant civil rights issues facing the country today. Today, the growth and disbursement of the prison population requires the Census Bureau to update its methodology with respect to the “usual place of residence” of incarcerated people, so that the size and power of the communities that host the prisons are not inflated at the expense of others. Therefore, we urge you to count incarcerated people as members of the community from which they come and not as</p>

members of the community in which they are incarcerated on Census Day.

The Census Bureau counts people in prison as if they were residents of the communities where they are incarcerated at the time of enumeration, even though they remain legal residents of the places they lived prior to incarceration. Because census data are used to apportion political representation at all levels of government, this practice gives extra political influence to people who reside in legislative districts that contain prisons and dilutes the votes cast in all other districts. This vote dilution is particularly extreme for urban and minority communities that have disproportionately high rates of incarceration.

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million.ⁱ Since then, the nation’s incarcerated population has more than quadrupled to over two million people.ⁱⁱ The manner in which this population is counted now has huge implications for the accuracy of the census and the fair allocation of political representation and governmental resources.

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 located far from the actual homes of incarcerated people.ⁱⁱⁱ In Illinois, for example, 60 percent of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99 percent of them as if they resided outside of Cook County.^{iv}

When these data are used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven State Senate districts only met population requirements because the census counted incarcerated people as if they were upstate residents. For this reason, the New York State Legislature passed legislation to adjust the population data after the 2010 Census to count incarcerated people at their home of record (that is, the place they resided before incarceration) for redistricting purposes.^v

The composition and structure of America’s population and households have changed dramatically in the 225 years since the first census. The census has evolved in response to many of these changes, in order to continue providing an accurate picture of the nation and to help policymakers meet society’s needs. Because The Leadership Conference supports a population count that accurately represents communities, we urge you to count incarcerated people as residents of their pre-incarceration household. We stand ready to work with you to ensure that the voices of the civil and human rights community are heard in this important, ongoing national conversation.

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, to reflect enormous demographic shifts, changes in the prison infrastructure, and the urgent needs of communities. If you have any questions about these comments, please contact _____, Managing Policy Director, at _____.

ⁱ NAACP, Criminal Justice Factsheet, available at <http://www.naacp.org/pages/criminal-justice-fact-sheet>.

ⁱⁱ *Id.*

ⁱⁱⁱ Prison Policy Initiative, Detailed Demographics of Correctional Populations Now Available for Nation (Sept. 13, 2011), <http://www.prisonersofthecensus.org/news/2011/09/13/sf1/>.

^{iv} Demos, *Testimony of Ben Peck, Senior Legislative and Policy Associate, Demos Before the National Advisory Committee on Racial, Ethnic and Other Populations of the U.S. Census Bureau on: The Census Count and Prisoners: The problem, the solutions and what the Census can do*, (Oct. 26, 2012), available at <http://www.demos.org/publication/census-count-and-prisoners-problem-solutions-and-what-census-can-do>.

^v Demos and Prison Policy Initiative, *States are Authorized to Adjust Census Data to End Prison-based Gerrymandering and many*

	<i>already do</i> (updated September, 2010), available at http://www.prisonpolicy.org/factsheets.html .
c67	<p>The Pennsylvania Prison Society submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). The Society urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The Prison Society was founded in 1787 and is the oldest prison reform organization in the world. We have continued our mission of humane treatment and justice for over two centuries. We now provide reentry services to men and women incarcerated in Pennsylvania state correctional institutions and county jails. We also provide services to families of inmates. The families often undergo hardships while their loved ones are incarcerated. The neighborhoods they live in also need resources. These communities need support and representation.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again. In Pennsylvania alone, there are over 50,000 men and women in the state system.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 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.</p> <p>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 The Pennsylvania Prison Society believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c68	<p>Regarding B. 5. Students; (f) Foreign students living in the U. S. while attending college (living either on-campus or off-campus...):</p> <p>For Census 2020, I suggest changing the wording that pertains to the resident rules for students to include, "...while attending school (either college or high school)...".</p> <p>In Umatilla County, Oregon, we have a boarding school that houses foreign high school students. These students are from other countries, and are attending the boarding school during the school year. The boarding school is their usual place of residence for the school year, which is most of the year.</p> <p>While the numbers of foreign high school students at this boarding school is small (10 boys and 10 girls), there currently is no category in which to count or include these students even though they reside in the U.S. during most of the year. Likely there are other situations similar to the Umatilla County boarding school in other parts of the U.S.</p>
c69	<p>I am writing to you as the Chief of the Population Division in response to the federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).</p> <p>In the last few Censuses I was counted as if I was a resident of the prison where I was incarcerated, not in Harlem New York City where I</p>

	<p>lived prior to my incarceration. This was not fair to my community, nor to any community in the state that didn't have a prison.</p> <p>It is particularly painful for me, as I was incarcerated for 23 years 11 months and 10 days for a crime I did not commit. Thanks to the efforts of a police officer who investigated the case in his private time, I am now out of prison.</p> <p>Clearly the elected representatives in Upstate New York do not have a desire to help people in their areas get out of prison. I am convinced though, that I could have been freed a lot sooner had I been able to ask for help from the political representatives in Harlem where I lived prior to my incarceration. But these people are already over-burdened, so as a policy they cannot offer assistance to <u>'residents outside their voting district'</u>.</p> <p>Although my situation is not common, it is not unique. I knew of 13 other innocent people during my time in prison. Eleven of them were from minority communities. They had the same experience as me, that is to say, they could not ask for support from the elected representatives in the areas where they lived before they were arrested.</p> <p>As you can see, a population count that accurately counts residents at their home address is very important, so I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c70	<p><i>This comment submission contains graphics and cannot be displayed in this table. It is available as Appendix Attachment c70.</i></p>
c71	<p>The Integrated Justice Alliance of New Jersey submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). The Integrated Justice Alliance urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The Integrated Justice Alliance of New Jersey (IJA) is a statewide network working toward a fair and effective criminal justice system: one that promotes public safety and the restoration of individuals and families, protects and safeguards the rights of individuals in state custody, promotes transparency and ensures accountability, and spends taxpayer dollars wisely. Our website: http://www.integratedjusticealliance.org/</p> <p>The IJA is dedicated to ending prison gerrymandering in order to ensure equal representation across our state. In 2011, members of the IJA gave testimony before the Apportionment Commission of New Jersey in Toms River (1-29-2011), Newark (2-9-2011), and Jersey City (2-11-2011) to request that we count incarcerated people fairly as residents of their home communities and not in the communities where they are incarcerated. We also gave testimony on May 14, 2012 before the New Jersey Senate State Government, Wagering, Tourism, and Historic Preservation Committee in support of Senate Bill 1055: Ending Prison-Based Gerrymandering in New Jersey.</p> <p>The IJA was also one of more than 200 signators of a letter to Census Bureau Acting Director Thomas Mesenbourg (of February 14, 2013), requesting that the Census Bureau count incarcerated persons at their home address.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the exponential growth in the prison population of the past 30 years requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p>

	<p>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 located far from the actual homes of incarcerated people. In New Jersey, the state's prison population comes disproportionately from certain counties: Essex County (Newark) is home for less than 9% of the state, but 16% of its incarcerated people; Camden County (Camden) is home for 6% of the state, but 12% of its incarcerated people. Crediting the state's incarcerated population to the census blocks that contain the state's 13 correctional facilities serves to enhance the weight of a vote cast in those 13 districts, while diluting the votes cast in every other district.</p> <p>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 the Integrated Justice Alliance of New Jersey believes in a population count that accurately represents all communities, we urge you to count incarcerated people as residents of their home address.</p>
c72	<p>I represent Senate District _____, _____ and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. Also, in Missouri, after the 2000 Census, each House district in Missouri should have had 34,326 residents. District 113, which claimed the populations of 2 large prisons, however, had only 30,014 actual residents. This means that the actual population of the district was 10% smaller than the average district in the state.</p> <p>Currently, four states (California, Delaware, Maryland and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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 and keeping with changes in society and population realities. Because democracy relies on a population count that accurately represents communities. I urge you to count incarcerated people as residents of their home address.</p>

c73	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>A lot of people from the city I live in end up in prison, and it's not fair that they get counted as if they were residents of the prison town instead of at home. Giving their political power to people who want to lock up more of our community members just doesn't make sense.</p> <p>Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c74	<p>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.</p> <p>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 Latinos¹ 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.</p> <p>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 <i>Little v. LATFOR</i>, 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.</p> <p>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.² Partisan political interests that control the redistricting process often engage in prison gerrymandering, using captive prison populations to increase partisan representation.</p> <p>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.³ 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.⁴ 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.⁵</p> <p>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.</p> <p><u>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.</u></p>

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 underrepresented⁶ due to the location of the prison itself.

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,⁷ 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.⁸ 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.⁹ 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.¹⁰

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,¹¹ 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.¹²

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.¹³ In 2000, only 25% of New York's state population lived upstate, yet 91% of detained people in state prisons were incarcerated there.¹⁴ In Illinois, 60% of detained people previously resided in Chicago, yet 99% of the prisons were located elsewhere.¹⁵ In California, 30% of incarcerated people hailed from Los Angeles County, but only 3% of them were located there.¹⁶ 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.¹⁷

In Michigan, 30% of the state's incarcerated people were from Detroit, but only 11% of the state's cells were located there.¹⁸ 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 conclusions¹⁹ for apportionment purposes. Some counties were reported to be growing when in fact it was their prison population that was increasing.²⁰ 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.²¹ In actuality, the Latino population is overrepresented in counties where they are not residing by choice.²² In turn, they are underrepresented in their actual place of "usual residence" and communities of origin.²³ 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.²⁴

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.²⁵ 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.²⁶

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.²⁷ In *Wesberry v. Sanders*, the Court established that equal representation for the number of people is a fundamental principal of our government.²⁸ Race, sex, economic, status, or place of residence must not undermine this fundamental principle.²⁹

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"³⁰ standard, which may also lead to unlawful vote dilution.³¹

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.³² Compared to the ratio of 1 of every 106 white men³³ 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 population³⁴ but were overrepresented at 22% of the state prison population.³⁵ This raises direct concerns over potential vote dilution of Latino voting strength. Study after study³⁶ has shown 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.³⁷

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.³⁸ 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.³⁹ 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.⁴⁰

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.⁴¹ 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).⁴² 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.⁴³ 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,⁴⁴ the U.S. Supreme Court has upheld the Section 2 VRA vote dilution standard to address discriminatory effect as well as discriminatory intent.⁴⁵

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.⁴⁶ 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.⁴⁷

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.⁴⁸ 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.⁴⁹ Colorado, Nevada and New York include similar language in their state constitutions.⁵⁰

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.⁵¹ 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."⁵² 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.⁵³

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.⁵⁴ 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.⁵⁵ 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.⁵⁶ 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."⁵⁷

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.⁵⁸ California, Florida, Texas, and New York are among the states that disenfranchise people who are serving time in state prisons for felony convictions.⁵⁹ Furthermore, people so detained cannot purchase homes, become employed, or make a living while they are incarcerated.⁶⁰

California and New York, two states with the largest Latino populations,⁶¹ 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.⁶² 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.⁶³ 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.⁶⁴ In New York, for example, the median time served in a facility for 2007 was seven months.⁶⁵ 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".⁶⁶ 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.⁶⁷

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.⁶⁸ A majority of the states have at least one city or county that favors this change.⁶⁹ 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.⁷⁰

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.⁷¹

¹ 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/c2010br02.pdf>.

² 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>.

³ See *2010 Group Quarters Shapefile*, Prison Policy Initiative, www.prisonersofthecensus.org/data/2010/groupquartersshapefile.html (last visited Jul. 13, 2015).

⁴ 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>.

⁵ *Id.*

⁶ 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.

⁷ 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.

⁸ Heyer & Wagner, *supra* note 4.

⁹ Wagner & Kopf, *supra* note 7.

¹⁰ *Id.*

¹¹ Heyer & Wagner, *supra* note 4.

¹² *Id.*

¹³ 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.").

¹⁴ Heyer & Wagner, *supra* note 4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Heyer & Wagner, *supra* note 4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 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.").

²⁵ 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).

²⁶ *Gray*, 372 U.S. at 379.

²⁷ *Reynolds*, 377 U.S. at 566.

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

²⁹ *Id.*

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

³¹ 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)).

³² 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/pcs_assets/2008/one20in20100pdf.pdf.

³³ *Id.*

³⁴ 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>.

³⁵ 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.

³⁶ 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_2010pdf; 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; 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/FEB_I_8-LatinoVotingRightsReport.pdf.

³⁷ See sources cited *supra* note 36.

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

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

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

⁴³ *Id.*

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

⁴⁵ 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)).

⁴⁶ 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*").

⁴⁷ *Local Governments*, *supra* note 46.

⁴⁸ Emus et. al, *supra* note 34.

⁴⁹ 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).

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

⁵¹ Peter Wagner, Aleks Kajstura, Elena Lavarreda, Christian de Ocejó & 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>.

⁵² N.Y. Const., Art. II, § 4.

⁵³ Wagner et al., *50 State Guide*, *supra* note 51.

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

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 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.

⁵⁹ *Id.*

⁶⁰ Wagner et al., *Why the Census*, *supra* note 2.
⁶¹ Ennis et. al, *supra* note 35.
⁶² *Local Governments*, *supra* note 46.
⁶³ Wagner et al., *Why the Census*, *supra* note 2.
⁶⁴ *Id.*
⁶⁵ 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.
⁶⁶ Wagner et al., *Why the Census*, *supra* note 2.
⁶⁷ *Id.*
⁶⁸ *Prison Gerrymandering*, *supra* note 38.
⁶⁹ *Local Governments*, *supra* note 46.
⁷⁰ *Id.*
⁷¹ LatinoJustice PRLDEF is grateful for the research and writing assistance provided by Helen Martinez of the Class of 2016, Northeastern University School of Law and 2015 Summer Legal Intern at LatinoJustice PRLDEF, in the preparation of this Comment.

c75 I represent the _____ District in _____, and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.

The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

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 located far from the actual homes of incarcerated people.

Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universally implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.

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 democracy relies on a population count that accurately

	represents communities, I urge you to count incarcerated people as residents of their home address.
c76	<p>The Campaign for Youth Justice (CFYJ) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20,2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>CFYJ is a national organization focused entirely on ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. The strategic goals of CFYJ are to reduce the total number of youth prosecuted in the adult criminal justice system and to decrease the harmful impact of trying youth in adult court.</p> <p>We strongly believe that any movement must involve those who are most impacted by the laws and policies. Thus, we seek to empower those affected by encouraging them to use their voices and experiences to affect meaningful change. Therefore, we are particularly troubled by the Census Bureau's interpretation of the residence rule; counting incarcerated people as if they were residents of the prison locations rather than residents of their communities hurts our democracy and further disempowers our communities.</p> <p>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. We want to ensure equal representation for all communities so that those most impacted by youth incarceration can have an equal voice in setting criminal justice policy, and so we urge you to count incarcerated people as residents of their home address.</p>
c77	<p>The prison population has increase dramatically in the last decade thus incarcerated people should be counted in their home districts, not where the prison is located. If this is done, extra representation is given to the communities that house the prisons. Especially African-American and Latinos communities are then under counted because of the high number of minorities in the prison population.</p> <p>Gerrymandering of legislative districts is bad enough as it is, we do not need further under representation.</p>
c78	<p>My comment is in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR28950 (May 20, 2015).</p> <p>I urge you to count incarcerated people at their home address, rather than at the particular facility that they are located in on Census Day. By designating a prison cell as a residence in the 2010 Census, the Bureau concentrated 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 these incarcerated people. When this data is used for redistricting, prisons inflate the political power of those people who live near them.</p> <p>North Carolina has three of the top ten most gerrymandered districts (1st, 4th, and 12th) in the country. Counting prisoners as local residents only gives more unethical power to the politicians.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Census Bureau</p>

	<p>strives to count everyone in the right place. In keeping with changes in society and population realities, I believe in a population count that accurately represents communities. This would be accomplished by counting incarcerated people as residents at their home address.</p>
c79	<p>Project Vote submits this comment in response to the Census Bureau’s Federal Register notice entitled, 2020 Decennial Census Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015), Docket No. 150409353-5353. Project Vote urges you to count incarcerated people at their home address, rather than at the particular facility at which they happen to be located on Census day.</p> <p>Project Vote is a national nonpartisan, non-profit organization dedicated to building an electorate that accurately represents the diversity of America’s citizenry. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that every eligible citizen can register, vote, and cast a ballot that counts.</p> <p>Because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly detrimental to proper representation of African-American and Latino communities. These communities are already historically underrepresented in the electorate and prison gerrymandering only contributes to this problem. Thus 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 blocks¹ that are located far from the actual homes of incarcerated people. When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located.</p> <p>Various states, including New York, California, Delaware, and Maryland, have taken statewide action to end prison gerrymandering when drawing districts, and other localities have made similar efforts.² But this ad hoc approach cannot be implemented universally. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so in 2014 it passed and sent the Census Bureau a resolution urging the Bureau to count incarcerated persons at their home addresses.³ A national approach is needed to ensure proper representation of communities.</p> <p>Thank you for this opportunity to comment on the 2020 Decennial Census Residence Rule and Residence Situations. Because Project Vote believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p> <p>¹ Prison Gerrymandering Project, <i>Detailed Demographics of Correctional Populations Now Available for Nation</i> (Sept. 13, 2011), http://www.prisonersofthecensus.org/news/2011/09/13/sf1/ (last visited July 7, 2015).</p> <p>² Prison Gerrymandering Project, <i>Legislation</i>, http://www.prisonersofthecensus.org/legislation.html (last visited July 7, 2015).</p> <p>³ See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (188th Session, Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014), <i>available at</i> http://www.prisonersofthecensus.org/resolutions/MA-resolution-081414.pdf.</p>
c80	<p>I am writing to urge you to change the residence designation of prison inmates from the place where they are incarcerated to the place of last known residence before incarceration, when counting for the 2020 U.S. Census.</p> <p>Counting prisoners where they are incarcerated, as opposed to their last residence, distorts the one-man, one-vote rule which is a linchpin of our</p>

	<p>decennial redistricting. Counting prisoners in a large institution as resident of the area where the prison is located artificially increases the representational strength of the prison area, while diluting the representational strength of the areas where the prisoners hail from. In Oregon, the Snake River Correctional Institution in the extreme eastern part of the state gives extra representational power to residents in those legislative and congresssional districts. The prisoners are in this area only temporarily, have no connection to the community and cannot vote. Yet they are counted as part of the population for purposes of redistricting.</p> <p>I urge you to adopt a nationwide policy of counting prisoners as residents of their last area before incarceration to end this distortion of our redistricting process.</p>
c81	<p>Prison Action Network is submitting this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).</p> <p>We suggest the Census bureau revise their rules because the way prisoners are counted now results in unequal representation in the political process.</p> <p>The needs of citizens in the neighborhoods from which prisoners were taken are not the same as those in the districts where they are counted. It makes no sense to include incarcerated people in their prison's district. Why include people who are temporary and whose needs are not considered by the officials elected to represent the district?</p> <p>It also dilutes the voting power of those located outside the districts with prisons. For instance, in New York, where we are located, each Senate district should have 306,072 residents. District 45, which claims the populations of thirteen large prisons, however, has only 286,614 actual residents. Crediting all of New York’s incarcerated people to a few locations, far from home, enhances the political clout of the people who live near prisons, while diluting voting power of all other New Yorkers.</p> <p>That’s why NY is taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>Why not make it easier and move that responsibility to the Census Bureau that has decades of experience?</p> <p>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 Prison Action Network believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c82	<p>I serve as the State Representative for _____ Legislative District (including _____), and I would like to submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>

	<p>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 a handful of Census blocks far from their actual homes. In my state, for example, 60% of incarcerated people have their home residences in _____ County, yet the Bureau counted 99% of them as if they resided outside _____ County.</p> <p>I have long supported counting incarcerated people at home, and have been working on a solution for _____ since 2009, when I introduced the Prisoner Census Adjustment Act in the _____ and again in the _____ proposing that for purposes of creating election districts and redistricting, requires that State and local governmental bodies use census figures adjusted to reflect the pre-incarceration addresses of persons imprisoned in State or federal facilities in _____; this measure passed the House, but stalled in the Senate. As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the state's population.</p> <p>When we use this data for redistricting, we shift political power to people who live near prisons. This needs to be corrected. The legislation I introduced would adjust redistricting data to count incarcerated people where they live. The bill applies to state, county, and municipal redistricting data, ensuring that prison populations are not used to skew political power in state or local government. And although the bills I introduced in _____ specifically had no impact on funding formulas, I am confident that our state's aid distribution is sophisticated enough that a methodology change at the Bureau will not have any significant impact on our funding streams. (For example, _____ highway funds already separately fund _____, so that no change in the population count would shift highway funds from _____ to _____.)</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are implementing a state- wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts, including at least 22 here in _____.</p> <p>But this ad hoc approach is not efficient. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state or county to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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 democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.</p>
c83	<p>The census claims to report where people reside but its definition of "reside" is amiss. It's inappropriate to say that a person held against his will resides in the jail.</p> <p>Such a claim has implications for elections.</p> <p>Iowa law creates election districts based on population. But if the population includes prisoners, they should not count as residents. They cannot vote.</p> <p>Anamosa, Iowa once found itself with an election district comprised of so many prisoner "residents" that practically no one in the district could vote. Yet they were supposed to elect a member of the city council. Anamosa had to eliminate districts altogether to get around this problem</p>

caused by the Census Bureau.

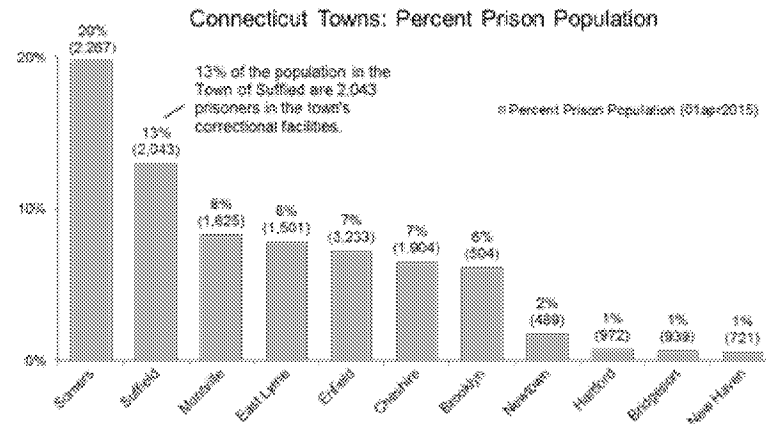
My own state senate district is also home to a pair of state prisons. Why do those prisoners count as residents here when they cannot vote? With so many Americans in prison this can lead to a lot of distortion.

Some changes should be made in this practice.

c84 The Latino and Puerto Rican Affairs Commission (LPRAC) was created by an act of the Connecticut General Assembly in 1994. In essence, we are a 21 member non-partisan commission mandated by state law to make recommendations to the legislature and the Governor of Connecticut for new or enhanced policies that will foster progress in achieving health, safety, educational success, economic self-sufficiency, and end discrimination for the Latino community in our state. LPRAC conducts educational and outreach activities to strengthen connections across the state's Latino population, establishing innovative partnerships, listening to stakeholders on issues particularly impacting the Latino population, and conducting wide-ranging socioeconomic research to fill gaps in the state's data collection and provide policy makers with comprehensive, up-to-date statistical information from which to develop effective and responsive laws, regulations, policies and procedures.

We strongly recommend that residence rules should be changed in the 2020 census for *People in Correctional Facilities for Adults* and *People in Juvenile Facilities*. The current residence rules and residence situations adversely affect the political representation of Hispanics in Connecticut.

For example, in the town of Somers, CT, the prison population accounts for 20 percent of the total population.¹ Furthermore, 24 percent of prisoners in Somers are Hispanic.² There are approximately 535 Hispanic prisoners in Somers but only 150 Hispanic residents who are not in the prison population.³ Consequently, the Hispanic prison population in Somers outnumbers Hispanic residents by over 250 percent. Furthermore, most of the Hispanic prisoners in Somers come from urban areas such as Hartford and Bridgeport, while Somers is a predominately-white rural town.



Because of the current practice of counting prisoners at their prison location, political representation for residents of Somers is **artificially increased** when legislative district boundaries are drawn for state senators and representatives. In order to stop this skewing of political representation, we ask that the residence rules and residence situations for *People in Correctional Facilities for Adults* be changed as

follows:

- (a) **People in correctional residential facilities on Census Day:** Prisoners with a household residence in Connecticut should be counted at the location of their household residence. Prisoners with a household residence outside Connecticut should be counted at the correctional residential facility.
- (b) **People in federal detention centers on Census Day:** Prisoners with a household residence in Connecticut should be counted at the location of their household residence. Prisoners with a household residence outside Connecticut should be counted at the federal detention center.
- (c) **People in federal and state prisons on Census Day:** Prisoners with a household residence in Connecticut should be counted at the location of their household residence. Prisoners with a household residence outside Connecticut should be counted at the location of the federal or state prison.
- (d) **People in local jails and other municipal confinement facilities on Census Day:** Prisoners with a household residence in Connecticut should be counted at the location of their household residence. Prisoners with a household residence outside Connecticut should be counted at the location of the local jail or the municipal confinement facility.

For *People in Juvenile Facilities*, residence rules should be similarly changed as follows:

- (a) **People in correctional facilities intended for juveniles on Census Day:** Juveniles with a household residence in Connecticut should be counted at the location of their household residence. Juveniles with a household residence outside Connecticut should be counted at the correctional facility.
- (b) **People in group homes for juveniles (non-correctional) on Census Day:** Juveniles with a household residence in Connecticut should be counted at the location of their household residence. Juveniles with a household residence outside Connecticut should be counted at the group home.
- (c) **People in residential treatment centers for juveniles (non-correctional) on Census Day:** Juveniles with a household residence in Connecticut should be counted at the location of their household residence. Juveniles with a household residence outside Connecticut should be counted at the residential treatment center.

These recommended changes to residence rules and residence situations will *not affect* congressional reapportionment; however, it will end the existing over-representation in state legislatures of communities with group quarters such as correctional and juvenile facilities. Furthermore, in Connecticut most of the communities with these types of facilities have a predominately-white population while the prison and juvenile facilities located in these communities are disproportionately Hispanic. These suggested changes in residence rules and residence situations will end the current dilution of political representation in Connecticut's predominately-Hispanic urban areas.

¹ ACS 2013 5yr B01001

² CT Dept. of Corrections April 2015

³ ACS 2013 5yr B11002I

c85

Thank you for this opportunity to respond to the Bureau's Notice, seeking comments on the Bureau's 2010 Census Residence Rule and Residence Situations (80 FR 28950, dated May 20, 2015). The League of Women Voters of Virginia urges a change to Rule 13, People in Correctional Facilities for Adults, due to the impact it has on voter representation and on the work of the League to protect voting rights, ensure fair and equal representation, and promote accurate redistricting.

The Bureau's current policy, as reflected in Rule 13, has the effect of improperly inflating the true population of a county or state district. Counting prisoners as if they are residents of the prison location effectively gives greater representation to people who happen to live in

districts that contain prisons. Often those prisoner counts are in the hundreds and at times in excess of one thousand per prison. Thus, prisoners, whose home residences are in cities and towns scattered across the state, are concentrated and counted in just one block. The result: a county supervisor representing a district with a prison will have fewer actual constituents in his or her district than a legislator in an adjoining district that has no prison. This results in an unfair diluted representation for residents of the district with no prison.

Prisoner home addresses are in the communities they come from and most often typically return to. While incarcerated prisoners in Virginia cannot vote, they do retain affiliation with their home communities because their families, friends and roots are in their home area. Prisoners in one state in this country who can vote while incarcerated must do so by absentee ballot, using their home address, not their prison address. In no sense can a prison be considered a home.

Currently, Virginia's inmate population in state and federal prisons is over 30,000. Those prisons are located predominately in rural areas where local districts experience the greatest impact when redistricting. During the 2011 decennial redistricting in Virginia, the prison populations identified by the Census Bureau were all counted at their prison locations for state House and Senate districts. This resulted in skewed representation at the state legislature. People incarcerated in state and federal prisons located in State House District 75, for example, accounted for over 12% of the district's population as reported by the Census in 2010. This means that residents of District 75 were given more voting power in the Legislature than any other resident in the state.

Some Virginia county governments have sought to avoid this kind of undemocratic outcome. Lack of uniformity prevails, however, in the way prisoner counts are used for redistricting in local jurisdictions. Six counties adjust the Census data and do not include prisoner counts when drawing their supervisors' districts. Eighteen other counties in Virginia use Census counts and include prison populations when they redistrict, leaving them with inaccurate population counts upon which to draw boundaries.

This hodgepodge manner in which census data is used during the redistricting process at the local level strikes at the heart of fairness in electoral representation. Counting prisoners uniformly at their home addresses would solve that problem.

For all of these reasons, the League of Women Voters urges the Bureau to change Rule 13 and count prisoners at their true home addresses in 2020 so state and local districts can be drawn accurately, consistently, and fairly during redistricting.

c86 The Tribal Law Journal of the University of New Mexico School of Law writes in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.

As a premier academic and legal journal, we take an interest in the accuracy of the methodology that the U.S. Census Bureau uses to count the U.S. population. Our authors often rely on population data offered by the U.S. Census Bureau in their articles. In turn, members of the legal profession depend on our articles to support advocacy efforts, lawmaking, rulemaking, legal strategy, and jurisprudence.

It has come to our attention that the US Census Bureau's 2010 Residence Rule and Residence Situations skews the accuracy of the U.S. Census data by counting incarcerated people at the facilities that they are confined in, rather than at their home addresses, on Census day. By designating a prison cell as a residence in the 2010 Census, the Census Bureau located a population that is disproportionately male, urban, and Black, Native American or Latino into Census blocks far from their homes. This inflates the apparent size of the towns of people who live near prisons. When this data is used in submissions to our publications, the reliability of important scholarship is risked.

More worrisome, when used for redistricting, the 2010 U.S. Census deprives political power from those communities, including sovereign tribal nations, where a disproportionate amount of people are arrested and imprisoned away from home. Members of our journals identify with those communities.

	<p>Because we believe in a population count that accurately represents our Nation, we urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Thank you for your consideration.</p>
c87	<p>The Drug Policy Alliance submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). The Drug Policy Alliance urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The Drug Policy Alliance is the nation’s leading organization promoting drug policies grounded in science, compassion, health and human rights. We work to ensure that our nation’s drug policies no longer arrest, incarcerate, disenfranchise and otherwise harm millions – particularly young people and people of color who are disproportionately affected by the war on drugs. Prison gerrymandering is one of the most troubling ways that our current policies discriminate against communities worst harmed by the war on drugs.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million but since then, the nation’s incarcerated population has more than quadrupled to over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.</p> <p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>New York State is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p>

	<p>The Drug Policy Alliance is concerned that the Bureau’s current method of counting incarcerated people is inaccurate. We share the following two examples of specific inaccuracies flowing from the Bureau’s current method of counting incarcerated persons as follows: Consider a statistic from New York, where the upstate region has steadily been losing population: in the 2000 Census, almost one-third of the persons credited as having “moved” into upstate New York during the previous decade were persons sentenced to prison terms in upstate prisons. Such false migratory patterns can wreak havoc on seemingly sound policy decisions. In Texas, in two legislative districts drawn after 2000, 12% of the population consisted of incarcerated persons.</p> <p>We supported the passage of New York’s law ending prison gerrymandering. On the national front, we have also previously called upon the Census Bureau to change its practice in a 2013 letter submitted along with 209 other organizations.</p> <p>So we 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 the Drug Policy Alliance believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c88	<p>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.</p> <p>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.¹ 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.</p> <p>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.² Every person counted in prison on Census Day is one fewer resident counted in the home 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.</p> <p>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.³</p> <p>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.</p> <p>Professor Erika Wood’s recent analysis of how Maryland and New York implemented their new laws explains in detail the process each</p>

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.⁴ 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.

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*⁵ – 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.⁶
 - 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.⁷
3. Conduct experiments using existing state corrections data to evaluate how these administrative records, in their current form, would impact Census Bureau workflow and 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.⁸

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.

¹ 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).

² 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 which found that most Maryland prisoners returned to Baltimore after their release from prison).

³ 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).

⁴ 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>.

⁵ 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>.

⁶ 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.

⁷ 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/.

⁸ Owen and Chan, *supra* note 5, at 37.

c89 I am writing this letter in response to the NOFA of the U.S. Census Bureau requesting public comment on the 2010 Census Residence Rule and Residence Situations. I strongly believe that the Bureau's method of counting incarcerated people at prison locations, rather than in their home communities, leads to an unequal distribution of political power in state and local governments known as "prison gerrymandering." I have attached an April 1, 2013 joint Congressional letter written to then Acting Director Thomas Mesenbourg outlining our support for changing this Census program. Please do not hesitate to contact my office regarding any questions or concerns regarding this issue. Thank you.

April 1, 2013

Mr. Thomas Mesenbourg
 Acting Director
 U.S. Census Bureau
 4600 Silver Hill Road
 Washington, DC 20233

Dear Mr. Mesenbourg:

We are writing to request that the Census Bureau begin counting incarcerated people as residents of their home addresses rather than of the prisons in which they are confined. The Census Bureau has long maintained that an accurate census count yields not only a correct number of residents, but also the correct location for each resident. We believe additional thought should be given to the deemed place of residence in this unique situation. As Members of Congress, we have an interest in ensuring that the decennial enumeration provides fair and equitable representation for all.

In 2011, nearly 1 in 107 adults in the United States was imprisoned.¹ The Census Bureau's current "residence rules" count incarcerated individuals as residents of the prisons where they are serving their sentences. These incarcerated individuals normally have no ties to the prison location, cannot vote, and most often return to their home communities upon release. The designation of a prison cell as a residence prevents populations in more than 1,500 Federal and state prisons that are largely male, urban, and African-American or Latino from being counted as residents of their home communities.

Four states containing 21% percent of the U.S. population have enacted legislation to adjust census data to ensure that prisoner counts do not comprise legislative districts. Maryland and New York enacted legislation to ensure that incarcerated people are counted by home addresses, and Maryland's "No Representation without Population Act" was recently upheld by the U.S. Supreme Court.²

We applaud the Census Bureau's decision to release prison data from the 2010 census to assist individual state and local governments in their redistricting efforts. We hope the Census Bureau will develop a standardized national solution to the problem of redistricting distortion, relieving state and local governments from the need to make piecemeal adjustments to ensure prisoners are accurately assigned to their home residences and accurately allocated among legislative and Congressional districts. We therefore urge the Census Bureau to take the steps necessary to ensure that Census 2020 counts prisoners at their home addresses to assist state and local governments in accurately representing these populations.

We thank you for your careful consideration of this issue.

¹ Office of Justice Programs, Bureau of Justice Statistics, *Correctional Populations in the United States, 2011* (Nov. 27, 2012) (online at www.bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4537).

² *Fletcher v. Lamone*, ___ U.S. ___, 2012 WL 1030482 (June 25, 2012).

c90

I am writing in response to your federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).

I was incarcerated at York Correctional Institution in Niantic, Connecticut from December 7, 2007 to March 18, 2014. Knowing my convictions remained on appeal and were, therefore, legally stayed, the local registrar of voters in my hometown of Orange, Connecticut never removed my name from the town's list of registered voters.

Because of the current residence rule, during the last Census I was counted as if I were a resident of Niantic, the town containing the prison where I was incarcerated, despite the fact that I was registered to vote in another town: Orange, Connecticut. This was not fair to my community, nor to any community in Connecticut that didn't have a prison.

Furthermore, it is an inaccurate way to count voters. The right to vote is sacred; counting me in one town when I was registered in another is a poor example of how to protect a citizen's most treasured right.

	<p>Because I believe in a population count that accurately represents my community and counts voters where they are actually registered, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c91	<p>The City of Fayetteville, Cumberland County and the Fayetteville Regional Chamber formed a partnership that works collaboratively to engage with the federal government and pursue funding assistance for strategic focus areas identified in an annual, collectively established agenda. The partnership's combined efforts are critical to the growth and strength of our community. These efforts ensure protection and preservation of essential community assets and resources, allowing all areas of the community and surrounding metropolitan and unincorporated areas to thrive.</p> <p>We would like to thank you for the opportunity to submit comments regarding the Census Bureau's Residence Rule and Residence Situations. One of our community federal agenda goals is to further advance the issues associated with the current process utilized by the US Census Bureau for counting deployed soldiers. The partnership would like to request that the Census Bureau undertake a review of the decades-old policy to prevent further undercounting in the garrison communities.</p> <p>It is our understanding that you are currently reviewing the 2010 Residence Rule and Residence Situations in order to determine if changes should be made to the Rule and/or if the situations should be updated for the 2020 decennial Census. As shown below, we believe that the Rule should be applied to the situation of military personnel who are temporarily deployed overseas to a conflict zone. We are also suggesting several updates to Situation 9(f) for the 2020 Census.</p> <p>Please note that the City of Fayetteville is located in Cumberland County, NC. Cumberland County is the home of Fort Bragg, the largest Army installation in the United States. Because of its size, Fort Bragg influences the population of our City, our County, and the surrounding region. Also, please note that in 2008, the North Carolina General Assembly annexed most of the Cumberland County part of Fort Bragg into the City of Fayetteville; the remainder was annexed into the Town of Spring Lake.</p> <p>In the comments that follow, we refer to the Rule and Situations as outlined in the Federal Register notice published on May 20, 2015.</p> <p>Comments Regarding the Residence Rule</p> <p>As we understand it, the Residence Rule is based on the basic idea that people should be counted at their usual residence, which is the place where they live and sleep most of the time. We agree with this Rule, and we believe that this Rule should be applied to the situation of military personnel who are temporarily deployed overseas to a conflict zone. This would result in these temporarily deployed persons being counted as part of the resident population of the military community from which they were deployed.</p> <p>Comments Regarding Situation 9(f)</p> <p>Situation 9(f) pertains to "U.S. military personnel living on or off a military installation outside the U.S., including dependents living with them." According to the Federal Register Notice, these people are currently "counted as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire."</p> <p>We think that this current situation is not fair for cities and counties that are located near military installations which are subject to large troop deployments. (Appendix 1 explains how the Census Bureau's current procedures for counting deployed military members have negatively impacted North Carolina and its military communities. Appendix 1 provides information on the impacts at the state level, the</p>

military county level, the Fort Bragg annexation area level, and the City of Fayetteville level.)

We would like to offer the following suggestions for updates to Situation 9(f):

Suggestion 1: The Census Bureau should revise Situation 9(f) so that it reflects at least the following two categories of U.S. overseas military populations:

Category 1- Military Members Temporarily Deployed Overseas to a Conflict Zone-For these members, the deployment will hopefully consist of a "there and back" experience. These members might find themselves in places such as Iraq and Afghanistan, but they intend to return to the military installation from which they were temporarily deployed. Members are expected to return to the location from where they deployed, rather than reporting to their next rotational duty assignment. But for being deployed, these members would be back at their last duty station. Although these members might be deployed for 6 to 9 months, we would argue that this is a "temporary" deployment, when considered in light of the overall amount of time these members are assigned to a stateside military base. It is assumed that these members would not likely have dependents living with them while temporarily deployed overseas to a conflict zone.

Category 2-Military Members Assigned Overseas Outside of a Conflict Zone-For these members, the experience of being assigned overseas is part of their career rotation. These members might find themselves assigned to places such as Germany and Japan. For these members, their next rotational duty assignment will very likely be somewhere different from their previous location. It is assumed that these members might have dependents living with them while stationed overseas outside of a conflict zone.

Suggestion 2: The Census Bureau should revise its method of counting overseas military population. In the Federal Register Notice, there is no information on how U.S. military personnel in Situation 9(f) are to be counted, except that these persons are to be counted "as part of the overseas population." We understand that under current procedures, overseas military personnel are counted through administrative records rather than a census questionnaire. We understand that these administrative records are maintained by the Defense Manpower Data Center (DMDC). We also understand that under current procedures, the Census Bureau currently counts these people as part of the apportionment population, but not part of the U.S. resident population. We understand that the Census Bureau allocates these people to a state's apportionment population based on a hierarchy of information that is shown in a person's file maintained by the DMDC. This hierarchy currently starts with the person's home of record, then the person's legal residence, and finally, the person's last duty station. We understand that the Census Bureau has used this hierarchy for the past several decennial censuses.

Suggestion 2(a): The Census Bureau should revise its method of counting overseas military by reversing the hierarchy of information that it currently uses to allocate people to a state's apportionment population. The reversed hierarchy should start with the person's last duty station, then the person's legal residence, and finally, the person's home of record. This suggestion of reversing the hierarchy is intended to be applied to both Category 1 and Category 2 of the overseas population suggested above; this would ensure that both categories are treated the same way. However, if the Census Bureau is not able to treat both categories in the same way, then we would encourage the Census Bureau to apply the reversed hierarchy to at least Category 1. After all, people in Category 1 are the ones who intend to return to their last duty station. They are the ones most likely to return to their last duty station after their deployment ends; this last duty station is also likely where their immediate families are living.

Suggestion 3: Assuming that the Census Bureau is willing to use the reversed hierarchy for at least the people in Category 1, the Census Bureau should count the people in Category 1 as part of a state's resident population, as well as part of a state's apportionment population. As noted above, the people in Category 1 intend to return to their last duty station and they are most likely to return to their last duty station, after their deployment ends.

Suggestion 4: Assuming that the Census Bureau is willing to count the people in Category 1 as part of a state's resident population, the Census Bureau should use the actual address of a person in Category 1 and allocate the person to the census block in which they resided before being deployed. This would ensure that the person is properly counted in the correct jurisdiction (city and county) in which the person resided before being deployed. We assume that the person's actual address would be in the administrative (DMDC) record for the person, because if the person were injured while being deployed, the military would need to be able to notify the person's family members of the injury. We assume that demographic characteristics (e.g., age, sex, and race) about the person in Category 1 would also be available in the administrative record for the person.

Suggestion 5: Consider adding a new question to the Census form. This question would ask: "Is a member of this household currently temporarily deployed overseas to a conflict zone?" A follow-up question would ask: "If yes, please provide the person's name (and age, sex, and race)." This information would then be matched against the administrative record for the Category 1 deployed person.

Suggestion 6: Clarify the Census instructions provided to military families. Local experience has suggested that families of deployed spouses were confused by Census instructions and did not complete their Census form. This increased the undercount of population in military communities. The instructions need to state that if a family member is temporarily deployed overseas to a conflict zone, the person filling out the form should list the deployed family member on the Census form. The instructions should also clearly state that all members of the family should be listed on the form, if a person from the family is temporarily deployed overseas to a conflict zone.

In summary, if the Census Bureau would adopt these suggestions, people in Category 1 (military members temporarily deployed overseas to a conflict zone) would be counted as part of the resident population of the community from which they were deployed. This would correct the undercount problem that has existed in military communities. If the Census Bureau would adopt these suggestions, people in Category 1 would be treated like the people in Situation 1 (people away from their usual residence on Census Day). They would be counted at the residence where they live and sleep most of the time, but for being deployed.

Again, thank you for the opportunity to make these suggestions. If you have any questions, feel free to contact us through the City of Fayetteville's Demographic Planner, _____, at _____, or by way of email at _____.

Appendix 1

How the Census Bureau's Current Procedures for Counting Deployed Military Members Have Negatively Impacted North Carolina and its Military Communities

Introduction and Purpose of This Appendix 1

In the letter preceding this Appendix 1, The City of Fayetteville, Cumberland County and the Fayetteville Regional Chamber partnership, has made several suggestions to the Census Bureau regarding the Census Bureau's current procedures for counting deployed military members. These procedures are based on the 2010 Census residence rule and situation 9(f). The purpose of this Appendix 1 is to show that the current procedures have negatively impacted North Carolina and its military communities. This Appendix 1 provides data in support of the partnership's suggestions for changing the Census Bureau's current procedures.

Background on the Census Bureau's Current Procedures

Prior to the 2010 Census, state and local leaders in North Carolina asked the Census Bureau to revise procedures for counting military members who are deployed overseas. Under the current procedures for the decennial census, in effect from prior censuses, the Census Bureau counted deployed military members as part of the overseas population. For the apportionment counts, the Census Bureau allocated deployed military members to a state's overseas population. The Census Bureau first used the home of record. If home of record was not available, the Census Bureau used the legal residence. If neither home of record or legal residence were available, the Census Bureau used the last duty station.

State and local leaders in North Carolina were concerned that the Census Bureau's current procedures would harm North Carolina, especially if a large number of military members stationed in North Carolina were temporarily deployed while the 2010 Census was conducted. Officials from the Census Bureau told the state that there was not time to change the methods for the 2010 Census. (Census Bureau officials suggested that they would consider changes before the 2020 Census.)

On April 1, 2010, the 2010 Census was conducted.

When the US Census Bureau conducted the 2010 Census, many military personnel stationed at military installations in North Carolina were temporarily deployed overseas. State officials estimate that more than 40,000 military members were deployed from military bases in North Carolina around the time of the 2010 Census (April 1, 2010). (Fayetteville Observer, 3/30/11, p 1A.)

On December 21, 2010, the Census Bureau released the first counts from the 2010 Census. These counts were known as the apportionment counts. These counts were used to apportion the seats in the U.S. House of Representatives to the 50 states. The apportionment population for a state consisted of two numbers: the resident population of the state and the U.S. overseas population allocated to the state, based on home of record information.

Table 1 below shows the apportionment populations for the U.S. and North Carolina, based on the 2010 Census.

Table 1
Apportionment Populations for the U.S. and North Carolina, Based on 2010 Census

Geographic area	Number of representatives	Apportionment population		
		Total	Resident population	U.S. overseas population
United States	435	309,183,463*	308,745,538	1,042,523
North Carolina	13	9,565,781	9,535,483	30,298

Notes:*The total apportionment population of the US includes the resident population for the 50 states, as ascertained by the Twenty-Third Decennial Census under Title 13, United States Code, and counts of overseas U.S. military and federal civilian employees (and their dependents living with them) allocated to their home state, as reported by the employing federal agencies. The apportionment population excludes the resident and overseas population of the District of Columbia.

Source: U.S. Census Bureau. 2010 Census. Population and Housing Unit Counts. United States Summary. Table A.- "Apportionment of U.S. House of Representatives and Apportionment Population Based on 2010 Census."

As shown in Table 1 above, the total U.S. overseas population was 1,042,523, and the North Carolina overseas population was 30,298.

Data on the components of the U.S. overseas population are shown below in the left half of Table 2. As shown, there were 410,696 persons classified as in the Armed Forces and living overseas in the 2010 Census. The City staff assumes that detailed records are available on each of these deployed members of the military. The staff assumes that the military could break this figure down by the number who are deployed temporarily to conflict zones (such as Afghanistan and Iraq), and the number who are assigned to long term duty stations outside of a conflict zone (such as Germany and Japan). (These distinctions are referred to as Category 1 and Category 2 in the partnership's letter.)

Unfortunately, it has not been possible to locate any data sources showing the components of the North Carolina overseas population. (On July 15, 2015, City staff was told that the North Carolina data were not published and cannot be released at this time.)

Therefore, the City staff has estimated the components of the North Carolina overseas population, based on the U.S. percentages. These estimates are shown below in the right half of Table 2.

Table 2
Details on the U.S. Overseas Population and Estimates for North Carolina

	2010-United States		2010-North Carolina (estimated)	
	Number	Percent*	Number	Percent
Total	1,042,523	100.00%	30,298	100.00%
Federal Employees	434,382	41.67%	12,624	41.67%
Armed Forces	410,696	39.39%	11,936	39.39%
Fed Civilian Employees	23,686	2.27%	688	2.27%
Dependents of Fed Employees	608,141	58.33%	17,674	58.33%
Armed Forces Dependents	592,153	56.80%	17,209	56.80%
Fed Civilian Dependents	15,988	1.53%	465	1.53%
Total Armed Forces & Dependents	1,002,849	96.19%	29,145	96.19%
Total Fed Civ Empl & Dependents	39,674	3.81%	1,153	3.81%

Source: US data based on report entitled, 2010 Census Federally Affiliated Overseas Count Operation Assessment Report. Data were in an unnumbered table on page 2 of the report. NC data calculated, based on US percentages.

Note:*Published percentages were rounded and did not show any decimal places. Percentages shown above are shown to 2 decimal places.

As shown above in Table 2, City staff has estimated that 29,145 people in the North Carolina overseas population were members of the Armed Forces and their dependents. Out of this, 11,936 were estimated to be members of the Armed Forces, while 17,209 were estimated to be dependents of the Armed Forces members.

If the Census Bureau would adopt the suggestions in the partnership's letter [e.g., if the Census Bureau would distinguish between Category 1 (temporarily deployed overseas) and Category 2 (assigned overseas for a longer term), and if the Census Bureau would use the last duty station criteria in allocating overseas military members to states,) the City staff believes the numbers for North Carolina shown in Table 2 above would be very different.

On March 2, 2012, the Census Bureau released the P.L. 94-171 Redistricting Summary File Data for North Carolina. This release provided

detailed information down to the block level for resident total population by race, voting age population by race, Hispanic Origin, and number of housing units. The Census Bureau provided summaries of this data by block groups, census tracts, voting districts, cities, and counties. Thus, local officials were able for the first time to know what their new 2010 Census populations were. The Redistricting Data release did not include any information about the group quarters population.

Assessment of the Impacts of the Current Procedure

As pointed out in Table 2 of the preceding section, the Census Bureau reported that the North Carolina overseas population was 30,298. Overseas military members made up a large part of this number, but it has not been possible to determine the actual number. However, state officials estimated that more than 40,000 military members were deployed from military bases in North Carolina around the time of the 2010 Census (Fayetteville Observer, 3/30/11, p. 1A).

City staff has tried to locate studies documenting the impacts of the current procedure on North Carolina. City staff has also performed its own analysis, using Census Bureau data. These studies and analysis efforts are discussed below.

Study of Defense Department Data. This is the most important study that City staff has been able to identify. Although City staff has not been able to locate a copy of this study, it was mentioned in a major story in The Fayetteville Observer published on March 30, 2011. This story was entitled, "Deployment Costly for State in Census." This story was based on a staff and wire report. The story referred to a study of Defense Department data that was provided to the Associated Press.

One of the main findings from the study was: "North Carolina officials estimate more than 40,000 troops were deployed from the state's military bases around the time of the census one year ago. But only 12,200 of the nation's overseas military personnel listed North Carolina as their home state, according to Department of Defense data provided to AP." This created a gap of around 28,000 troops, which was costly to the state. For example, had the apportionment population of the state been only 15,000 higher, the state would have been eligible for an extra congressional seat. This gap also likely resulted in considerable federal funding losses, which are often distributed based on population. (Fayetteville Observer, 3/30/11, p 1A.)

City Staff's Analysis Based on Census Bureau Data - City staff has used the data released as part of the 2010 Census to analyze the extent to which deployments have affected populations in North Carolina. This included using the Advanced Group Quarters Data, which was released on April 20, 2011, via the Census Bureau's FTP site. (It is believed that this data was later incorporated into the 2010 Census Summary File 1 dataset.) The term, "group quarters," refers to living quarters other than traditional housing units. Examples of group quarters are: nursing homes, college dormitories, and military quarters, i.e., military barracks.

The release of the Advance Group Quarters data made it possible for the first time to approximate the number of group quarters military personnel who were deployed from North Carolina. The general approach was to compare the number of people living in military quarters in the 2010 Census against the same number from the 2000 Census. It is assumed that military quarters population is a good indicator of the overall military population of an area.

The City staff has used Census Bureau data at four different scales: the state level, the military county level, Fort Bragg annexation area level, and the City of Fayetteville level. Each is discussed below.

Analysis at the State Level-Table 3 below shows the number of persons living in military quarters (i.e., barracks) in North Carolina in 2000 and 2010.

Table 3
Number of Persons Living in Military Quarters in North Carolina in 2000 and 2010

Geographic Area	2000 Census	2010 Census	Absolute Change, 2000-2010	Percent Change, 2000-2010
North Carolina	37,022	26,326	-10,696	-28.89%

The data in Table 3 show that the military quarters population decreased by 10,696 between 2000 and 2010. It seems reasonable to conclude that at least part of this decrease was due to the Census Bureau's procedures for counting deployed military personnel from the various military bases in North Carolina.

However, other factors could have affected this decrease. For example, the decrease could be a function of modernization programs at military bases in North Carolina. For example, a base might have torn down some barracks between 2000 and 2010; in this situation, it is assumed the base would have provided opportunities for the displaced military personnel to live off base.

Analysis at the Military County Level - "Military County" refers to any county with people living in military quarters. Table 4 below shows the number of persons living in military quarters in North Carolina by county in 2000 and 2010. The counties are ranked in the order of their military quarters population in 2000.

Table 4
Number of Persons Living in Military Quarters in North Carolina, by County, in 2000 and 2010

Geographic Area	2000 Census	2010 Census	Absolute Change, 2000-2010	Percent Change, 2000-2010
Onslow Co	18,491	16,697	- 1,794	- 9.70%
Cumberland Co	13,857	5,949	-7,908	-57.07%
Craven Co	3,420	2,986	- 434	-12.69%
Wayne Co	563	594	31	5.51%
Richmond Co	374	0	- 374	-100.00%
Brunswick Co	222	4	- 218	- 98.20%
Pasquotank Co	33	41	8	24.24%
Dare Co	27	6	- 21	- 77.78%
New Hanover	22	29	7	31.82%
Carteret Co	13	15	2	15.38%
Pamlico Co	0	4	4	
Mecklenburg	0	1	1	

Total-NC	37,022	26,326	-10,696	- 28.89%
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As shown above, Cumberland County (the home of Fort Bragg) experienced the largest absolute decrease in military quarters population of any county in North Carolina between 2000 and 2010.

It is assumed that this decrease is significantly related to deployment of troops from Fort Bragg around the time of the 2010 Census, and to the Census Bureau's procedures for counting deployed military members.

According to The Fayetteville Observer, Fort Bragg officials estimate that 13,000 soldiers returned to Fort Bragg in 2010 after being deployed to Afghanistan, Iraq, and Haiti. It was estimated that many of these returning troops returned after the date of the 2010 Census (April 1, 2010). (Fayetteville Observer, 3/30/11, p. 1A.)

Analysis at the Fort Bragg Annexation Area Level - A large part of Fort Bragg was annexed into the City of Fayetteville on September 1, 2008. Since the date of annexation, the military quarters population of this part of Fort Bragg has declined significantly. This decrease in the military quarters population definitely impacted the population of the City of Fayetteville, as reflected in the population estimates prepared by the State Demographer.

Table 5 shows data for the part of Fort Bragg annexed into the City of Fayetteville for four time periods (as of the 2000 Census, as of July 1, 2008, as of July 1, 2009, and as of the 2010 Census).

Table 5
Data for the Part of Fort Bragg Annexed Into the City of Fayetteville Effective 9/1/08

Population Components	As of 2000 Census (1)	As of July 1, 2008 (2)	As of July 1, 2009 (2)	As of 2010 Census (3)
Total Number Housing Units	4,142	4,338	4,338	4,185
# Vacant Housing Units	103	500	500	379
# Occupied Housing Units	4,039	3,838	3,838	3,806
Average Household Size	3.7096	3.6201	3.6201	3.1742
Household Population	14,983	13,894	13,894	12,081
Group Quarters Population	13,132	12,053	11,028	5,116
Total Population	28,115	25,947	24,922	17,197

Sources:

1. The data as of the 2000 Census are based on a tabulation of 2000 census blocks that were completely within the boundaries of the area annexed in 2008. When 2000 census blocks straddled the annexation boundary, City staff worked with a staff member from Fort Bragg in allocating housing units and population to the part of the block included within the annexation boundary. The City had to submit these estimates, based on 2000 Census data, to the US Justice Department for preclearance of the annexation of Fort Bragg.
2. The housing count data and the household population data for July 1, 2008 and for July 1, 2009 are from information provided by Fort Bragg officials to the City for submission to the State Demographer. The group quarters population data for July 1, 2008 and for July 1, 2009 are from information provided by Fort Bragg officials to the State Demographer. The State Demographer used all of this information in preparing her "standard" estimate of population for the City of Fayetteville.
3. The data as of the 2010 Census are based on a tabulation of 2010 census blocks that were completely within the boundaries of the area annexed in 2008. This involved using GIS to join block-level group quarters data, by facility type, to the shape file of census blocks.

The information in Table 5 above shows that there was a gradual decrease in the group quarters population in the Fort Bragg annex area between the 2000 Census and July 1, 2009. This might have been a function of the demolition of old barracks and the provision of opportunities for barracks residents to move off-post.

The information in Table 5 above also shows that there was a very sharp decrease in the group quarters population in the Fort Bragg annex area between July 1, 2009 and the 2010 Census. This was very likely due to the deployment of troops living in barracks on Fort Bragg, and to the Census Bureau's procedures for counting deployed military members.

The information in Table 5 above also suggests that the impact of deployments can be detected in the Fort Bragg annex area, in terms of a decrease in household population between July 1, 2009 and the 2010 Census. (It should be noted that in addition to barracks, many people on Fort Bragg live in traditional family units. These units are typically single-family detached units.) For example, while the number of occupied housing units declined slightly, the average household size decreased significantly. This might be because of the deployment of one adult from the household. Under this scenario, another adult would have been left in the household, along with any children from the household.

Analysis at the City of Fayetteville Level - The decrease in the military quarters population within the part of Fort Bragg that was annexed into the City of Fayetteville in 2008 has definitely impacted the overall population of the City of Fayetteville.

For example, the overall population of the City according to the 2010 Census was only 200,564. Prior to the release of the 2010 Census data for Fayetteville, the North Carolina State Demographer had estimated that the City's population was approximately 208,000.

It should be noted that this analysis of deployment impacts has not included a study of neighborhoods located off-post from Fort Bragg but within the City of Fayetteville. It is possible that if such a study were done, it would reveal that average household size was suppressed by the absence of an adult from the household who was deployed at the time of the 2010 Census.

Officials from another military community in North Carolina, Jacksonville, have reported that there was an undercount of household population in the Jacksonville area. It is believed that the undercount resulted in part from confusing instructions on how to fill out the Census form. A study of this problem has not been done in the Fayetteville area.

Summary of the Impacts of the Current Procedure

The study of Defense Department data outlined above, along with the City staff's analysis of Census Bureau data at several geographic

	<p>scales, suggest that the 2010 Census populations of military base communities in North Carolina were significantly impacted by the Census Bureaus' procedures for counting military members who were temporarily deployed overseas to a conflict zone. It is unfortunate that many of these deployed members of the military were apparently deployed just prior to the 2010 Census. This meant that under the current procedures of the Census Bureau, they were not counted in state, county, and city resident population counts. However, if the Census Bureau will adopt the suggestions outlined in the partnership's letter, this situation will likely not happen again.</p>
c92	<p>The Maryland State Conference of NAACP Branches, the Somerset County Branch of the NAACP (together, “the NAACP”) and the American Civil Liberties Union of Maryland (“the ACLU-MD”)¹ submit this comment in response to the Census Bureau’s <i>Federal Register</i> notice regarding the Residence Rule and Specific Residence Situations, 80 FR 28950 (May 20, 2015) to support counting incarcerated people at their places of last residence, rather than at their places of incarceration. As detailed below, our experience with this issue in Maryland provides strong support, from a civil rights perspective, for this change.</p> <p>The NAACP and the ACLU-MD are committed to preserving all citizens’ right to be equally represented in the electoral system, and we have worked to make that promise a reality in our own state. Somerset County, on Maryland’s Eastern Shore, has long been one of the state’s most racially-divided communities, with a sad history that includes lynchings, formal opposition to school integration through the 1960s, and court-ordered reforms to racially discriminatory election and employment practices into the 1980s and 1990s.²</p> <p>At the time of the last U.S. Census, Somerset County was 42 percent African American—the highest ratio of blacks to whites in any Eastern Shore County.³ Yet, despite Somerset’s demographic diversity, blacks have historically been left virtually unrepresented in County government.⁴ Indeed, until 2010, no black person had <i>ever</i> been elected or appointed— in all of the County’s 350-year history—to <i>any</i> top County office, including County Commissioner, County Administrator, Sheriff, Detention Center Warden, Judge, State’s Attorney, State Delegate, County Treasurer, County Finance Director, County Attorney, County Personnel Director, County Planning Director, County Fire Marshall, County Emergency Management Director or County Elections Administrator, among others.⁵ The situation persisted even though the historically black University of Maryland, Eastern Shore (“UMES”), located within the county, graduates many candidates qualified for government jobs and offices.</p> <p>In 2008 and 2009, the NAACP and ACLU-MD began to understand that part of the reason African Americans had remained shut out of Somerset government for so long related to what is now known as “prison-based gerrymandering.” Because the County is rural and relatively sparsely populated, the inclusion for redistricting purposes of the large prison population at Eastern Correctional Institution (“ECI”) severely undermined the racial fairness of the local election system.</p> <p>Due to a Voting Rights Act challenge to the County’s at-large election system in the mid-1980s, the County switched to a system of five single-member districts to elect its County Commission. The County planned one district as a remedial district with a majority black population, but by the time that district was established, ECI had opened. ECI’s mostly minority inmates were counted as residents of the so-called remedial district, even though they were ineligible to vote in Somerset elections. The prison’s inclusion distorted the district’s voting power, because only a small share of those counted in the district were actually eligible to vote, and an even smaller share of those eligible to vote were African American. As such, the district could not and did not function as a true remedial district, and for two decades consistently elected white officials to represent the “minority” district. Moreover, because inmates significantly outnumbered other district residents, their inclusion in the redistricting database led to over-representation of non- prison residents within that district, as compared to residents in other districts that did not include a prison.</p> <p>In 2009 and 2010, the NAACP and ACLU-MD partnered with community leaders to challenge this system. Together, they advocated with local Somerset officials, the Maryland Attorney General, and the Maryland General Assembly for exclusion of the prison population from the redistricting database. Eventually, as a result of this advocacy, the Maryland legislature became the first in the nation to adopt a</p>

law mandating that prisoners be counted at their place of last residence, rather than their place of incarceration.⁶ This simple change finally gave meaning to the voting rights remedy put in place by Somerset County in 1986 and paved the way for greater participation by minorities in Somerset County’s local government. In fact, the County’s first black County Commissioner, Rev. Craig Mathies, was elected shortly after the law was enacted. Furthermore, Somerset’s 2012 redistricting plan includes two districts with majority minority populations, better reflecting the demographics of the community and enhancing minority electoral opportunities within the County.

The story of Somerset County illustrates one adverse collateral consequence that can follow from the dramatic growth of our nation’s prison population over the past few decades: a reduction in the suitability of current Census counts for use in redistricting. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million.⁷ But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars.⁸ This change implicates a need for corresponding change in application of the Census’s “usual residence” rule with respect to incarcerated persons, to ensure that redistricting decisions and remedies count populations accurately and promote electoral fairness for all.

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 located far from the actual homes of incarcerated people.⁹ Although Maryland (along with California, Delaware, New York, and over 200 counties and municipalities) has approved a measure to adjust the Census’ population totals to count incarcerated people at home, this ad hoc approach is neither efficient nor universally feasible. For example, the Massachusetts state legislature concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses.¹⁰

Thank you for this opportunity to comment on the Residence Rule and Specific Residence Situations as the Bureau strives to count everyone in the right place, in keeping with changes in society and population realities. Because of our experience in Somerset County—and our awareness of the difference that Maryland’s new rule made to African American residents there—the Maryland State Conference of NAACP Branches, the Somerset County Branch of the NAACP and the ACLU of Maryland urge the U.S. Census Bureau to count incarcerated people as residents of their last home addresses.

¹ The American Civil Liberties Union submitted separate comments to the Census Bureau reflecting the work of the ACLU nationwide to ensure population counts that accurately represent our communities.

² See ACLU of Maryland and Somerset County NAACP, “Semper Eadem—‘Always the Same?’” at 5 (2009), available at http://www.aclu-md.org/uploaded_files/0000/0348/finalreportwapp.pdf [hereinafter “Report”].

³ See U.S. CENSUS, “2010 Census Interactive Population Map,” available at <http://www.census.gov/2010census/popmap/>. According to the 2010 U.S. Census, Somerset County is 53.53% white and 42.28% black; the only parts of Maryland with a higher percentage of black residents are Prince George’s County and Baltimore City.

⁴ See Report, *supra* note 1, at 4. According to the Report, African Americans represent 35 percent of Somerset County’s available labor force, but only 12.6 percent of County employees.

⁵ See *id.* at 2–3. Indeed, according to EEO filings at that time, not a single African American was employed by the County in a professional capacity. The County employed 46 people full or part time that year in official, professional, technical or paraprofessional positions, but *none* was African American.

⁶ Md. Code, State Gov’t § 2–2A–01 (2015).

⁷ See U.S. Department of Justice, Bureau of Justice Statistics, “Historical Corrections Statistics in the United States, 1850–1984” at Table 4–1 (December 1986), available at <http://www.bjs.gov/content/pub/pdf/hcsus5084.pdf>.

⁸ See U.S. Department of Justice, Bureau of Justice Statistics, “Correctional Populations in the United States, 2012” at Table 2 (December 2013), available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>.

⁹ See Prisoners of the Census, “Detailed demographics of correctional populations now available for nation” (Sept. 13, 2011), available at <http://www.prisonersofthecensus.org/news/2011/09/13/sf1/>.

	<p>¹⁰ See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p>
c93	<p>I am writing in response to the May 20 Federal Register notice soliciting comments on the Residence Rule and Residence Situations.</p> <p>I am a data scientist (BS Math Caltech '86, PhD Math MIT '89) with several refereed publications on the mathematics of voting. The data which the census bureau collects inmates according to the home address is of critical importance and I strongly urge you to count inmates at their home address rather than the particular prison in which they are incarcerated on April 1, 2020.</p> <p>This data will help us researcher understand the effect of incarceration on the home community.</p> <p>On a more practical level, without this data, citizens who are barred from voting become literally political prisoners as their place of incarceration can be chosen to transfer representation from their home community to the location of their prison.</p> <p>I would be happy to discuss this matter in more detail with you or any members of your staff.</p>
c94	<p>Prison inmates should be counted as residents of their permanent home addresses, not at the places of incarceration. I will not attempt a comprehensive discussion of this issue, which many competent persons have addressed. I wish, however, to call attention to one facet of the question that should receive more attention: the inconsistent treatment of transient populations.</p> <p>I will then offer some observations based on my own experience. I directed the staff work on redistricting for successive Minority Leaders of the New York State Senate, from 1980 through my retirement at the end of 2005; was the principal consultant to the Committee on Election Law of the Bar Association of the City of New York in the development of its 2007 report on reform of the New York redistricting process; worked closely with legal teams on litigation concerning New York redistricting during each of the last four decades; consulted with New York State Senate and Assembly staff on the drafting of the prison population re-allocation law enacted in 2010; and consulted with California Assembly staff in connection with the latest amendment to California’s prison population re-allocation law. (I am not a lawyer.)</p> <p>I. The counting of prisoners at the places of incarceration is not part of a consistent rule for defining residence.</p> <p>This can be understood by comparing the rules for counting three categories of transient populations: a) college and university students away from home; b) persons traveling for business and pleasure; and c) those who are away from home as prison inmates. I do not wish to argue that the rules for students and travelers should be changed. But the comparison will illuminate the problem with the rule that applies to prisoners.</p> <p>Students and prisoners are counted at their temporary residences, and travelers are counted at their permanent home addresses. Yet the students and the travelers have much in common with each other, in ways in which both groups differ from the prisoners. Unlike the prisoners, both the students and the travelers:</p> <ol style="list-style-type: none"> 1. are at their Census Day location voluntarily; 2. are part of the social and economic fabric of the communities where they temporarily reside: walking freely in the streets, using the roads and public transit, frequenting restaurants, visiting parks, attending sports events, museums, theatres, etc., and free to participate in politics and other aspects of civic life;

3. use public services financed by local taxes: roads, public transport, police, ambulances and emergency rooms, building code enforcement, restaurant inspections, etc.; and
4. pay local taxes: sales taxes, for both groups; hotel occupancy taxes and, indirectly, real estate taxes, for travelers; and real estate taxes, either directly or indirectly (depending on whether they own or rent), for students living off-campus.

Students may also be employed, holding the sort of jobs that might also be held by permanent local residents, and likewise subject to taxes on their earnings. And many travelers are paid to perform duties away from home in connection with their employment.

Furthermore, members of Congress and state legislators, in furthering the interests of the permanent residents of their districts, also seek to further the interests of the students and visitors. It is not only from the love of learning or recognition of the social value of research that elected officials seek to support and expand institutions of higher learning in their districts. But by seeking to maximize the local economic benefit derived from such institutions – supporting expansion and making the colleges and universities attractive to students – they also further the interests of the students.

Similarly, in seeking prosperity for their districts by making them attractive destinations for business travelers and tourists, they serve the interests of the visitors. In both cases, the elected representatives would entirely fail to serve the interests of their permanent constituents if they did not also faithfully serve the interests of the students and visitors.

In contrast, no Congress member or state legislator seeks to represent the interests of the prisoners incarcerated in his or her district. Their offices do not offer the prisoners the ‘constituent services’ that they provide to permanent residents of their districts. To the degree that they seek to maximize the economic value of the prisons – which are, indeed, the major local employer in some places, as universities are in others – they regard the prisoners merely as the raw material of a local industry. To the degree that the prisoners enjoy representation in Congress or state legislatures, it is only from the representatives of the communities where they left behind their families and friends, to which they will eventually return, and where they may once again be voters.

New York City, where I live, is disadvantaged by the census rules relating to both prisoners and visitors.

On the one hand, thousands of permanent residents of the city are counted at prisons outside of the city. Under the New York State law¹ subtracting prisoners, for purposes of legislative apportionment, from their places of incarceration, and re-allocating them insofar as possible to their permanent home addresses, the population of New York City showed a net increase of 21,082, while the balance of the state showed a net decrease of 14,705. This actually understates the effect on New York City of the rule for counting prisoners, because the legislative task force² charged with making the calculations had no access to data from Federal agencies or other states, a subject I will return to below.

At the same time, the city’s population is permanently swollen by hundreds of thousands of visitors, but these persons are not counted here.³ There is, of course, a good deal of turnover among the individuals who constitute this transient population, but the total remains fairly steady. There is seasonal variation in this number, but not nearly so large as the seasonal variation in the number of students in a college town. In many college towns, almost the whole student population will vanish about two months after Census Day, not to return for about three months. And when the fall term begins, many who were counted in April will be gone, to be replaced by new enrollees.

For all of these reasons, if visitors are to be counted at their permanent home addresses, not where they are sleeping on Census Day, there is an even stronger argument for applying that principle to prisoners.

The Census Bureau should be guided by the ruling of the three-judge court in *Fletcher v. Lamone*, 831 F. Supp.2d 887 (D. Md. 2011), that the careful attribution of prisoners to their permanent home addresses for congressional and legislative redistricting is consistent with the constitutional rules. There is no basis for supposing that such attribution is permissible for congressional redistricting, but not for congressional reapportionment. Note especially the Court's observation distinguishing prisoners from other 'group quarters' populations:

We also observe that the plaintiffs' argument on this point implies that college students, soldiers, and prisoners are all similarly situated groups. This assumption, however, is questionable at best. College students and members of the military are eligible to vote, while incarcerated persons are not. In addition, college students and military personnel have the liberty to interact with members of the surrounding community and to engage fully in civic life. In this sense, both groups have a much more substantial connection to, and effect on, the communities where they reside than do prisoners. (*Id.* at 896)

The Court also observed that:

According to the Census Bureau, prisoners are counted where they are incarcerated for pragmatic and administrative reasons, not legal ones. The Bureau has explained that counting prisoners at their home addresses would require "collecting information from each prisoner individually" and necessitate "an extensive coordination procedure" with correctional facilities. (*Id.* at 895)

But while it is possible to imagine many technical difficulties that would arise in counting business travelers and tourists where they are actually sleeping on Census Day, we now have extensive experience demonstrating that it would be quite practicable to count prisoners at their permanent home addresses. The states of New York and Maryland successfully adjusted their population databases for the 2010-12 redistricting without a huge investment of resources. An account of how New York and Maryland accomplished this, and an excellent review of the entire subject, is provided in Prof. Erika L. Wood's study, *Implementing Reform: How Maryland and New York Ended Prison Gerrymandering* (New York: Dēmos, 2014).⁴ These experiences can provide a model, and should lead the Census Bureau to reconsider its previous view that it would be prohibitively expensive to do what New York and Maryland accomplished.

II. I wish to add a few observations from my own experience to Prof. Wood's findings and recommendations.

A. In the discussions leading to the enactment of the New York law in 2010, those of us who had experience with redistricting databases, and with the use of geographic information systems to geocode addresses to census blocks, agreed that it would be possible to re-allocate to their home addresses about 60% of the prisoners on the list to be provided by the NYS Department of Corrections and Community Supervision (DOCCS).⁵ We were wrong. As Prof. Wood documents, 79% of the addresses on the DOCCS list were successfully attributed to New York census blocks. And even that figure understates the success of the project, since the remaining 21% includes those prisoners whose permanent homes were not in New York State.

B. In my consultations during 2010 with New York legislative staff concerning the drafting of Part XX of Chap. 57, it was clear that the decision to exclude congressional redistricting from the use of the adjusted database was entirely a matter of legal caution. There was case law supporting the use of an adjusted database for state legislative redistricting, but there was much uncertainty about whether the courts would permit such a database to be used for congressional redistricting. The use of the adjusted database was limited to legislative redistricting to avoid creating a possible basis for a legal challenge to the congressional districts to be enacted in 2012. Happily, Maryland was more bold, and the matter was settled in *Fletcher*. I am certain, from the discussions in which I participated, that the New York law

would have encompassed congressional redistricting if the issues later decided in *Fletcher* had already been settled in 2010.⁶

C. The California re-allocation law, which will apply to the next decennial redistricting, originally provided for subtraction of prisoners from their places of incarceration only if they could be re-allocated to a permanent home address within the state. The law therefore excluded prisoners in the custody of the U.S. Government. The law has now been amended to provide, as in the New York law, for the subtraction of all inmates of Federal and state prisons, and then for their re-allocation to their permanent home addresses insofar as possible. The laws in both states are now based on the principle that counting a person in the *wrong* place distorts the apportionment database even more than excluding the person entirely.

D. There is nothing novel about excluding from the PL94-171 data set those persons who are part of the U.S. population, but who cannot be attributed to a specific U.S. address for purposes of reapportionment and redistricting. That is the rule for U.S. citizens and their dependents living outside the U.S. while in the employ of the U.S. Government or serving in the armed forces.

E. The drafters of the New York law assumed that it would be impossible to obtain from the U.S. Bureau of Prisons the sort of list that was provided by NYSDOCCS. Maryland did attempt to obtain such a list from BOP, and was rebuffed. BOP explained its refusal as based on a concern to protect the confidentiality of records about prisoners. This a legitimate concern, and underlies the confidentiality provisions that were written into the New York and California re-allocation laws. One cannot blame BOP for being cautious about providing such lists to state agencies, and of course the state legislatures cannot command BOP's cooperation. But the Census Bureau may well be able to address BOP's concerns about preserving confidentiality. If the Census Bureau can obtain the necessary lists from BOP (and also from ICE), it will be in a far better position than the states, individually or collectively, to allocate prisoners to the census blocks of their permanent home addresses. The Census Bureau, unlike the states, will also be able to re-allocate those prisoners who are being held, either by Federal or state authorities, in a state other than that of their permanent residence.

For all of the above reasons, the residence rule for prison inmates should be changed. Prisoners should be counted at the homes to which they will eventually return, where they left behind their families and friends, where they are represented by elected officials, and where they may once again be voters.

¹ Legislative Law, Section 83-m, Subsection 13, enacted by Part XX of Chapter 57 of the Laws of 2010.

² The Legislative Task Force on Demographic Research and Reapportionment, known as LATFOR, an acronym derived from an older name of the task force.

³ NYC & Company, the city's tourism promotion organization, estimates that there were 54.3 million visitors in 2013.

[<http://www.nycgo.com/articles/nyc-statistics-page>] The *New York Times* reports that there were 108,592 hotel rooms in the city in 2013, and estimates that the average daily occupancy was 68% in January 2015, down 4.7% from January 2014 (the January 2014 figure having been swollen by the Super Bowl). [<http://www.nytimes.com/2015/03/04/realestate/commercial/hotel-market-staggers-in-new-york-city.html>; web edition, March 3, 2015; New York print edition, March 4, 2015, p. B6] Allowing for some uncertainty about the estimated number of visitors, the proportion who did not remain for the night, the average number of persons in an occupied hotel room, and the proportion of visitors who found other accommodations, it is reasonable to suppose that some 200,000 visitors sleep here on an average night. That is a good enough estimate for the present discussion.

⁴ Available at: <http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>

⁵ The list provided all of the address information available to DOCCS about each prisoner, but no names. Each record was identified only by a number that the Legislative Task Force could use in addressing inquiries to DOCCS. Furthermore, the Task Force was required to hold all of the address information in confidence, making public only the revised block-level counts. The California law has a similar provision.

⁶ In the event, the New York Legislature failed to agree on a congressional redistricting plan in 2012, and the task fell to a U.S. District Court after all. But that was not foreseen in 2010.

c95

I am writing in response to your May 20 Federal Register notice regarding the Residence Rule and Residence situations.

As a philosopher of science focused on social demography and social ecology, I analyze studies that, among other things, investigate the effects of crime, incarceration, and recidivism in American communities. In order to understand those effects it is crucial to have reliable data regarding the incarceration rates in those communities. The Census Bureau is the only reliable source of demographic data. Should the proposed rule be adopted this research would be impossible. I, therefore, urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census Day.

Thank you for your consideration.

c96

These comments are submitted in response to the Public Notice, dated May 20, 2015, regarding proposed changes to the Residence Rule and Residence Situations for the upcoming 2020 Census.¹ The Public Notice sought comment on the Residence Rule, and the undersigned seeks to provide comment on the Residence Rule as it relates to those who are incarcerated (Rule 13) and those in Juvenile Facilities (Rule 16) (collectively, the “Detainees”).

I have served as the *pro bono* counsel for the family members of those who have been incarcerated in a proceeding before the Federal Communications Commission since 2010. The proceeding relates to the telephone rates and other charges that are imposed on families to remain in contact with Detainees, and I have actively advocated before the FCC, Congress, and the US District Court for the establishment of rate caps and elimination of excessive fees. The telephone is uniquely important to the families I represent *because correctional facilities tend to be located very far away from their homes*. In this context, I have become uniquely aware of the economic and personal impact of the difficulties of family members to remain in contact with Detainees, especially with the 1.7 million children with at least one family member who are Detainees.

Rule 13 and Rule 16 count Detainees as being a resident at the facility, rather than their residence before being detained, i.e., their permanent residence. Not only is this determination different than many states’ laws which specifically do not change Detainees’ permanent residences, and actually permit Detainees to vote for candidates at their permanent residence. Thus, the rules are in conflict with state law, and do not reflect the reality of how states treat Detainees in connection with their right to vote.

Moreover, this rule incentivizes the construction of detention facilities at distant locations far away from the Detainees’ permanent residences. In particular, because Census figures are used to determine state legislative districts, these rules skew the population of districts by adding additional people to districts that do not actually have the ability to vote for candidates in those very same congressional districts.

Because the current Census rules count Detainees as residents at the facility location, there is a strong incentive for communities to volunteer to construct detention facilities in order to increase their population without permitting the Detainees to vote in local elections. Studies have shown that more than 60% of those incarcerated are at facilities more than 100 miles from their permanent residence, and 10% of those incarcerated are located at facilities more than 500 miles from their permanent residence.²

The more reasonable approach would be for the Census Bureau to count Detainees at their permanent residence. This would lead to the accurate determination of the number of eligible voting residents for that particular district. Moreover, it would eliminate the perverse incentive to site detention facilities far distances from Detainees’ permanent residences. If detention facilities are more easily accessible, then the recidivism rate will be reduced by increase contact between families and friends and Detainees, which will reduce the prison and jail costs.

Thank you this opportunity to provide comments on this very important criminal justice matter.

¹ See *Notice and Request for Comment*, 80 Fed. Reg. 28950 (rel. May 20, 2015) (the “Public Notice”).

² *Incarcerated Parents and Their Children*, Bureau of Justice Statistics (Aug. 2000) (www.bjs.gov/content/pub/pdf/iptc.pdf).

c97

I am writing this letter to respond to the proposed 2020 Census “Residence Rule and Residence Situations” that is open for public comment.

I believe that there is a serious problem with category number 13, (“People in Correctional Facilities for Adults”). In each of the listed subcategories (a through d) of number 13, people are proposed to be: “Counted at the Facility.”

Your question was about problems seen in the 2010 Census with the rules; but as this part of the rule has been unchanged for at least the last several decades; my experience in the 1990, 2000 and 2010 redistricting cycles may be helpful.

I live, since the late 1990's, in Franklin County, New York, a rural county that has a large prison population. Prisoners are not residents of our community as they originate outside of our community, they have no interaction with our community and immediately leave the community when their sentences expire or when the Department of Corrections chooses to transfer them elsewhere. Enumerating these populations as part of our community forces our community to choose between either: (1) rejecting your counts, or (2) using census data that dilutes the votes of most of our community's residents to the benefit of the few who live immediately adjacent to the prison.

I have been concerned about the implications of your "residence rule" for democracy within rural communities since the 1990 Census when I was a resident of another upstate New York county which similarly hosted a large correctional facility. I, and many of my Jefferson County neighbors were concerned and raised public awareness that relying on your counts resulted in county apportionment that diluted the votes of residents who did not live near the prisons.

In the late 1990's, I moved to Franklin County and was again involved as a citizen activist in redistricting. There, I was pleasantly surprised to learn that I would not need to organize a post-2000 lawsuit against Franklin County because my county was already committed to modifying your census data to remove the prison populations and avoid what is now commonly called "prison gerrymandering."

However, a controversy that erupted in the neighboring county of St. Lawrence over prison-counting after the 2000 Census led me to discover that the rejection of Census Bureau prison counts in rural communities was the rule, not the exception. In summary,

St. Lawrence County had, after the 1990 Census, traditionally rejected your prison counts, but for “outcome determinative” reasons decided to include the prison populations in the post-2000 districts. The public objected, with thousands of county residents signing a petition requesting the redistricting plan be put on the ballot. The county leadership rejected the petition and in response the public defeated the political party responsible for the prison gerrymandering in the next election.

Around this time, an upstate newspaper contacted other counties in the state to see how they were currently handling the prison populations, and I surveyed several counties that this newspaper missed. This survey work inspired the Prison Policy Initiative to do a more formal survey analysis which they published as “Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties“ concluding that the majority of New York State counties with large prisons rejected prison gerrymandering.

	<p>What should be obvious from my letter is that I, along with the elected leaders of my county, were concerned that including the prison population where the Census Bureau counted it but where those people -- 10% of our county's Census population -- do not reside would have a vote dilutive impact on the other parts of our county. We simply did not want to draw a county legislative districts that had a preponderance of incarcerated people. Such districts would have given every county resident living near the prisons much more voting power than the other residents of the county.</p> <p>Having considered the effects of "prison gerrymandering" on rural counties that host prisons, I and many of my neighbors came to the obvious conclusion that the Census Bureau's counts are inaccurate in so far as the Bureau counted incarcerated people as residents of the prison locations. As a result, we removed the prison populations from the one set of legislative districts that we could control -- our county districts.</p> <p>And here I feel I need to clarify our approach, given current statements from some plaintiffs in the current Texas case about excluding some non-voting populations from redistricting.</p> <p>For us, in Franklin County, the decision was not whether to count incarcerated people, but where they should rightly be counted, which we think is at their home of record. We had no right to count prisoners as local constituents, they relied on the representative services of their home legislators, and there is nothing that one of our county legislators could do for them.</p> <p>Removing the prison population was the best we could do because we lacked authority over the redistricting bodies of the New York City Council, the Albany City Council and the other home locations of the incarcerated people. As I, along with two neighbors wrote to you in our July 9, 2004 comment letter: "We know of no complaints from prisoners as a result, as they no doubt look to the New York City Council for the local issues of interest to them."</p> <p>Thankfully, New York State took things one step further with the passage of Part XX (ending prison gerrymandering at the state and local levels) which made sure that all state prisoners are counted in the appropriate locations. This is legislation that I and many of my neighbors supported. And while I support Part XX, I must note that the law had one shortcoming that only the Census Bureau can fix: Part XX did not reallocate federal prisoners to their homes; it simply removed them from the count.</p> <p>The Census Bureau is the only entity which can provide a complete solution to the redistricting confusion caused by the current "usual residence rule." I urge you to adjust this policy and count all prisoners at their homes of record in the next federal Census.</p>
c98	<p>My name is _____. For over 25 years, I have provided redistricting expertise to civil rights organizations, community groups, and local governments across the country. I estimate that I have developed state and local election plans for at least 750 jurisdictions in about 40 states – primarily in the American South and Rocky Mountain West (Indian Country). I have testified in federal courts on voting matters in about 35 cases and submitted declarations or been deposed in an additional 50 cases.</p> <p>I always recommend to local-level clients that the prison population should be removed or reallocated to establish an apportionment base that is in keeping with the principle of one-person, one-vote. But this adjustment is not always possible to do, given the current structure of the PL94-171 files and some state and local laws that restrict the apportionment base to the counts in the PL94-171 files.</p> <p>I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census Day. Below are four specific steps that I believe you must take for the 2020 Census to more accurately reflect present-day demographic realities.</p>

- (1) Reassign or reallocate all adults in prisons and jails to their home address. This single step would eliminate a distortion in the complete count Census that often results in extreme violations of the one-person, one-vote constitutional principle in state and local election plans.
- (2) Cordon off all prisons and jails (using building footprints) into 2020 census blocks that contain only incarcerated persons. This step is necessary because some percentage of the incarcerated population will continue to list prison and jail facilities as their home address. This will facilitate overpopulating prison-impacted districts to meet one-person, one-vote requirements in statewide election plans and allow for the removal or reassignment (using other official prisoner address documents not relied upon by the Census Bureau) of this remaining non-voting population in local election plans.
- (3) Release an Advance Group Quarters Summary File as I understand you plan to do, within the PL94-171 files (I use the 2010 Advance Group Quarters Summary File almost every day to identify prisons, college dorms, military bases, etc. as I develop election plans. I cannot overstate how useful the 2010 file has been for my work.) The 2020 Advance Group Quarters Summary File will be extremely helpful to identify any of the remaining incarcerated persons who report prison facilities as their home address, as noted in (2) above.
- (4) Release a complete count census block-level summary file that tallies the reallocated prison population by race, age, and ethnicity. I have in mind that this file would be identical in format to the PL94-171 file. It should be released no later than the early summer of 2021. This block-level summary file is critical for Voting Rights Act “ability to elect” analysis -- especially for districts that are close to having 50% minority voting-age populations.

In conclusion, the incarcerated population in the United States is now about 2.3 million. There are 16 states with populations that are less than 2.3 million. A summary file as noted in (4) above is important for various social policy and programmatic reasons unrelated to election plans, such as community development, targeted neighborhood-level programs to reduce recidivism, academic research, etc. Such a summary file will pay for itself over time.

Thank you for the opportunity to comment on the Residence Rule and Residence Situations, as it pertains to the 2020 Census.

c99

I am writing in response to your federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Thank you for asking for input from the public.

I was once incarcerated. My last residence prior to my incarceration in various Upstate New York prisons was in Queens, New York City. But, I was always counted as if I were a resident of the prison where I was incarcerated.

This most respectfully skews the results of the census so badly, that one is forced to ask: “What is the point of using the census results to ascertain political representation?”

For example. I was in _____ in the town of Warwarsing for some years, and in that town this is what the Census in 2010 showed:

According to the 2010 Census :

Total number of residents in Warwarsing:	13,157
Total prison population in Warwarsing:	1,723

Thus 13% more people are counted as living in Warwarsing than actually live there. As a result Warwarsing is allocated 13% political

	<p>representation more than it should have. Representation which some other community is being deprived of. Like the community I lived in before I was incarcerated for example. And, if you add to that equation the evidence that that African-Americans and Latinos are disproportionately incarcerated, then the figures may even be more seriously skewed for incarcerated members of these communities.</p> <p>I urge you therefore to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>The present system of counting residences in a community, may have worked before the 1980's when the number of people in prison in the U.S. was much lower than it is now. But now, as your own Census Bureau data shows: The count is so skewed, it cannot be considered accurate.</p> <p>In which case one has to ask why bother doing a census at all if the results are inaccurate up to 13% and perhaps even more?</p> <p>Before closing I would like to thank you again for requesting public feedback. This is a very important part of the democratic process.</p>
c100	<p>My name is ____ I spent a considerable amount of time in Federal Prison despite never being convicted of a crime. It is because I have never been convicted that my voting rights remain intact. I was not aware for most of my incarceration that I was being counted in the various states of my incarceration for certain purposes but would be denied the right to vote in those states due to a lack of residency.</p> <p>In 2014 while being held in the United States Medical Center for Federal Prisoners in Springfield, Missouri I attempted to register to vote. I received the voting registration forms and submitted them to the Greene County Clerk. I received mail stating that my registration was not completed because I had not submitted identification and I did not provide an acceptable address. I assumed this to mean that I could not use a P.O. Box as an address and I corrected this by resubmitting my form with a copy of identification and the physical address of the facility. Even at this point the Greene County clerk refused to complete my registration on the grounds that I was not considered a resident for voting purposes despite being counted as a resident for districting purposes. For this level of disenfranchisement to exist in the United States in 2015 is incredibly alarming and in need of immediate attention at all levels of federal and state government.</p>
c101	<p>The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) submits this comment letter in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015), (“Rule”). Beginning with the 2020 Census and each subsequent decennial census, LDF urges the Census Bureau to count incarcerated people as residents of their last known pre-arrest home address, rather than of the particular prison facility where they happen to be located on Census day. Not only would this change to the Rule be consistent with many state laws, whereby incarcerated people maintain their pre-arrest address and do not lose that residence by virtue of being temporarily incarcerated, but also it would help bring the redistricting processes of states and localities into greater conformity with fundamental principles of an inclusive democracy.</p> <p>Founded under the leadership of Thurgood Marshall, LDF, now in its 75th anniversary year, is the nation’s oldest civil rights and racial justice law firm. One of LDF’s core missions is the achievement of the full, equal, and active participation of all Americans, particularly Black Americans, in the political process.¹ Consistent with this mission, LDF has advocated – through litigation and public policy – for the elimination of prison-based gerrymandering, the practice by states and localities of counting, for redistricting purposes, incarcerated people as residents of the prison facilities where they are held, rather than where they actually lived prior to their arrest.²</p> <p>In carrying out prison-based gerrymandering, states and localities often rely on Census data and, under the current Rule, the Census Bureau counts incarcerated people where they are confined.³ As explained in further detail below, however, prison-based gerrymandering is unlawful precisely because it artificially inflates population numbers, and thus, the political influence, of districts</p>

where prisons are located, at the expense of voters living in all other districts. Indeed, prison-based gerrymandering is all-too reminiscent of the infamous “three-fifths compromise,” whereby enslaved and disfranchised African American people were counted to inflate the number of constituents in—and thus, the political influence of—Southern states before the Civil War.⁴

On previous occasions, LDF has called upon the Census Bureau to change its Rule⁵ to count incarcerated people at their last known pre-arrest home address, not where they are incarcerated, to: (1) conform with legal principles on residence; (2) conform with the ordinary definition of resident; (3) avoid inflating the political power of more rural and suburban areas where prisons tend to be located and where white residents predominantly live, at the expense of urban areas where there are fewer prisons and minority communities predominantly live; and, (4) provide a more accurate picture of the nation.

First, the current Rule, which counts incarcerated people as residents of the facilities wherein they are incarcerated, contravenes basic legal principles on residence. Nearly every state has a constitutional provision or statute providing that a person does not gain or lose residence in a place by virtue of being incarcerated. Rather, an incarcerated person typically “retains the legal residence that he or she had prior to arrest, and continues to maintain residence in that county for a variety of purposes, such as court and tax filings.”⁶ For example, under Connecticut state law, a person does not gain or lose legal residence by virtue of being incarcerated,⁷ and, similarly, under Rhode Island state law, a person’s domicile shall not be lost based on confinement in a correctional facility.⁸

Second, incarcerated people are not residents, in the ordinary sense of the word, of the areas in which they are confined. Most fundamentally, in the overwhelming majority of states, incarcerated people cannot vote as residents of the places where they are confined.⁹ And, in the limited places where incarcerated people are permitted to vote, as in Maine and Vermont, they do so by absentee ballot in their home communities.¹⁰ Incarcerated people do not choose the places in which they are confined and can be moved at any time at the discretion of prison officials.¹¹ Wherever they are located, incarcerated people do not interact with or develop meaningful and enduring ties to the communities surrounding the prison facilities since, for example, they cannot use local services such as parks, libraries, highways, and roads.

Third, counting incarcerated people as residents of the places in which they are confined artificially inflates the population numbers, and thus, the political influence of the residents in districts where prisoners are located, to the detriment of all other voters who do not live in districts with prisons.¹² Additionally, by counting incarcerated people as residents of the facilities where they are incarcerated, rather than in the place where they lived prior to incarceration, Census data suggests many counties are racially and ethnically diverse, even when this is not the reality.¹³ Subsequently, officials use that flawed data to draw legislative districts, and the districts that gain political clout are often places where diverse populations have little presence, voice, or influence.¹⁴

Indeed, the stark racial and ethnic disparities that exist between those in prison and those living in the surrounding county, due at least in part from the prison construction boom, which took place primarily in rural areas, is distressing. For example, in Martin County, Kentucky, 884 incarcerated Black individuals make up 56 percent of the incarcerated population, but 12 Black residents make up only about 1 percent of the county’s non-incarcerated population.¹⁵

Ultimately, artificial inflation of voting power often benefits more rural and suburban areas where prisons tend to be located and where white residents predominantly live.¹⁶ Conversely, this artificial inflation dilutes the voting strength of urban areas where prisons are fewer and, thereby, weakens the political power of minority communities. This contravenes the constitutional principle of one person, one vote, which requires that everyone is represented equally in the political process,¹⁷ as well as the prohibition by the Voting Rights Act, now celebrating its 50th anniversary year, on the dilution of the voting strength of minority communities.¹⁸

For example, after the 2000 Census, while 68 percent of Maryland's incarcerated individuals were from Baltimore, the Census Bureau counted only 17 percent of the state's incarcerated individuals in that City.¹⁹ Maryland responded to this distortion of its legislative districts in 2010 by passing legislation, which requires certain officials to work in tandem to adjust population data so that incarcerated individuals are counted at their last-known residence for Congressional, state, and local redistricting.²⁰

Similarly, after the 2000 Census, in New York, seven state senate districts met minimum population requirements only because the Census counted incarcerated people as if they were upstate residents.²¹ New York responded to this artificial inflation of these legislative districts by passing legislation to adjust the population data after the 2010 Census to count incarcerated people at their respective homes for redistricting purposes.²²

Maryland and New York are not the only leading jurisdictions to take action statewide to end the problem of prison-based gerrymandering. Other states, like California and Delaware have passed similar laws,²³ and over 200 local counties and municipalities, have all individually adjusted population data to avoid prison-based gerrymandering when drawing their districts.²⁴ Notably, the democracy-distorting effects of prison-based gerrymandering are felt most keenly at the local level where total population numbers are smaller and the presence of large prison facilities can have a greater skewing effect.

Meanwhile, other states, like Illinois, where, for example, 60 percent of incarcerated people have their home residences in Cook County (Chicago), yet 99 percent of them were counted in the 2010 Census as if they resided outside of Cook County,²⁵ have considered legislation to respond to such artificial inflation.²⁶

Despite progress on these fronts, this ad hoc—state by state and locality by locality—approach to addressing prison-based gerrymandering is neither efficient nor universally implementable. The Massachusetts Legislature, for example, concluded that the state constitution did not permit legislation to eliminate the practice of prison-based gerrymandering; though, in recognizing the need to address the problematic practice, the Legislature sent the Census Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses.²⁷ The Bureau should heed these calls to update the Rule.

Consistent with the Bureau's notice inviting comments on the Rule, and the Census Bureau's agreement in 2010 to make prisoner population numbers available to states and localities in time for those figures to be taken into account in the redistricting process, LDF recognizes that the Census Bureau continues to strive to count everyone in the right place in keeping with changes in society and population realities. And, indeed, society has changed with the incarcerated population in the U.S. exploding from less than half a million in the 1980s to over two million people today.²⁸ This incarcerated population is disproportionately male and Black and Brown.²⁹ Accordingly, the current Rule should be updated to count incarcerated people at their last known pre-arrest address rather than the prison facility where they are confined on Census day.

By changing the current Rule, the Census Bureau will support state and localities' efforts to ensure compliance with the one-person, one vote constitutional principle and the Voting Rights Act's protection of minority communities' voting strength. Ultimately then, an updated and more accurate Rule that counts incarcerated people at their pre-arrest address, rather than at the prison facilities where they are incarcerated, will help ensure a more robust democracy for the benefit of all Americans.

Thank you for this opportunity to comment on the Rule. If you have any questions or concerns, please do not hesitate to contact _____, Assistant Counsel, at _____ or me.

¹ LDF has represented parties in voting rights cases before federal courts throughout the country and the U.S. Supreme Court. *See, e.g.,*

Shelby County Alabama v. Holder, 570 U.S. 2 (2013) (defending the constitutionality of Section 5 of the Voting Rights Act); *Nw. Austin Mun. Util. Dist. No. One v. Holder* 557 U.S. 193 (2009) (same); *Thornburg v. Gingles*, 478 U.S. 30 (1986) (defining the scope of Section 2 of the Voting Rights Act); *Smith v. Allwright*, 321 US 649 (1944) (abolishing the white primary).

² See, e.g., Brief of the Howard University School of Law Civil Rights Clinic, the American Civil Liberties Union of Maryland, the Maryland State Conference of the NAACP Branches, Somerset County Branch of the NAACP, the NAACP Legal Defense and Educational Fund, Inc., the Prison Policy Initiative and DEMOS as Amici Curiae Supporting Respondents, *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011), *aff'd*, 133 S. Ct. 29 (2012), <http://www.naacpldf.org/document/fletcher-v-lamone-brief-naacp-legal-defense-and-educational-fund-inc-et-al> (arguing for the constitutionality of Maryland’s legislation, “No Representation Without Population Act,” which, for purposes of redistricting, credited incarcerated people to their last known address); Decision/Order, Index No. 2310-201, *Little v. Latfor* (N.Y. Sup. Ct. Aug. 4, 2011), <http://www.naacpldf.org/document/order-granting-intervention> (granting motion to intervene of LDF, the Brennan Center for Justice, the Center for Law and Social Justice, Dēmos, LatinoJustice PRLDEF, the New York Civil Liberties Union, and the Prison Policy Initiative, to defend New York’s Part XX legislation to end prison-based gerrymandering).

See also Letter from Leah C. Aden, Assistant Counsel, LDF, to Cale P. Keable, Chairperson, Rhode Island House Committee on the Judiciary, Apr. 13, 2015, [http://www.naacpldf.org/document/letter-urges-rhode-island-house-committee-judiciary-pass-pending-legislation-ending-prison-\(urging-the-rhode-island-legislature-to-pass-legislation-to-end-prison-based-gerrymandering-in-the-state\)](http://www.naacpldf.org/document/letter-urges-rhode-island-house-committee-judiciary-pass-pending-legislation-ending-prison-(urging-the-rhode-island-legislature-to-pass-legislation-to-end-prison-based-gerrymandering-in-the-state)); *Hearing Regarding HB 6679 Before the Connecticut General Assembly Joint Committee on Judiciary*, Apr. 1, 2013, <http://www.cga.ct.gov/2013/JUDdata/Tmy/2013HB-06679-R000401-Leah%20Aden%20%20NAACP%20Legal%20Defense%20and%20Educational%20Fund-TMY.PDF> (urging the Connecticut legislature to pass legislation to end prison-based gerrymandering in the state); *Hearing Before the Kentucky General Assembly Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs*, Aug. 23, 2011, <http://www.naacpldf.org/document/da-le-ho-testimony-kentucky-prison-based-gerrymandering> (urging the Kentucky legislature to pass legislation to end prison-based gerrymandering in the state); *Hearing Regarding AB 420 Before the California State Senate Committee on Elections and Constitutional Amendments*, June 21, 2011, <http://www.naacpldf.org/document/da-le-ho-california-testimony> (urging the California legislature to pass legislation to end prison-based gerrymandering in the state).

³ While there is no requirement that states and localities rely exclusively on Census data during redistricting, states and localities commonly do. See, e.g., *Bethel Park v. Stans*, 449 F.2d 575, 583 (3rd Cir. 1971) (“Although a state is entitled to the number of representatives in the House of Representatives as determined by the federal census, it is not required to use these census figures as a basis for apportioning its own legislature.”).

⁴ NAACP LDF, CAPTIVE CONSTITUENTS: PRISON-BASED GERRYMANDERING AND THE DISTORTION OF OUR DEMOCRACY at 2, available at http://www.naacpldf.org/files/case_issue/captive_constituents.pdf (last visited Jun. 23, 2015) [hereinafter *Captive Constituents*].

⁵ See, e.g., Letter From Stakeholders to Thomas Mesenbourg, Acting Director, U.S. Census Bureau (Feb. 14, 2013) (<http://www.prisonersofthecensus.org/letters/feb2013.html>).

⁶ *Captive Constituents*, *supra* n.4 at 2.

⁷ Gen. Stat. Conn. 9-14 (“Electors residing in state institutions. No person shall be deemed to have lost his residence in any town by reason of his absence there from in any institution maintained by the state. No person who resides in any institution maintained by the state shall be admitted as an elector in the town in which such institution is located, unless he proves to the satisfaction of the admitting official that he is a bona die resident of such institution.”).

⁸ Rhode Island General Laws § 17-1-3.1 Residence for voting purposes (“(a) A person’s residence for voting purposes is his or her fixed and established domicile. The determinant of one’s domicile is that person’s factual physical presence in the voting district on a regular basis incorporating an intention to reside for an indefinite period. This domicile is the place to which, upon temporary absence, he or she has the intention of returning. Once acquired, this domicile continues until another domicile is established. A person can have only one domicile, and the domicile shall not be considered lost solely by reason of absence for any of the following reasons: . . . (2) confinement in a correctional facility . . .”)

⁹ Peter Wagner & Christian de Ocejó, Prison Policy Initiative, *Imported Constituents: Incarcerated People and Political Clout in Connecticut* (Mar. 25, 2010), available at <http://www.prisonersofthecensus.org/ct/report.html> (last visited Mar. 31, 2013)).

¹⁰ *Captive Constituents*, *supra* n.4.

¹¹ *Legal Defense Fund Applauds Legislation Ending Prison-based Gerrymandering*, NAACP LDF (Aug. 4, 2010),

<http://www.naacpldf.org/press-release/legal-defense-fund-applauds-legislation-ending-prison-based-gerrymandering-new-york>.

¹² See *PRISON POLICY INITIATIVE, THE PROBLEM*, <http://www.prisonersofthecensus.org/impact.html> (last visited June 23, 2015).

¹³ In 2010, there existed 161 counties where incarcerated Black individuals outnumber non-incarcerated Black individuals. See *PRISON POLICY INITIATIVE, THE RACIAL GEOGRAPHY OF MASS INCARCERATION*, <http://www.prisonpolicy.org/racialgeography/report.html> (last visited July 16, 2015).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Although non-metropolitan counties contain only 20 percent of the national population, they are host to approximately 60 percent of new prison construction. *Captive Constituents*, *supra* n.4 at 3.

¹⁷ The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires that electoral representation—other than to the United States Senate—“be apportioned on a population basis.” See *Reynolds v. Sims*, 377 U.S. 533, 567 (1964).

¹⁸ Section 2 of the Voting Rights Act prohibits any “voting ... standard, practice, or procedure...which results in the denial or abridgment of the right of any citizen of the United States to vote on account of race or color.” 42 U.S.C. § 1973. Section 2 also prohibits voting practices that deny the right to vote outright on the basis of race, and those practices that have a dilutive effect on minority vote power. See *Bartlett v. Strickland*, 556 U.S. 1 (2009).

¹⁹ *PRISON POLICY INITIATIVE, ENDING PRISON-BASED GERRYMANDERING WOULD AID THE AFRICAN-AMERICAN VOTE IN MARYLAND* (January 22, 2010), <http://www.prisonersofthecensus.org/factsheets/md/africanamericans.pdf>.

²⁰ H.B. 496, 2015 Reg. Sess. (Md. 2010) (Entitled “No Representation Without Population Act of 2010”) (stating “[t]he population count ...shall count individuals incarcerated in the state or federal correctional facilities, as determined by the decennial census, at their last known residence before incarceration if the individuals were residents of the state.”)

The U.S. Supreme Court subsequently denied a request to consider a challenge to the constitutionality of Maryland’s landmark legislation. NAACP LDF, *United States Supreme Court Affirms Landmark Law Ending Prison Based Gerrymandering*, <http://www.naacpldf.org/update/united-states-supreme-court-affirms-maryland%E2%80%99s-landmark-law-ending-prison-based-gerrymandering>

²¹ *PRISON POLICY INSTITUTE, Gerrymandering and Relying on the Miscalculation of Prisoners Combine to Violate the U.S. Constitution in New York* (last visited July 6, 2015), <http://www.prisonersofthecensus.org/nygerrymander.html>.

²² A. 9710/ S. 6610-C, 233rd Leg., 2010 N.Y. Sess. Laws 57 (McKinney) (“...For such purposes, no personal shall be deemed to have gained or lost a residence, or to have become a resident of a local government, as defined in subdivision eight of section two of this chapter, by reason of being subject to the jurisdiction of the department of correctional services and present in a state correctional facility pursuant to such jurisdiction.”).

²³ An Act to Add Section 21003 to the Elections Code, Relating to Redistricting, AB 420, 2011-12 Reg. Sess. Ch. 548 (Cal. 2012) (“...the Legislature hereby requests the Citizens Redistricting Commission to deem each incarcerated person as residing at his or her last known place of residence, rather than at the institution of his or her incarceration, and to utilize the information furnished to it ... in carrying out its redistricting responsibilities.”); An Act to Amend Title 29 of the Delaware Code Relating to State Government, H.B. 384, 145th Gen. Ass. (Del. 2010) (“The Act provides that the General Assembly may not count as part of the population in a given district boundary any incarcerated individual who was not a resident of the State prior to the individual’s incarceration. In addition, the Act requires that an individual who was a resident of the State of Delaware prior to incarceration be counted at the individual’s last known residence prior to incarceration, as opposed to at the address of the correctional facility.”)

²⁴ *PRISON POLICY INITIATIVE, Local Governments That Avoid Prison-based Gerrymandering*, <http://www.prisonersofthecensus.org/local/> (last updated July 3, 2015).

²⁵ Rose Heyer & Peter Wagner, *Too Big to Ignore: How Counting People in Prisons Distorted Census 2000*, *PRISONERS OF THE CENSUS* (Apr. 2004), <http://www.prisonersofthecensus.org/toobig/toobig.html#ftnref3>.

²⁶ During the 2014 and 2015 legislative sessions, the Illinois Legislature has considered legislation to end prison-based gerrymandering. *PRISON POLICY INITIATIVE, Illinois*, <http://www.prisonersofthecensus.org/illinois.html>.

During multiple legislative sessions, the Connecticut legislature also has considering legislation to address the practice of prison-based gerrymandering. See LDF Testimony before Connecticut General Assembly, Joint Committee on Judiciary, at 2,

<http://www.cga.ct.gov/2013/JUDdata/Tmy/2013HB-06679-R000401-Leah%20Aden%20-%20NAACP%20Legal%20Defense%20and%20Educational%20Fund-TMY.PDF>; *See also supra* n.2 (reflecting consideration by Kentucky and Illinois to end prison-based gerrymandering).

²⁷ Massachusetts General Court Resolution, *Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'* (adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014); *see also* PRISON POLICY INITIATIVE, *Massachusetts Legislature Calls on U.S. Census Bureau: Support Fair Redistricting, End Prison Gerrymandering* (Sept. 30, 2014), <http://www.prisonersofthecensus.org/news/2014/09/30/mass-fair-redistricting/>.

²⁸ *See* U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2008, at 8 (Dec. 2009), <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763> (tabulating the total incarcerated population at 2,304,115).

²⁹ PRISON POPULATION Initiative, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity* (May 28, 2014), <http://www.prisonpolicy.org/reports/rates.html>; *see also* Bruce Drake, *Incarceration Gap Widens Between Whites and Blacks*, PEW RESEARCH CENTER (Sept. 6, 2013), <http://www.pewresearch.org/fact-tank/2013/09/06/incarceration-gap-between-whites-and-blacks-widens/>.

c102

After the 2010 census, my students at DePauw University, located in Putnam County, Indiana, did a project on local government redistricting. As part of this process, we found that some of Indiana's 23 state and 3 federal prisons were distorting representation in local governments, sometimes dramatically.

For example, we have four school corporations and one major state prison in our county. At the time of the 2010 census, the South Putnam School Board had four single-member electoral districts plus one member elected at-large. Seventy percent of the "residents" of one of those electoral districts were actually prisoners in Putnamville prison. The 765 "free residents" of that district elected one board member, as did the 2,493 residents of the school board's most populous district. Thus, voters in the district with a prison had nearly four times the electoral power of voters in the district without a prison. We persuaded the South Putnam School Board to switch to residential districts rather than single-member electoral districts to address this problem, but Henry, Madison, and Vigo were other counties that used single member electoral districts and in which sizable portions of one school board district were prisoners.

School boards were not the only local governments in which we saw dramatic effects. The Sullivan County Council has four members elected from single-member districts (plus three at-large seats). In 2010, Sullivan County had 21,475 residents. Thus, the ideal size of each of the four county council districts would be 5,369. The Wabash Valley correctional complex had 2,118 prisoners or 39% of one district. We found 7 other counties (Henry, LaPorte, Madison, Miami, Parke, Perry and Vigo) where large prisons or prison complexes were seriously distorting democratic representation. My students created a informative website on every county council in Indiana, including maps and analysis, which you might find of interest:
<http://indianalocalredistricting.com/counties>

Counting prisoners as residents of their prison rather than as residents of their home undermines one-person-one-vote by giving greater electoral power to those who happen to live near prisons than to other members of their community or district who do not live near a prison. Furthermore, unlike other transient populations who live in group quarters, such as college students and military families, prisoners are disenfranchised, their residency is non-voluntary, they do not participate in the local economy, they are not beneficiaries of local government decisions, which they are powerless to influence, and, in the case of school board districts, prisoners rarely have children who attend local schools.

A survey of all members of the Indiana House of Representatives in 2004 showed that our elected officials who happen to have prisons in their districts do not consider the prisoners to be their constituents. The survey asked:

Which inmate would you feel was more truly a part of your constituency?

- a) An inmate who is currently incarcerated in a prison located in your district, but has no other ties to your district.
- b) An inmate who is currently incarcerated in a prison in another district, but who lived in your district before being convicted and/or whose family still lives in your district.

To quote the study:

"Every single one of the forty respondents who answered the question - regardless of their political party or the presence or absence of a prison in their district - chose answer (b). . . . [I]t is quite clear that representatives do not consider inmates to be constituents of the districts in which they are incarcerated - unless, of course, they happen to have prior ties to those districts." ("Counting Matters," *Virginia Journal of Social Policy and the Law*, Winter 2004)

Electoral equality and representational equality in Indiana would be best served by not counting prisoners as residents of the prison where they happen to be incarcerated at the time of the census.

c103

In response to the Census Bureau's *Federal Register Notice and Request for Comment* dated May 20, 2015, the League of Women Voters of New Jersey respectfully submits this comment regarding Residence Rule and Residence Situations, 80 FR 28950.

The League of Women Voters of New Jersey urges you to count incarcerated people as residents of their legal home addresses. The Census Bureau is "committed to counting every person in the correct place...to fulfill the Constitutional requirement (Article 1, Section 2) to apportion the seats in the US House of Representatives among the states."¹ For fair and equitable apportionment for legal voters, counting incarcerated populations at a correctional institutional is counting them at the incorrect location, one in which they happen to be temporarily located on Census day.

The League of Women Voters has been dedicated to protecting voter's rights since our organization was founded in 1920. The League's mission – Making Democracy Work® – includes ensuring a free, fair and accessible electoral system for all eligible voters. In protecting voting rights, we also want to ensure that each vote carries equal weight when electing state and federal legislators.

Counting incarcerated people at their facility address violates the constitutional principle of "One Person, One Vote" and the Supreme Court's mandate that districts be designed to give each resident the same access to government.² Including prison populations as legitimate constituents in the prison's district gives disproportionate weight to the votes of those legal voters living in that district, more weight than voters living in districts that do not have correctional facilities.

The consequences of the Census Bureau's policy of tabulating incarcerated people as residents of prison locations, rather than at their home addresses, skews democracy on both the state and local levels and is especially problematic in New Jersey where this policy unfairly enhances the weight of cast vote in 13 districts where state correctional facilities are located while diluting the vote in every other district.^{3,4}

This is particularly unfair for residents in Newark, New Jersey's largest city, where the added prison population does not offset the disproportionate number of residents that have been incarcerated and counted in a different district.⁵ Another urban center, Camden, is considered the poorest city in the nation and prison gerrymandering has reassigned 12% of its residents to faraway districts, diluting further the power of the remaining voters.⁶

	<p>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 located far from the actual homes of incarcerated people. For New Jersey, that number represents 76% of offenders in New Jersey correctional institutions as of January 2015.⁷</p> <p>The League of Women Voters of New Jersey also has identified other unfair outcomes flowing from the Bureau’s current method of counting incarcerated persons. For example, New Jersey does not require school board districts based on population that have 8 or fewer members to exclude correctional populations when apportioning county districts thereby creating significant vote dilution in districts with prison populations.⁸</p> <p>We have previously called upon the Census Bureau to change its practice when the League joined in a letter to Census Bureau Acting Director Thomas Mesenbourg (of February 14, 2013), requesting that the Census Bureau count incarcerated persons at their home address.⁹ The League will continue to watch the NJ Senate Bill 480 and Assembly Bill A-659 that require incarcerated individuals to be counted at their residential address for legislative redistricting purposes.¹⁰</p> <p>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 the League of Women Voters of New Jersey believes in a population count that accurately represents communities, we urge you to implement changes to the ‘usual residence’ rule to provide a count in the 2020 Census of incarcerated persons at their pre-incarceration addresses.</p> <p>¹ http://www.census.gov/population/www/cen2010/resid_rules/resid_rules.html ² http://www.njleg.state.nj.us/legislativepub/our.asp Legislators are elected from 40 legislative districts of substantially equal population. ³ http://www.state.nj.us/corrections/pages/about_us/org_struct/Division_of_Ops.html ⁴ This count does not include a 14th state facility opened since the 2010 Census. http://www.prisonersofthecensus.org/50states/newprisons.html ⁵ 14% according to http://www.state.nj.us/corrections/pdf/offender_statistics/2015/By%20County%20of%20Commitment%202015.pdf ⁶ http://www.state.nj.us/corrections/pages/about_us/org_struct/Division_of_Ops.html and http://www.state.nj.us/corrections/pdf/offender_statistics/2015/By%20County%20of%20Commitment%202015.pdf ⁷ http://www.state.nj.us/corrections/pdf/offender_statistics/2015/By%20Ethnicity_Race%202015.pdf ⁸ http://www.prisonersofthecensus.org/50states/NJ.html ⁹ http://lww.org/content/league-urges-census-bureau-end-prison-based-gerrymandering ¹⁰ https://legiscan.com/NJ/text/S480/id/916795/New_Jersey-2014-S480-Introduced.html</p>
c104	<i>This comment submission contains graphics and cannot be displayed in this table. It is available as Appendix Attachment c104.</i>
c105	<p>The Center for Living and Learning submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>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 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.</p> <p>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 [org name] believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c106	Common Cause Delaware (CCDE) and Delaware Americans for Democratic Action (ADA) submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge

you to count incarcerated people at their home addresses, rather than at the particular facility that they happen to be located at on Census day.

Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of the core mission of both CCDE and ADA to promote civic engagement and accountability in government, as is ensuring that every eligible American's vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district, while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy, and it hurts the communities from which these incarcerated persons hail.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the explosion in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of "one person, one vote" but also with the federal Voting Rights Acts of 1965 which protects minority communities' opportunities "to participate in the political process and to elect representatives of their choice."

The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

Currently, four states including our own (California, Delaware, Maryland, and New York) have taken a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities individually adjust population data to avoid prison gerrymandering, when drawing their local government districts.

In 2010, Delaware became the second state to pass a law to end prison-based gerrymandering. House Bill 384 required the Department of Correction to collect the home addresses of incarcerated people and required the legislature to draw its districts on the basis of Census Bureau data corrected to count incarcerated people at their home addresses. The Department of Corrections collected and transmitted the address information but, unfortunately, the state was unable to arrange for the geocoding of this address data in time for the legislature's deadline on making their proposals public and had to, reluctantly, postpone full implementation until 2021. A change in the residence rule for incarcerated people by the Census Bureau would meet the state's needs in a much more streamlined fashion.

We're proud Delaware took the first step towards undoing prison-based gerrymandering, but it hasn't been a smooth process, and there is a better way. This ad hoc approach in a few states is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation's foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.

Thank you for this opportunity to comment on the Residence Rule and Residence Situations; we appreciate the Bureau's aim to count everyone in the right place in keeping with changes in society and population realities. Because Common Cause Delaware and Delaware Americans for Democratic Action believe in a population count that accurately represents communities, we urge you to count

	incarcerated people as residents of their last-known home addresses.
c107	<p>Common Cause Minnesota submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Common Cause Minnesota works to insure every voice in every community is heard and that those we elect to serve in office are held accountable. Counting those incarcerated at the particular facility fails Minnesota’s democracy in two ways.</p> <p>First, counting prison populations as if they were actual constituents of the district the prison is located gives a few small communities more political power at the expense of everyone who does not live near a prison. The effect is that everyone who does not live in a district that contains a prison has their vote diluted by these artificially inflated populations.</p> <p>Second, counting prison populations in this way also creates a second and more serious problem here in Minnesota in that if people are being counted in prison, they are not being counted in their home community. 47% of people currently incarcerated are people of color which is a huge disparity with the 18.1 % people of color represent in Minnesota’s population. In turn, the communities in which those incarcerated lived are now under-represented in terms of their size for every elected official, from city council all the way to their congressional representation.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 [org name] believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c108	<p>On behalf of the NAACP, our nation’s oldest, largest and most widely-recognized grassroots-based civil rights organization, I would like to submit this letter as a comment on the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950, issued on May 20, 2015. We strongly support the Census Bureau’s counting incarcerated people at their most recent residence prior</p>

to incarceration, rather than at the particular facility in which they are incarcerated in on Census day.

As was recently described in its report “The Racial Geography of Mass Incarceration,” the Prison Policy Initiative found that stark racial and ethnic disparities exist between incarcerated people and the people in the county outside the prison's walls¹. The report found that the transfer of African American and Latino incarcerated people to communities very different than their own is a national problem not confined to select states. As a result, hundreds of counties have a 10-to-1 “ratio of over-representation” between incarcerated African Americans and African Americans in the surrounding county — meaning that the portion of the prison that is African American is at least 10 times larger than the portion of the surrounding county².

One example cited in the report is Martin County, Kentucky, which has a ratio of the percentage of its incarcerated population that is African American to the percentage of its non-incarcerated population that is African American of 529, because the 884 incarcerated African Americans make up 56% of the incarcerated population but the 12 African Americans freely living in the county make up only about 0.1% of the county's free population³. This large scale census inaccuracy leads to Martin County, and similar counties like this all across our nation, as being considered diverse when they are not. Furthermore, because of felon dis-enfranchisement laws, the non-ethnic population has much more political power than the racial and ethnic minorities who reside among them. As a result, when state legislatures use that flawed data to draw legislative districts, they transfer African American political values to districts where African Americans have no voice.

The report concludes by saying that “this large-scale transfer of (African American) and Latino people to areas demographically very different than their homes has even larger effects thanks to a unique quirk in the federal Census that counts incarcerated people as if they were willing residents of the county that contains the correctional facility for redistricting purposes.”⁴

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades; and as clearly demonstrated by the report cited above, the time to update this rule is now. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million people. But since then, the nation's incarcerated population has more than quadrupled to over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.

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 located far from the actual homes of incarcerated people. When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located.

As the Bureau strives to count everyone in the right place in keeping with changes in society and population realities, it is imperative that the changes proposed to the Residence Rule be updated. Because the NAACP believes in a population count that accurately represents communities, and because it so acutely impacts the people and we serve and represent, we urge you to count incarcerated people as residents of their home address.

Thank you again for the opportunity to comment on the Census Bureau's Proposed Residence Rule. Should you have any questions or comments on the NAACP position, please feel free to contact me at _____.

¹ *The Racial Geography of Mass Incarceration*, July 2015, by Peter Wagner and Daniel Kopf, Prison Policy Initiative. Found at <http://www.prisonpolicy.org/racialgeography/report.html>

² Ibid

	<p>³ Ibid.</p> <p>⁴ Ibid.</p>
c109	<p>Asian Americans Advancing Justice AAJC (Advancing Justice AAJC) submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Advancing Justice AAJC is a national non-profit, non-partisan organization founded in 1991. Advancing Justice AAJC’s mission is to advance the human and civil rights of Asian Americans, and build and promote a fair and equitable society for all. Our wide-ranging efforts include promoting civic engagement, forging strong and safe communities and creating an inclusive society. Advancing Justice AAJC is part of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five nonprofit organizations in Los Angeles and San Francisco, CA, Chicago, IL, Atlanta, GA and Washington, D.C. who joined to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. Additionally, 120 organizations are involved in Advancing Justice’s community partners network, serving communities in 29 states and the District of Columbia.</p> <p>Together with the Advancing Justice affiliates and our Community Partners, AAJC has been extensively involved in improving the current level of political and civic engagement among Asian American communities and increasing Asian American access to the voting process. We work on enforcement and protection of the VRA and other voting statutes, protection of the vote, and improvement of election administration. During the last redistricting cycle, we worked with the Advancing Justice affiliates and our local partners to ensure Asian American communities had a voice during the redistricting process and were able to work to keep their communities of interest together. Since those efforts, Advancing Justice AAJC has been engaged in conversations around redistricting reform and ensuring proper representation for all.</p> <p>We recognize that American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation’s incarcerated population has more than quadrupled to over two million people. The Asian American and Pacific Islander (AAPI) prison population increased by 30 percent from 1999 to 2004 while the white prison population rose by only 2.5 percent. During the prison boom in the 1990s, the AAPI prison population grew 250 percent to the overall prison population’s 77 percent. And a closer look at disaggregated data shows that mass incarceration has increasingly become more of an issue for specific AAPI communities. For example, according to a study by the Office of Hawaiian Affairs in 2010, Native Hawaiians comprised about 39 percent of Hawaii's state prison population in comparison to the state's overall Native Hawaiian population of 24 percent.¹ In California, a study found that 64.6 percent of the state’s AAPI prisoners were immigrants and refugees. The largest populations among them were Vietnamese (22 percent) and Filipino (19.8 percent), followed by Pacific Islanders (9.9 percent) and Laotians (8.5 percent).² Thus, the manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.</p>

When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.

New York State is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. *See* The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).

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 Advancing Justice | AAJC believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

¹ Office of Hawaiian Affairs, Justice Policy Institute, University of Hawai‘i and Georgetown University, Report: The Disparate Treatment of Native Hawaiians in the Criminal Justice System, available at <http://www.oha.org/governance/criminal-justice/>

² Sarita Ahuja and Robert Chlala, Asian Americans/Pacific Islanders in Philanthropy, Widening the Lens on Boys and Men of Color: California AAPI & AMEMSA Perspectives, available at http://www.asianprisonersupport.com/wp-content/uploads/2014/01/aapip_bymoc-final.screen.pdf.

c110

Common Cause/PA submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Our organization strongly urges you to begin counting incarcerated individuals at their home address, rather than at the particular facility that they happen to be located at on Census day.

For over four decades Common Cause/PA has been working to ensure that every citizen of our state who is entitled to vote has the opportunity to do so – and that every vote is counted as cast. However, voters also must believe their votes are meaningful if they are going to participate in elections, and have the opportunity to hold their elected officials accountable. That means we must have competitive elections and every voter’s vote must have nearly equal value. When incarcerated individuals – who cannot vote in Pennsylvania – are counted by the census at their penal facility residence instead of their pre-incarceration home address, that translates into inflated populations for penal institution municipalities. This skews the redistricting process. To ensure that every citizen’s vote carries relatively equal weight when legislative and congressional districts are designed, incarcerated persons must be counted at their pre-sentencing address.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated

	<p>people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census, and ultimately on the fairness of redistricting.</p> <p>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 located far from the actual homes of incarcerated people. In Pennsylvania, this has resulted in significant skewing of legislative and congressional districts. Pennsylvania has 18 congressional districts with average populations of 705,688 residents. Over 51,000 inmates are incarcerated in 26 state prisons which are dispersed across twelve of those congressional districts (six districts have no state prisons), according to the PA Dept. of Corrections. Five congressional districts have one state prison; four have two state prisons; two have three state prisons; and the very large rural 5th Congressional District has seven state prisons. The problem becomes even more severe when it is applied to the much smaller state senate and legislative districts which respectively average 254,048 and 62,573 residents.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 Common Cause/PA believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c111	<p>The State of Connecticut African-American Affairs Commission has as its mission to improve and promote the economic development, education, health and political well-being of the African-American community in the State of Connecticut.</p> <p>We strongly urge that the residence rules be changed in the 2020 census for people in correctional facilities for adults and people in juvenile facilities. As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>The great racial disproportionality in the make-up of the prison population skews the demographics for communities when doing census calculations and gives certain communities over representation in state legislatures. A prisoner is not a part of the community that they happen to end up incarcerated in therefore they should not be included in the population count.</p> <p>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 urge you to count incarcerated people as residents of their</p>

	home address.
c112	<p>Common Cause NY submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause NY urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of our core mission to promote civic engagement and accountability in government. Counting people in prison as residents of the district in which they are incarcerated has the effect of unfairly enhancing the political power of those who live in the district with the prison in it while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of “one person, one vote,” but also with the federal Voting Rights Acts of 1965 which protects minority communities’ opportunity “to participate in the political process and to elect representatives of their choice.”</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>Currently, four states including our own (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>After New York finally passed its law to end prison based gerrymandering, the NYS Legislative Task Force on Demographic Research and Reapportionment (LATFOR) was mandated to re-allocate state prisoners to their pre-incarceration home address. Part XX of Chapter 57 of the Laws of 2010 states:</p> <p style="padding-left: 40px;">“Upon receipt of such information for each incarcerated person subject to the jurisdiction of the department of correctional services, the task force shall determine the census block corresponding to the street address of each such person's residential address prior to incarceration (if any), and the census block corresponding to the street address of the correctional facility in which such person was held subject to the jurisdiction of such department. Until such time as the United States bureau of the census shall implement a policy of reporting each such incarcerated person at such person's residential address prior to incarceration, the task force shall use such data to develop a database in which all incarcerated persons shall be, where possible, allocated for redistricting purposes, such that each geographic unit reflects incarcerated populations at their respective residential addresses prior to incarceration rather than at the addresses of such correctional facilities.....The assembly and senate districts shall be drawn using such amended population data set.”</p> <p>Task Force technical staff adjusted the Census Bureau’s 2010 Public Law 94-171 data for New York State legislative redistricting. They created three statewide block-level files, which included every category necessary to accommodate the adjusted data and to make the Department of Correctional Services (DOCCS) data compatible with PL 94-171. The prisoner total to be subtracted from prison based census blocks was 60,708 in 2010. One file was generated with all of the geocoded prisoner addresses and racial/ethnic information from DOCCS (to be added to PL 94-171). Another file was created through aggregating racial and ethnic information by correctional facility</p>

and then disaggregating when prisons were located on multiple blocks. A third block-level file was produced for federal prisoners. The adjustment is based on: Adjusted PL = PL + Geocoded prisoner addresses – DOCCS facilities – Federal facilities. This process took a long time, with considerable bureaucratic delays. LATFOR did not complete its prisoner reallocation until 2012.

Such prisoner reallocation greatly impacted how the people of NYS are represented. North Brooklyn Senate District 18, represented by Senator Martin Dilan, had the largest gain in reallocated prisoner population with 2,100 people. In total, Brooklyn Senate Districts gained over 8,500 people, and New York City as a whole gained over 21,000, mostly minority people. Assembly Districts 55 and 56 in central Brooklyn, both represented by African American women, also had significant gains in population after prisoner readjustment, 1,193 and 1,090 people respectively. In contrast, Senate District 45, which encompasses Clinton, Essex, Franklin, Saint Lawrence, Warren and Washington counties, lost over 12,000 of its population count due to the prisoner readjustment. According to a 2012 DOCCS report, almost half, or about 47%, of the incarcerated population had a home residence in the five boroughs of New York City, and only 12% were committed from Long Island, Rockland and Westchester counties. The rest of the incarcerated population came from upstate. Of the total incarcerated population, 49.5% was African-American and 23.6% Hispanic.

The importance of re-knitting a community's once-fractured state of political representation cannot be overstated and many New York State's upstate counties also strengthened the voice of their minority communities through reallocation. For example, Monroe County gained almost 3,000 people, with over 2,000 African-Americans while Onondaga County counted almost 2,000 residents, over half of them minorities.

There were several challenges with implementing New York's law, namely the technical challenges for LATFOR, partisan political opposition to applying the law's mandates and the extreme delays in receiving data from DOCCS, which deferred the entire redistricting process and complicated public engagement efforts of democracy advocates. Also, New York's 2010 law only requires population data to be adjusted for state Senate and Assembly districts, not for Congressional districts, and thus does not solve the problem of underrepresentation for New Yorkers in its entirety.

This ad hoc approach in a few states is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans.

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 Common Cause NY believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

c113

Common Cause Rhode Island submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause Rhode Island urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census Day.

Common Cause Rhode Island has been supportive of ending prison-based gerrymandering for five years, advocating for legislation before the Rhode Island General Assembly that would count prisoners in their home communities, consistent with Rhode Island law. Because Rhode Island has a single prison complex the problem of prison-based gerrymandering is particularly pernicious in our state.

As you know, the American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the

	<p>growth of the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>By designating a prison cell as a residence in the 201 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 located far from the actual homes of incarcerated people. In Rhode Island, this resulted in a state legislative district in which 15% of the population is incarcerated, diluting the voting power of the state's other residents.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. The Rhode Island Senate has passed legislation to do the same after the 2020 Census.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 Common Cause Rhode Island believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c114	<p>On behalf of Connecticut Working Families, I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Working Families organizes for social, economic and racial justice. We have historically advocated for laws and policies that improve the quality of life of workers and their families. Our model is centered on building power within communities by engaging all people in the political process. We firmly believe in political participation, both at the polls and at the General Assembly.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p>

	<p>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 located far from the actual homes of incarcerated people. In Connecticut, while Black individuals make up only 10% of the population, they make up 41% of the incarcerated population. Similarly, Latino individuals make up 13% of the total population but represent 29% of the incarcerated population. The practice of counting a prison cell as a residence has undoubtedly removed power from urban communities of color to mostly white suburban areas. In our state, the vast majority of the prison population was concentrated in 5 small towns, whose residents are mostly white. These towns have been able to count thousands of African Americans and Latinos as their own residents, even though these individuals were housed there only temporarily, and sentenced to those particular facilities for reasons that are frequently arbitrary.</p> <p>We believe that the practice of counting incarcerated people as residents of the area in which they are housed compromises the democratic process. Those areas that house prisons add to their population count and thus their political clout. Larger districts are drawn thereby increasing the power of not only those that are elected but those who live near these prisons. But incarcerated people see no direct benefit for the usurpation of their political power.</p> <p>This must change and it can start with the Census reforming its approach.</p> <p>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 Working Families believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c115	<p>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.</p> <p>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.</p> <p>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 Forth 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.</p> <p>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</p>

additional support for revising the Bureau’s current methodology. The original draft language of the Constitution called for 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.

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>.

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).

c116

Common Cause Oregon submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We ask that you count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

Common Cause is a nonpartisan not-for-profit public interest group that works to safeguard and improve the democratic process. The organization has a long history of leadership, both nationally and here in Oregon, in support of fair and democratic redistricting. In Oregon, we just helped pass state legislation to bring more public participation and transparency to the state’s redistricting process. We’ve also been

	<p>working to address the very problem you are considering now – the fact that counting prisoners where they are incarcerated serves to arbitrarily concentrate a large group of non-voters and thus skew the relative strength of voters.</p> <p>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 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.</p> <p>In Oregon, the Native American population is one population that has lost voting strength due to this distortion. With incarceration rates at more than twice the rate of White Oregonians, Native Americans make up 1% of the total Oregon population but 3% of the incarcerated population. For the most part, Oregon prisons are located outside of tribal areas so that that voting power of non-incarcerated Native Americans is diluted.</p> <p>This distorting effect plays out not only between communities with and without prisons, but also within the communities where prisons are located. For instance, in Pendleton Oregon, the prison population at the Eastern Oregon Correctional Institution makes up roughly 28% of a single Pendleton city council district. Every 3 residents of that district have the political power of 4 residents in other parts of the city.</p> <p>While Common Cause and others are trying to remedy this situation here in Oregon, it would be far better to resolve this through the Census Bureau’s own process. This is too important an issue – getting at the heart of the one-person-one-vote principal – to address piecemeal, state by state.</p> <p>We appreciate that you are looking into this matter and thank you for this opportunity to comment.</p>
c117	<p>Common Cause Indiana submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause Indiana urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of our core mission to promote civic engagement and accountability in government. So is ensuring that every eligible American’s vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy. And it hurts the communities from which these incarcerated persons hail.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the explosion in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of “one person, one vote” but also with the federal Voting Rights Acts of 1965 which protects minority communities’ opportunities “to participate in the political process and to elect representatives of their choice.”</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p>

In Indiana, the city of Terre Haute (the county seat of Vigo County) exemplifies the problem. The 2000 Census counted 1,764 federal prisoners as if they were residents of the city, and when the city used that data for redistricting it drew a City Council where more than 20% of the “residents” were in fact prisoners in a federal prison complex located within town boundaries. This gave each group of 8 residents in that district the same clout as 10 residents in other city council districts. Because the prison nearly doubled in size over the ensuing decade, the distortion of voting power would have been particularly dramatic after the next redistricting. After the 2010 Census just two people who live near the prison could have had as much say in city affairs as three people in any other district. With such stark numbers, the flaw in the Census’ data became apparent and the City corrected the 2010 Census data and was able to then draw equal districts. (For more details, see the attached editorial from a local paper.)

While Terre Haute has created an interim solution, the situation also illustrates the inefficiency of such a one by one approach. As I mentioned earlier, Terre Haute is the county seat of Vigo County, which had to tackle the same problem in its own redistricting even after Terre Haute solved theirs.

As our cities and counties continue to individually tackle the inaccuracies in the Bureau’s data, four states (California, Delaware, Maryland, and New York) have taken a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

This ad hoc approach in a few states is neither efficient nor universally implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation’s foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.

Thank you for this opportunity to comment on the Residence Rule and Residence Situations; we appreciate the Bureau’s aim to count everyone in the right place in keeping with changes in society and population realities. Because Common Cause Indiana believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their last-known home addresses.

c118

I represent Wisconsin State Assembly Legislative district _____ in _____, Wisconsin and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests in part on an accurate count of the nation's population. Moreover, an accurate count of the nation's population has far reaching implications for how legislative and congressional districts are drawn and how important federal and state resources are allocated.

The Census has evolved immensely since the first Census 225 years ago. Today, the growth in the prison population requires the Census continue that evolution. The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

	<p>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 located far from the actual homes of incarcerated people. In Wisconsin, state legislative district 53, drawn after the 2000 Census, contained 5,131 prisoners from other parts of the state. This artificially decreased the population of the district by almost 10%. In effect, each group of 9 residents in district 53 had as much political power as 10 residents elsewhere in the state.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>However, going forward, this ad hoc approach is untenable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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. Democracy relies on a population count that accurately represents communities, therefore I urge you to count incarcerated people as residents of their home address.</p>
c119	<p>The Civil Rights Committee of the New York City Bar Association submits this comment in response to the Census Bureau's Federal Register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge that you change the proposed rule from counting incarcerated people at the facility in which they are housed and use their last permanent residence or "usual residence" as defined by the prisoner instead.</p> <p>The New York City Bar Association is among the nation's oldest and largest bar association. Through its more than 160 committees, the Association promotes reforms in the law and seeks to improve the administration of justice. The Civil Rights Committee is directly concerned with how 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. 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.</p> <p>American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 Latino¹ into just 5,393 Census blocks that are located far from the actual homes of incarcerated people.² In New York, in particular, after the 2000 Census, seven state senate districts met population requirements in state apportionment only because the Census counted detained people as if they were upstate residents.³ For example, each Senate district in New York should have had 306,072 residents after the 2000 Census. District 45, which claimed the populations of thirteen large prisons,</p>

however, had only 286,614 actual residents.⁴

Because of the distortions in political representation caused relying on the Census count of prisoners for the purposes of redistricting, 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.⁵ In *Little v. LATFOR*, the Supreme Court of the State of New York in Albany upheld this state law.⁶ The Court reasoned that the incarcerated people lacked any permanency in the locations of the facilities nor did they intend to remain there after their release.⁷ 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.⁸ 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.”⁹

Given the logic of 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, when incarcerated people are both *de jure* and *de facto* excluded from participating in the civic life of these communities. Detained people cannot purchase homes, become employed, or make a living while they are incarcerated.¹⁰

In 2010 there were 161 counties in 31 states where the incarcerated African-American population outnumbered the number of free African-Americans, and 20 counties in 10 states where the incarcerated Latino population outnumbered the number of free Latinos in those same counties.¹¹ In states as populous as New York, Pennsylvania, Illinois, Georgia, Florida and Texas, African-Americans and Latinos are more likely to be locked up in prisons in communities that remain largely white, non-diverse, and miles apart, both literally and figuratively, from communities in their home counties.¹²

African-Americans and Latinos in New York are overincarcerated. Even though African Americans comprise 16% and Latinos 18% of the general population in New York State, African-Americans comprise 53% and Latinos 22% of the incarcerated state population.¹³ New York is also more likely to incarcerate African-Americans and Latinos outside their communities of usual residence.¹⁴ In 2000, only 25% of New York’s state population lived upstate, yet 91% of detained people in state prisons were incarcerated there.¹⁵

When the Census Bureau counts detainees 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”.¹⁶ In New York, the median time served in a facility in 2007 was seven months, a statistic that further reflects that the place of incarceration is not the permanent residence of the incarcerated individual.¹⁷ Counting detained people in their prior residence serves not only the ideals of equity and equal protection in democracy, but is also rooted in common sense -- people who are detained are transferred often and incarcerated temporarily.

Currently, California, Delaware, Maryland, and New York are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at their actual homes, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. The U.S. Census should follow suit by changing its policy to achieve a more accurate population count that serves the goals of fairness, equity, and equality in enumeration.

Finally, when state legislatures used this flawed data to draw or apportion legislative districts, they impute African-American and Latino political clout and political participation to districts where African-American and Latino communities in actuality have little to no civic voice.¹⁸ These outcomes do not appear to comport with the Supreme Court’s Fourteenth Amendment equal protection jurisprudence “one person one vote” standard.¹⁹

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 The Civil Rights Committee of the New York City Bar Association supports a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

¹ 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/c2010br02.pdf>.

² See *2010 Group Quarters Shapefile*, Prison Policy Initiative, www.prisonersofthecensus.org/data/2010/groupquartersshapefile.html (last visited Jul. 13, 2015).

³ PETER WAGNER, ALEKS KAJSTURA, ELENA LAVARREDA, CHRISTIAN DE OCEJO & SHEILA VENNEL 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](http://www.prisonersofthecensus.org/50STATES/NY.HTML).

⁴ *Id.*

⁵ Wagner et al., *50 State Guide*, *supra* note 3.

⁶ *Little v. LATFOR*, No. 2310/2011 at 7 (N.Y. Sup. Ct., Albany Cnty. Dec. 1, 2011).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Peter Wagner, Eric Lotke & Andrew Beveridge, *Why the Census Bureau can and must start collecting the home addresses of incarcerated people*, Prison Policy Initiative Report submitted to the U.S. Census Bureau on February 10, 2006, in advance of the Bureau's report to the Appropriations Committee on using incarcerated people's homes of record in the Census, <http://www.prisonpolicy.org/homeaddresses/report.html>. (February 2006) (hereinafter “*Why the Census*”).

¹³ See Peter Wagner & Daniel Kopf, *The racial geography of mass incarceration*, Prison Policy Initiative (July 2015), <http://www.prisonpolicy.org/racialgeography/report.html>.

¹⁴ *Id.*

¹³ *50 State Incarceration Profiles: New York*, Prison Policy Initiative, <http://www.prisonpolicy.org/profiles/NY.html> (last visited Jul. 13, 2015).

¹⁴ Wagner & Kopf, *The racial geography of mass incarceration*, *supra* note 13.

¹⁵ 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>.

¹⁶ Wagner et al., *Why the Census*, *supra* note 12.

¹⁷ New York State Department of Correctional Services, HUB SYSTEM: Profile of Inmate Population Under Custody on January 1, 2008, at 11, available at http://www.doccs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf.

¹⁸ Wagner & Kopf, *The racial geography of mass incarceration*, *supra* note 13.

¹⁹ 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).

c120

We at Common Cause appreciate the Census Bureau's invitation to submit these comments in response to its federal register notice regarding Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). To ensure that each district in this country fairly captures its residential population, for purposes of voting and fair representation, we urge the Bureau to count incarcerated people at their home addresses, rather than at the prison facilities in which they are temporarily located. Making this change to the residence rules is fundamental to ensuring that votes from prison districts do not hold more power than those from districts without prisons.

Founded in 1970, Common Cause is a national nonpartisan advocacy organization dedicated to empowering citizens in making their voices heard in the political process and holding government accountable to the people. Ensuring that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles, is fundamental to a democracy that aims for and professes representation of all. So too is ensuring that each vote cast is weighed fairly, in keeping with the principle of "one-person, one-vote" announced by the Supreme Court in *Reynolds v. Sims*. To protect these principles, Common Cause, through its national office and 35 state organizations, advances a number of elections reforms throughout the country, including the elimination of prison-based gerrymandering.

The practice of prison-based gerrymandering is at odds with our principles of democracy. Prisons are typically located in rural - often, white-majority districts¹ - and in many instances the prisoners make up a large majority of the district's population. States engaging in prison-based gerrymandering - by adopting the Bureau's residence rules and allocating incarcerated persons to prison districts - necessarily inflate the votes of their rural, white voters at the expense of those cast by people of color living in non-prison, often urban, districts. The number of people affected by the practice, moreover, is not insignificant. In 2010, non-Hispanic Black men were incarcerated at a rate seven times higher than non-Hispanic White men²; it is these typically urban, minority-majority communities, to which incarcerated persons most often return upon completion of sentences, whose votes are made - by the practice of prison-based gerrymandering - to matter less than those of mostly white, rural voters.

When the Bureau first began counting Americans in 1790, the issue of where to count prisoners did not hold the same significance, or result in the same disparities, as it does today. As is well known, American demographics and living situations have changed dramatically over the past two centuries, and the Census has appropriately evolved in response to many such changes in order to provide an accurate picture of the nation. The prison population's explosion, particularly over the past two decades³, requires the Census Bureau to again update its methodology in order to create, as the Bureau strives for, a "fair and equitable apportionment" that reflects "changing living situation resulting from societal change."⁴

While waiting for the Bureau to make this needed change, a number of states have begun to take action. New York State, California, Delaware, and Maryland have all passed legislation to eliminate the state-wide practice of prison-based gerrymandering, and over 200 counties and municipalities individually adjust population data to avoid the practice when drawing their local government districts. A number of others states - including Oregon, Illinois, Rhode Island, and New Jersey - have also begun considering legislation that would ban the outdated practice of counting incarcerated persons in the prisons where they temporarily remain.

As evident by these state and local actions, states are not legally required to adopt the Census Bureau's definition of "residence" when allocating individuals for redistricting purposes. However, the reality is that they almost all do. After all, the Bureau provides the "leading source of quality data about the nation's people ...",⁵ and is best suited to lead the way - and thus guide remaining states - on this important issue. An ad hoc approach on how to apportion incarcerated persons is neither efficient nor fair; votes across districts, and across the country, should hold equal weight.⁶ States ascribing to the same definition of "residency" for incarcerated persons makes good sense, particularly since all incarcerated persons share the same characteristic of temporary removal from both greater society and their own homes. Indeed, they don't partake of the prison district's roads, parks, or schools; they are confined within that district only temporarily; and, in the vast majority of instances, they return to the districts in which they lived before incarceration. Changing the residence rule to reflect this reality would provide long-awaited guidance to states.

Thank you for this opportunity to comment on your Residence Rule and Residence Situations. We appreciate that the Bureau strives to

	<p>count all individuals in the right place in keeping with changes in society and population realities. Because Common Cause believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p> <p>¹ For example, 98% of New York's prison cells are located in state senate districts that are disproportionately White; in Connecticut, 75% of the state's prisons are in state house districts that are disproportionately White. See Peter Wagner, 98% of New York's Prison Cells Are in Disproportionately White Senate Districts, Prison Pol'y Initiative (Nov. 17, 2010), http://www.prisonersofthecensus.org/new/2005/01/17/white-senate-districts/; see also Ending Prison-Based Gerrymandering Would Aid in African-American and Latino Vote in Connecticut, Prison Pol'y Initiative (Nov. 17, 2010), http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf</p> <p>² U.S. Dept. of Justice, "Prisoners in 2010," avail. at http://www.bjs.gov/content/pub/pdf/p10.pdf</p> <p>³ NAACP, Criminal Justice Factsheet, available at www.naacp.org/pages/criminal-justice-fact-sheet</p> <p>⁴ 2020 Decennial Census Residence Rule and Residence Situations, 80 Fed. Reg. 28950-28952 (May 20, 2015)</p> <p>⁵ See Census Bureau website at http://www.census.gov/about.html, last visited on July 9, 2015.</p> <p>⁶ Moreover, Massachusetts cannot easily make such changes to the ways in which it allocates prisoners for redistricting purposes until the Census Bureau issues a change in its residence rules, due to a state constitutional requirement that it follow the Bureau's rules. The Massachusetts legislature sent the Bureau a resolution in 2014 urging it to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p>
c121	<p>I am a Professor of Law at _____, _____.¹ I teach constitutional law and the law of democracy — which means that I have the privilege of studying, analyzing, and teaching the Constitution from start to finish. From the first words of the Preamble to the final words of the 27th Amendment, our founding document is concerned with how We the People are represented: what we authorize our representatives to do, what we do not permit our representatives to do, and how we structure authority to allow our representatives to check and balance each other in the interest of ensuring that the republic serves us all.</p> <p>My examination of the Constitution and the law of democracy is not merely theoretical. I have had the privilege to practice in this arena as well, including work with institutions and organizations attempting to foster meaningful representation of the American public. My work has included the publication of studies and reports; the provision of testimony and informal assistance to federal and state legislative and administrative bodies and officials with responsibility for apportionment, districting, and the electoral process; and, when necessary, participation in litigation to compel jurisdictions to comply with their obligations under state and federal law.</p> <p>Much of my work, including my research and scholarship, confronts the structure of representation and the factual predicates of that structure. I have analyzed, in detail, the effect of different voting systems and districting plans that purport to further meaningful representation, the manner in which the Census count impacts that representation, and various jurisdictions' efforts to modify and adapt the Census default. I believe that it is no coincidence that an enumeration of the People is the very first substantive duty that our founding charter gives to the newly established collective government, for it is this enumeration that drives the representation at the core of our constitutional order.</p> <p>It is therefore a privilege to respond to your call for comment on the existing Census Residence Rule and Residence Situations. I am heartened that the Census Bureau is evaluating its rules governing where individuals should be counted, in order to determine whether they best effectuate the constitutional mandate or whether they might be improved for 2020.</p> <p>For most individuals, the Census Bureau's current default for determining residence has a sound representational logic. The vast majority of persons counted by the Census will be counted at a place they consider "home": the address that they would also consider their permanent legal, electoral, and social residence. For these people, the residence rules generate no meaningful controversy.</p>

Some people are away from “home” when the Census comes calling. Many (but not all)² of these individuals are counted at the place considered their “usual residence,” where they live and sleep most of the time. For most such individuals whose “usual residence” is not “home,” the current Census default is also entirely sensible. These individuals may be people who have been called away from home for military or other public service, job relocation, or education, and they are generally intertwined with the communities where they are laying their heads most often. They eat locally, shop locally, seek entertainment locally, and walk, bike, bus, and drive locally. While they are away from home, they use local services, utilities, and public assistance just as their new neighbors do. They interact regularly with the other members of the local community, and in so doing, they are subject to the same rules and regulations and ordinances that govern others in the community, and they enjoy many of the same benefits. All of the above interaction with the local community makes it logical for the Census to tally most of these sojourners in tandem with the local communities in which they are usually physically present, for purposes of representation of their interests by local, state, and federal government.

There is one sizable group of people, however, for whom the above description is not at all accurate. The 2.2 million individuals who are incarcerated in the United States³ were counted by the Census Bureau in 2010 at the locations where they had involuntarily been placed. The vast majority of them showed no intent at all to change their legal or electoral residence. (Indeed, consistent with the common principle that a temporary absence does not amount to a change in legal or electoral residence, 28 states have explicitly provided that incarceration does not itself provoke such a change.⁴ And in most if not all of the other states, the implication of their more general rule would lead to the same conclusion.)

Individuals who are transferred to a correctional facility often have little in common with more usual “usual residents” of the area. Incarcerated individuals are often from a demographic and socioeconomic background quite distinct from those who live in the neighborhood. And in many areas, the racial or ethnic disparity is quite stark. For example, a recent study found that there are now more than 450 counties where the proportion of African-Americans in the incarcerated population is larger than the proportion of African-Americans in the surrounding county — and more than 200 counties where the proportion of African-Americans in the incarcerated population is more than ten times larger than the proportion of African-Americans in the surrounding county.⁵ As another researcher concluded, “In 173 counties nationwide, more than 50% of the purported African-American ‘residents’ are behind bars.”⁶

Moreover, unlike all of the other sojourners above who are away from “home” on Census Day, incarcerated individuals do not meaningfully interact — indeed, are not permitted to meaningfully interact — with the communities to which the Census Bureau assigned them in 2010. Individuals incarcerated in Village Township do not eat at the restaurants of Village Township, shop in Village Township stores, attend Village Township movie theaters, or use Village Township roads, sidewalks, or public transportation. While incarcerated, they are not affected by Village Township county or municipal codes and cannot attend Village Township public meetings. They may be confined in a location physically adjacent to Village Township residents, but most Village Township residents will not likely consider them “neighbors.”

Because of both the lack of similarity and the lack of interaction, it would be quite surprising to find that incarcerated individuals feel represented — either directly or indirectly — by the officials representing the physical locations to which they were assigned by the Census Bureau in 2010. At least some officials representing communities with sizable correctional facilities keenly understand the disconnect. When an Iowa city councilman was asked whether he considered the incarcerated individuals comprising 96% of the population in his district to be his constituents, he said, simply, “not really.”⁷ And in 2002, a New York state legislator representing a district housing thousands of incarcerated individuals said that given a choice between the district’s cows and the district’s prisoners, he would “take his chances” with the cows, because “[t]hey would be more likely to vote for me.”⁸

The practice of tallying incarcerated individuals at the facilities where they are confined is wrong. It creates both informational and

democratic harm, and should be corrected in the 2020 Census.

The practice creates informational harm by painting a misleading picture of community demographics. A researcher or policymaker or planner seeking to better understand an area will look to the valuable information compiled by the Census for a rich portrait of the local residents. For those areas that include a correctional facility, the snapshot will include those who are incarcerated, when it is likely that neither the people inside nor those outside the facility regard the prison population as a true part of the community.

The practice creates democratic harm as well, in several ways. The Constitution requires that local, state, and federal districts be drawn such that district populations are approximately equal.⁹ When the population tally counts incarcerated individuals where they are confined, districts are built on the backs of “ghost constituents,” with no meaningful ability to influence their purported representatives, directly or indirectly.¹⁰ These individuals and the communities where they are truly from, accordingly, lose representation; in certain circumstances, the dilution may give rise to a claim under the Voting Rights Act.¹¹ As the National Academy of Sciences recognized, “The prison population includes disproportionate numbers of racial minorities and persons from large urban areas; that this population is counted in the largely rural areas where prisons tend to be located, and that they are included in redistricting calculations despite being barred from voting in most cases, raises legitimate concerns of equity and fairness in the census.”¹²

On the other side of the coin, the non-incarcerated residents of districts with prisons garner unduly disproportionate influence. For example, in Lake County, Tennessee, after the most recent census, 87% of the population of one County Commissioner district was allotted to a local correctional facility. As a result, the 344 non-incarcerated residents of the district receive the same voice on county policy as the approximately 2500 or 2600 individuals in each of Lake’s two other districts.¹³

Even when correctional facilities do not distort representation, they may well distort the candidate pool. Many jurisdictions allow voters throughout the jurisdiction to vote on candidates, but require the candidates to be from geographic districts of approximately equal size. If such districts are drawn to include large correctional facilities, there may be districts with no individuals eligible to run as candidates.¹⁴

Sometimes, these factors align. In Anamosa, Iowa, after the 2000 Census, 1300 of the 1358 individuals allotted to City Council ward 2 were incarcerated there, giving the 58 other residents of that ward strikingly disproportionate political power.¹⁵ And after subtracting individuals ineligible to run for city council, that also left the ward strikingly few potential officeholders. In the 2005 municipal election, ward 2 had no candidates on the ballot, and only three voters, total.¹⁶ The winner, selected with two write-in votes, did not even vote for himself.¹⁷

Though Anamosa’s situation is an extreme, the practice of counting incarcerated individuals where they are confined does democratic damage everywhere. This explains why more than 200 known counties, cities, and school boards in at least 30 states have attempted to correct or otherwise compensate for the 2010 Census tally, usually adjusting local population totals to account for populations in correctional facilities when drawing their own districts.¹⁸ At least six states require certain local governments to adjust existing population tallies in order to more equitably account for incarcerated individuals when drawing local districts;¹⁹ additional states expressly permit or encourage the practice.²⁰ And four states, representing 65 million people, have already decided that in 2020, they will endeavor to correct the Census Bureau’s count of incarcerated populations in drawing state and federal legislative districts, if the Census Bureau does not correct its own misallocation.²¹ Legislation has been proposed in others.

The Census Bureau’s practice of counting incarcerated individuals where they are confined was based on principles developed well before the Supreme Court cases establishing the equal representation principle, and well before the comparatively recent explosion in the incarcerated population.²² States and localities are attempting to compensate for the inadequate allocation as best they can. It is time for

the Census Bureau to assist them.

It would be in keeping with the bulk of the Census Bureau’s representational logic to tally incarcerated individuals in the communities to which they are most closely connected on Census Day. That location is not where they are involuntarily confined, but rather where their relatives and friends and support systems are often located, where their children may live, where they are most likely to return when they are released from incarceration,²³ and where their inclusion will illuminate and not distort the snapshot of the true local community. While in individual cases these indicators may point to different addresses, the best available proxy — and a far superior proxy than the deeply flawed alternative of the carceral facility — is the individual’s last known residence before incarceration. This is the most recent place that an incarcerated individual is from, and the last place that they chose to make their “usual” residence. A decision to tally incarcerated individuals at their last known address would come far closer to aligning such individuals with their legal and social residence than the Census Bureau’s past practice. And it would further the opportunity for these individuals to be adequately represented, better fulfilling the rationale for the Census’s core function.

Counting incarcerated individuals at their last known residence before incarceration, rather than where they are involuntarily confined, is a feasible solution as well as a just one. There are several options for collecting this information. Incarcerated individuals may be surveyed by interview and questionnaire, just as the vast majority of other individuals are surveyed.²⁴ In the alternative, or to supplement coverage gaps, the Census Bureau could collect most last prior addresses from the existing administrative records of correctional, parole and probation, or judicial offices.²⁵

I encourage the Census Bureau to consider revising its Residence Rule and Residence Situations, to tally incarcerated individuals at their last known address before incarceration. Correcting the outmoded alternative practice in place during the last Census is a pragmatic means to align the residence rules in a way that furthers just representation of individuals in the communities to which they are truly attached on Census Day.

I thank the Census Bureau for this opportunity to comment. If you have any further questions, please feel free to contact me at your convenience. I can best be reached by email, at _____, or by phone at _____.

¹ My comments represent my personal views and are not necessarily those of _____ or any other organization with which I am now or have previously been affiliated.

² For example, children at a boarding school have been counted at the home of their parents. 2020 Decennial Census Residence Rule and Residence Situations, 80 Fed. Reg. 28,950, 28,951 (May 20, 2015).

³ Lauren E. Glaze & Danielle Kaebler, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Correctional Populations in the United States, 2013* (Dec. 2014), <http://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

⁴ See ALASKA STAT. § 15.05.020; ARIZ. CONST. art. VII, § 3; CAL. CONST. art. II, § 4; COLO. CONST. art. VII, § 4; CONN. GEN. STAT. ANN. §§ 9-14, 9-40a(a); HAW. REV. STAT. § 11-13(5); IDAHO CODE ANN. § 34-405; KAN. STAT. ANN. § 11-205(f); ME. REV. STAT. ANN. tit. 21-A, § 112(14); MICH. COMP. L. § 168.11(2); MINN. CONST. art. VII, § 2; MISS. CODE ANN. § 47-1-63; MO. CONST. art. VIII, § 6; MONT. CODE ANN. § 13-1-112(2); N.C. GEN. STAT. ANN. § 153A-257(a)(2); NEV. CONST. art. II, § 2; N.H. REV. STAT. § 654:2; N.M. STAT. ANN. § 1-1-7(D); N.Y. CONST. art. II, § 4; OR. CONST. art. II, § 4; 25 PA. STAT. § 2813; R.I. GEN. LAWS § 17-1-3.1(a)(2); TENN. CODE ANN. § 2-2-122(7); TEX. ELEC. CODE ANN. § 1.105(e); UTAH CODE ANN. § 20A-2-105(3)(c)(iii); VT. STAT. ANN. tit. 17, § 2122(a); WASH. CONST. art. VI, § 4; WYO. STAT. ANN. § 22-1-102(a)(xxx)(B)(III). See generally Dale E. Ho, *Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle*, 22 STAN. L. & POL’Y REV. 355, 366-67 (2011) (reviewing residency standards).

⁵ Peter Wagner & Daniel Kopf, *The Racial Geography of Mass Incarceration*, July 2015, <http://www.prisonpolicy.org/racialgeography/report.html>. The same study found more than 220 counties where the proportion of Latinos in the incarcerated population is larger than the proportion of Latinos in the surrounding county — and more than 40 counties where the proportion of Latinos in the incarcerated population is more than ten times larger than the proportion of Latinos in the surrounding county. *Id.*

- ⁶ Ho, *supra* note 4, at 361. This report considered Census data from 2000, but the number has not changed considerably in ten years. In 2010, there were 161 counties where more than half of the African-American individuals tallied by the Census were incarcerated. See Wagner & Kopf, *supra* note 5.
- ⁷ Sam Roberts, *Census Bureau's Counting of Prisoners Benefits Some Rural Voting Districts*, N.Y. TIMES, Oct. 24, 2008, <http://www.nytimes.com/2008/10/24/us/politics/24census.html>.
- ⁸ Jonathan Tilove, *Minority Prison Inmates Skew Local Populations as States Redistrict*, Newhouse News Service, 2002, <https://web.archive.org/web/20021009134128/http://www.newhousenews.com/archive/storyla031202.html>.
- ⁹ *Tennant v. Jefferson County Comm'n*, 133 S. Ct. 3 (2012); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Avery v. Midland County, Tex.*, 390 U.S. 474 (1968).
- ¹⁰ All states other than Maine and Vermont bar individuals who have been convicted of a felony from voting while incarcerated. The Sentencing Project, Fact Sheet: Felony Disenfranchisement Laws, April 2014, http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Laws%20in%20the%20US.pdf. And in most cases, family members or loved ones who are eligible to vote and might advocate for the interests of these individuals live far away, in other legislative districts.
- ¹¹ *Cf.* *Hayden v. Pataki*, 449 F.3d 305, 328-29 (2d Cir. 2006) (en banc) (remanding to determine whether the issue was properly raised by the plaintiff); *id.* at 337 (Straub, J., concurring in part and concurring in the judgment). In the trial court, plaintiffs clarified that they had not stated such a claim, and the case was dismissed. Memorandum and Order, *Hayden v. Pataki*, No. 00-8586, 2006 WL 2242760 (S.D.N.Y. Aug. 4, 2006).
- ¹² NAT'L RESEARCH COUNCIL OF THE NAT'L ACADEMIES, ONCE, ONLY ONCE, AND IN THE RIGHT PLACE: RESIDENCE RULES IN THE DECENNIAL CENSUS 8 (Daniel L. Cork & Paul R. Voss, eds. 2006).
- ¹³ See Lake County 2014 County Commission Districts and Current Voting Precincts, <http://comptroller.tn.gov/repository/LG/DistrictMaps/Lake/County%20Commission/2014%20Countywide.pdf>; U.S. Census Bureau, 2010 Census Summary File 1, tbl. P1 (Total Population), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_P1&prodType=table; *id.* PCT20 (Group Quarters Population by Group Quarters Type), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_PCT20&prodType=table; Tenn. Dep't of Correction Planning & Research Section, Tennessee Bed Space and Operating Capacities Report at 1, July 2010, <http://www.tn.gov/assets/entities/correction/attachments/BedJuly2010.pdf>. The county's districts were similarly skewed after the last Census. See Peter Wagner & JooHye DellaRocco, *Phantom Constituents in Tennessee's Boards of County Commissioners*, Prison Policy Initiative, Feb. 21, 2008, <http://www.prisonersofthecensus.org/tncounties/report.html>.
- ¹⁴ See, e.g., Tilove, *supra* note 8 ("In eastern Colorado's Crowley County, commissioners are elected by the countywide electorate but must run from and live in a particular district. Counting inmates there, according to commissioner T.E. 'Tobe' Allumbaugh, would have created a 'prison' district without possibility of representation. 'It's a little bit of a joke,' Allumbaugh said.").
- ¹⁵ See Roberts, *supra* note 7.
- ¹⁶ Jones County Auditor, *Official Canvass of the Votes Cast at the November 8, 2005 Anamosa City Election Held in Jones County, Iowa*, at 1, <http://www.jonescountyiowa.org/Documents/Aud.CanvassCity05.pdf>; Maureen Turner, *The Prison Town Advantage*, VALLEY ADVOCATE, Oct. 8, 2009, <http://www.valleyadvocate.com/2009/10/08/the-prison-town-advantage/>.
- ¹⁷ See Turner, *supra* note 16.
- ¹⁸ There are is no official compilation of local governments that have taken such measures. The most comprehensive such list appears to be kept by the Prison Policy Initiative, at <http://www.prisonersofthecensus.org/local/> (last updated July 3, 2015).
- ¹⁹ COLO. REV. STAT. §§ 22-31-109(2)(c), 30-10-306.7(5)(a) (Colorado); MD. CODE ANN., LOCAL GOV'T § 1-1307 (Maryland); MICH. COMP. L. §§ 46.404(g), 117.27a(5) (Michigan); Op. No. 2002-0060, 2002 WL 321998 (Miss. A.G. 2002) (Mississippi); N.J. STAT. § 18A:13-8 (New Jersey); N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(13)(c) (New York); *cf.* IND. CODE § 3-10-6-1(b) (providing specific rules for elections in cities of a certain population size, excluding incarcerated individuals).
- ²⁰ VA. CODE ANN. § 24.2-304.1(C).
- ²¹ See CAL. ELEC. CODE § 21003; 29 DEL. CODE § 804A; MD. CODE ANN., ELECTION LAW § 8-704; MD. CODE ANN., STATE GOV'T, § 2-2A-01; N.Y. LEGIS. LAW § 83-m(13)(b).
- ²² See NAT'L RESEARCH COUNCIL OF THE NAT'L ACADEMIES, *supra* note 12, at 28-30, 38, 86-87.
- ²³ See Kirsten D. Levingston & Christopher Muller, Brennan Ctr. for Justice at NYU School of Law, "Home" in 2010: A Report on the Feasibility of Enumerating People in Prison at Their Home Addresses in the Next Census 9 (Feb. 15, 2006), <https://www.brennancenter.org/publication/home-2010>.

	<p>²⁴ See, e.g., Michelle Inderbitzin & Anna Chan, <i>Ethnographic Study of the Group Quarters Population in the 2010 Census: Prisons for Adults and Juvenile Correctional Facilities</i> 25-26, Mar. 7, 2013, https://www.census.gov/srd/papers/pdf/ssm2013-08.pdf (describing a visit to a maximum security prison to collect Census data, and finding the surveyed random sample of the incarcerated population to be “[o]n the whole, . . . extremely polite and cooperative”); <i>Even Prisoners Counted in Census</i>, DESERET NEWS, May 22, 2000, http://www.deseretnews.com/article/761559/Even-prisoners-counted-in-census.html?pg=all; Annette Kondo, <i>At Prison, Census Reactions of All Stripes</i>, L.A. TIMES, Apr. 20, 2000, http://articles.latimes.com/2000/apr/20/local/me-21623; Tina A. Brown, <i>Asking ‘Stupid’ Questions</i>, HARTFORD COURANT, Apr. 4, 2000, http://articles.courant.com/2000-04-04/news/0004040079_1_seven-inmates-prison-population-census-bureau (“In Connecticut, when the correction department locked down all of its prisons Monday morning, it expected to have counted 17,511 inmates within a four-hour period.”).</p> <p>²⁵ See Levingston & Muller, <i>supra</i> note 23, at 11-12.</p>
c122	<p>I am writing in response to your May 20 Federal Register notice regarding the Residence Rule and Residence Situations.</p> <p>As a native Texan, I am unnerved by the Census Bureau’s policy to count incarcerated people as residents of prison facilities, not of their hometowns. That practice, especially when the data are intended for redistricting, clearly runs counter to the Texas Election Code, which specifies:</p> <p style="padding-left: 40px;">In this code, “residence” means domicile, that is, one’s home and fixed place of habitation to which one intends to return after any temporary absence... A person who is an inmate in a penal institution... does not, while an inmate, acquire residence at the place where the institution is located.¹</p> <p>The Census Bureau’s Residence Rule ignores Texas law, so community leaders have had to take this problem into their own hands. In an investigation of jurisdictions with large prison populations, researchers found that almost all (86%) Texas communities rejected prison gerrymandering by excluding prisoners from population counts, even if the vote dilution impacts of including prisoners were miniscule.² In some parts of the state, the effects of using uncorrected Census Bureau data would have been far from innocuous. For example, in some jurisdictions – including districts in Childress, Walker, Anderson, Karnes, and Mitchell Counties – prisoners would have made up at least 50% of the population if unaltered Census Bureau data were used, giving voters living near prison facilities undue political influence.³</p> <p>Fortunately, local government leaders in Texas have overwhelmingly rejected the Census Bureau’s interpretation of the Residence Rule in order to avoid prison gerrymandering and uphold the “one person, one vote” principle. After Census 2010, Hale County Judge Bill Coleman told the <i>Austin American-Statesman</i> that excluding prisoners from precinct populations for redistricting purposes was simply common sense:</p> <p style="padding-left: 40px;">If your altruistic goal is to try to make each precinct have an equal number of at least potential voters, and a significant chunk of you population is not allowed to vote, aren’t you sort of undermining the whole purpose of this thing?⁴</p> <p>Still, Texas officials have not made the commitment to end prison gerrymandering at the state level as other states, such as California, Delaware, Maryland, and New York, have done. Despite multiple efforts by government leaders and grassroots organizations, Texas continues to rely on your data, which count incarcerated people as residents of prisons. As a result, African Americans and Latinos who disproportionately fill Texas correctional facilities are being used to pad white votes in prison-hosting state districts while also diluting minority votes elsewhere. For example, after Census 2000, 45,000 Texas prisoners were moved from competitive, marginal districts to more conservative districts as a political strategy. Such an egregious example of prison gerrymandering is both troubling and, more importantly, avoidable.</p>

	<p>Today, Texas stands among the nation’s leaders in many measures of criminal justice severity. My state incarcerates its residents at a higher rate than entire countries like Cuba, Rwanda, and El Salvador.⁵ Where prisoners are counted has a profound impact on the integrity of American democracy. I therefore urge you to count incarcerated people at their home addresses, rather than at the particular facilities where they happen to be located on Census Day.</p> <p>¹ Texas State Legislature, <i>Texas Election Code</i>, Sec. 1.015(e). Available at: http://www.statutes.legis.state.tx.us/Docs/SDocs/ELECTIONCODE.pdf.</p> <p>² Peter Wagner, “Avoiding Prison Gerrymandering is Often a Matter of Common Sense: Texas and Louisiana Research Update,” <i>Prison Policy Initiative</i>, 2013. Available at: http://www.prisonersofthecensus.org/news/2013/12/06/scatterplot/.</p> <p>³ Elena Laverreda, “Not Everything is Bigger in Texas: How Rural Texas Counties with Large Prisons Maintain Fairness in Democracy,” <i>Prison Policy Initiative</i>, 2010. Available at: http://www.prisonersofthecensus.org/news/2010/06/02/notbigger/.</p> <p>⁴ Jonathan Tilove, “Prisoners Can’t Vote, But They Can Subtly Shift Political Power,” <i>Austin American-Statesman</i>, November 30, 2013.</p> <p>⁵ Peter Wagner, Leah Sakala, and Josh Begley, “States of Incarceration: The Global Context,” <i>Prison Policy Initiative</i>, 2014. Available at: http://www.prisonpolicy.org/global/.</p>
c123	<p>I am writing in response to your May 20 Federal Register notice regarding the Residence Rule and Residence Situations.</p> <p>As a social justice and voting rights activist from West Virginia, I am horrified by the racial injustice that is caused by counting incarcerated people as residents of prisons instead of their hometowns. According to the Census, Blacks in West Virginia make up only 3% of the total population, but they represent 28% of the incarcerated population. Like most states, West Virginia has a significant racial disparity in its incarceration rates, but there is another problem: the state host many federal prisons that are disproportionately filled with incarcerated African-Americans from other places, in particular, the District of Columbia.</p> <p>The Residence Rule harms the democratic process because incarcerated people in West Virginia (and 47 other states) cannot vote. As a result, the Census Bureau’s practice of counting incarcerated people in prisons, instead of their hometowns, essentially keeps the Three-Fifths Compromise alive. Before the Civil War, people who lived among slaves had greater relative voting power than others because Black slaves were used to determine political representation but were barred from the polls. Today, people who live near prisons experience the exact same increase in voting power to the detriment of other West Virginian citizens as well as the citizens of the incarcerated individuals hometown.</p> <p>West Virginia was founded on the principles of freedom and equality – the state formed when its citizens refused to join Virginia in its secession from the Union and its fight to maintain slavery. But even in 2015, West Virginians are not free and equal because incarcerated people of color are included in population counts but excluded on Election Day.</p> <p>The Residence Rule violates the “one person, one vote” principle by padding white votes and diluting Black votes, contrary to the Voters Rights Act of 1964. I urge you to fix this violation of democracy by counting all incarcerated people at their homes, rather than at the prison facilities where they happen to be on Census Day.</p>
c124	<p>We write in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>As editors of premier academic and legal journals, and leaders of premier law school student associations, we take an interest in the accuracy of the methodology that the U.S. Census Bureau uses to count the U.S. population. Our academic and legal journal authors often rely on population data provided by the U.S. Census Bureau in their articles. In turn, members of the legal profession depend on our articles to support advocacy efforts, lawmaking, rulemaking, legal strategy, and jurisprudence.</p> <p>It has come to our attention that the US Census Bureau’s 2010 Residence Rule and Residence Situations skews the accuracy of the U.S. Census data by counting incarcerated people at the facilities that they are confined in, rather than at the their home addresses, on</p>

	<p>Census day. By designating a prison cell as a residence in the 2010 Census, the Census Bureau located a population that is disproportionately male, urban, and Black or Latino into Census blocks far from their homes. This inflates the apparent size of the towns of people who live near prisons. When this data is used in submissions to our academic and legal journal publications, the reliability of important scholarship published by the law schools with which we are associated is risked.</p> <p>More worrisome, when used for redistricting, the 2010 U.S. Census deprives political power from those communities where a disproportionate amount of people are arrested and imprisoned away from home. Members of our organizations identify with those communities.</p> <p>Because we believe in a population count that accurately represents our nation, we urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Thank you for your consideration.</p>
c125	<p>The undersigned national civil rights, voting rights, labor and criminal justice organizations submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. When the “usual residence” rule was first implemented in the first Census, incarcerated persons comprised a vanishingly tiny portion of the country and had no significant impact on representational fairness. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation’s incarcerated population has more than quadrupled to over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.</p> <p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>New York State is not the only jurisdiction taking action to correct the inaccuracies resulting from tabulating incarcerated persons at the prison location. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The states and localities that have decided to avoid the</p>

	<p>distortions of the current Census rule must create their own population data, because the Census Bureau is not yet publishing the data on home residence that is needed to count this population accurately. Other states find themselves unable to change their practices even when they would like to. The Massachusetts legislature, for example, concluded that the state constitution required it to follow Census Bureau data despite the inaccuracies with respect to incarcerated persons; so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>For all these reasons, the Census Bureau must modify its residence rule with respect to incarcerated persons so that all states and localities will have the opportunity to accurately reflect the incarcerated population in their redistricting plans.</p> <p>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 we believe in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c126	<p>I write in response to the U.S. Census Bureau’s Federal Register Notice on the Residence Rule and Residence Situations [80 FR 28950 (May 20, 2015)]. I strongly urge your office to count incarcerated people at their last home address instead of the current practice of using the correctional facility they happen to be in when the Census is counted.</p> <p>As a former State Representative for the City of Hartford, a Vice President of the Greater Hartford Labor Council and as a Board Member of the Capital Community College Foundation*, I know the impact that undercounting city residents has for our Capital City. Most correctional institutions in our state are located in very rural, very Caucasian towns. Most Connecticut inmates come from our state’s three biggest cities – Bridgeport, Hartford and New Haven. They are disproportionately African American and Latino. By using the current method of counting these inmates, the political power of our economically-depressed cities is significantly reduced.</p> <p>This is especially egregious because Connecticut has never fully addressed the inequities that stem from mal-apportionment of State Representative and State Senate districts from World War II to the mid-1960s. In 1964, ninety-six towns with an aggregate population of 303,086 (12 percent of the people) elected a majority of the State Representatives(148 of the 294). It was the most mal-apportioned lower house in the country. However, by the time the CT General Assembly had enacted a redistricting plan which withstood legal scrutiny, the population and power had shifted from the cities to the suburbs.</p> <p>Thank you for the opportunity to comment on this important issue affecting the people of Connecticut.</p> <p>*Capital Community College (CCC) has the 2nd highest percentage of minority students among 252 New England Schools and Colleges. Over 60% of the student body is African-American or Latino/a and CCC is the ONLY College in CT designated as a Hispanic Servicing Institution.</p>
c127	<p>I submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>My name is _____, and I am a former _____, Louisiana school board member. As someone who represented what was considered a minority district that housed a prison, I am troubled by the way that incarcerated people are counted as residents of wherever they are imprisoned. As a minority myself, an American Indian, I believe that it is invaluable to our democracy that redistricting allows for equal representation of all people, and prison gerrymandering stands in the way of this.</p>

Because of the way incarcerated people are counted as residents of the particular facility that they happen to be imprisoned at on Census day, the people who live near _____ in _____ have greater political clout than those who do not for the sole reason that they happen to live near the prison. I represented the district that housed _____, and it was clear that the approximately 900 people imprisoned in this district were being counted in the wrong place.

Another detriment of having the prison population count in my district is that it has limited my school enrollment to approximately 292 students. This school is a Pre-Kindergarten thru 12th grade school. The students in my district are not offered music past elementary, art, band nor football to list a few of the programs that are offered at ALL of the other Jr. High and High Schools in the _____ School System. Bond Taxes are forced on my district thru millage, knowing that we are starting 900 votes short on any election therefore we do not have the votes to vote it down even if every voter turned out. Over \$8 million was forced upon my district last bond election with very little being spent at our school. The bond tax previous to the \$8 million one was for \$22 million and out of that only \$1,200.00 was spent in my school. Starting out any election 900 votes short we do not have any choice in these millage taxes being levied against my district. We are rural and my district is where the millage tax comes from. This is **TAXATION WITHOUT REPRESENTATION!!!** 900 NO votes would cancel any tax in this parish. Not only is this affecting our voice it is affecting millions of dollars also.

In 2012, our school board evaluated two redistricting plans including one that would have excluded the _____ population. I had hoped that my parish school board would follow the police juries in Avoyelles, Caldwell, Claiborne, Concordia, East Carroll, East Feliciana, Evangeline, Grant, La Salle, Richland, West Carroll, West Feliciana, and Winn Parishes as well as the council-president in Iberville and adjust your Census counts of the prison population to avoid prison gerrymandering.

Unfortunately, my colleagues on the school board voted for the plan that gives the district I represented unearned influence. I believe that many of my colleagues voted for the redistricting plan that used the prison population not out of any belief that people incarcerated there had anything to do with the administration of education in the school board but out of fear that by voting against prison gerrymandering they would somehow complicate negotiations to save the prison from closure. I saw that decision as unrelated; and the fact that the prison did close and is now in the process of reopening in a new and smaller form does illustrate that not only are the people who were confined in my district rather transient, so is the actual facility.

To repeat in another way, my school board engaged in prison gerrymandering to give extra representation to the one district that didn't want the extra representation; and it did so using a prison population that it knew was expected to cease to exist in our Parish.

For these reasons I urge you to count incarcerated people at their home addresses so that Parishes and School Boards like mine won't have to go through this unnecessary debate in the future. Thank you for this opportunity to comment.

c128

I represent Rhode Island House district _____ and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the

growth in the prison population requires the Census to update its methodology again.

The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

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 located far from the actual homes of incarcerated people. In Rhode Island I was the first member of the Rhode Island House of Representatives to introduce legislation on February 27, 2010, H 7833, the Residence of Those in Government Custody Act, to correct this problem for purposes of drawing new legislative districts.

Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universality implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.

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 democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.

c129

The American Civil Liberties Union submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, specifically Section 13, "People in Correctional Facilities with Adults."¹ We urge you to count incarcerated people at their home address, rather than at the particular facility at which they happen to be located on Census day.

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

I. Background on the Need to Change the Current Residence Rule to Count Incarcerated People at their Home Address

Under Article I, Section 2 of the Constitution, every inhabitant of the United States must be counted in the Census – but they must be counted in the correct place.²

American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. In the 1980s, the incarcerated population in the U.S. totaled less than half a million, but since then, the nation's incarcerated population has more than quadrupled to over

two million people.³ The significant growth in the nation's prison population over the past 30 years requires the Census Bureau to update its methodology again, by changing the "usual residence" rule.

By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a normally city-based population that is disproportionately male and African-American or Latino into just 5,393 Census blocks that are located far from their actual homes and often in rural areas. In Illinois, for example, 60 percent of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99 percent of them as if they resided outside Cook County.⁴

When this data is used for redistricting, the political power of the areas where the prisons are located is artificially inflated. In New York after the 2000 Census, for example, seven state Senate districts only met population requirements because the Census counted incarcerated people as if they were residents of upstate New York, though most of the state's prisoners are residents of New York City.⁵ For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for state redistricting purposes.⁶

New York State is not the only jurisdiction taking action. Three other states, California, Delaware, and Maryland, are taking a similar state-wide approach, and more than 200 counties and municipalities each individually adjust population data to avoid prison-based gerrymandering when drawing their local government districts.⁷

But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses.⁸ A universal process by the Census Bureau is necessary to provide clarity and accuracy in representing our nation's communities nationwide.

II. ACLU Efforts Nationwide to Ensure Fair and Accurate Representation

Until Bureau practice changes, the ACLU will work across the country to mitigate problems created by the current Census approach.

1. Maryland

In Maryland, the ACLU partnered with the NAACP and other community leaders to raise concerns about local redistricting practices in Somerset County, an area with a long, sad history of racial segregation and violence. Although the county is 42 percent African-American and includes the historically black University of Maryland, Eastern Shore, no black person had ever been elected or appointed to a top county office as of 2009. Prison-based gerrymandering was part of the reason. When the county had drawn new voting districts in the 1980s, to resolve a federal challenge to minority vote dilution, it included in its remedial "majority-minority" district the Eastern Correctional Institution (ECI), where prisoners were counted as residents for redistricting. The inmate population was large in comparison with the rest of the district, and mostly made up of people of color, while the rest of the district was mostly white. Because the inmate population was ineligible to vote in Somerset elections, the white, non-inmate population was overrepresented, and the district's voting power was distorted in comparison to the county's other districts.

As a result, the district did not function as a true remedial district and consistently elected white officials over the course of two decades. The ACLU and NAACP advocated for exclusion of the prison population from Somerset's local redistricting database, and in 2010, the Maryland legislature responded by passing a law mandating that prisoners throughout Maryland be counted at their place of last residence, rather than their place of incarceration. Shortly thereafter, Somerset County's first black County

Commissioner, Rev. Craig Mathies, was elected.⁹

2. New York

In New York, the ACLU defended the constitutionality of New York State’s practice of counting incarcerated individuals at home. In 2010, the New York legislature passed a law, “Part XX,” that requires that incarcerated persons be allocated to their home communities for redistricting and reapportionment of state and local legislative districts. The NYCLU, Brennan Center for Justice, the Center for Law and Social Justice, Dēmos, LatinoJustice PRLDEF, NAACP Legal Defense and Educational Fund, and Prison Policy Initiative, representing 15 rural and urban voters as intervenors, defended the law against a legal challenge brought by a state senator whose district included 12,000 incarcerated persons and was therefore significantly impacted by the law. In December 2011, a New York court ruled that the law was constitutional, and Part XX remains in effect today.

3. South Carolina

In South Carolina, the ACLU was victorious in a recent reapportionment case for the Jasper County School District that would have improperly counted the correctional population when creating school board districts.¹⁰ Jasper County’s population in 2010 was 24,777. Located in that county is the Ridgeland Correctional Institution, with an average population of 1,163. The prisoners sent to that institution come from all counties in the state. The school board has 9 single-member districts. If the population calculations included the prisoners, each district would have needed to have 2,753 people, but one of the districts would have comprised over 40 percent prisoner population – unable to vote, resulting in unequal representation for voters in that district. Following a remedial order, all parties to the lawsuit agreed to remove the prison population from the calculations.¹¹

4. Florida

In Florida, the ACLU and the Florida Justice Institute filed a lawsuit challenging the redistricting plan that the Jefferson County Board of Commissioners and the Jefferson County School Board adopted in 2013, as a violation of the plaintiffs’ Fourteenth Amendment right to equal representation under the “one person, one vote” principle of the Equal Protection Clause. The complaint, filed in March 2015, alleges that the defendants’ decision to include the inmate population at Jefferson Correctional Institution (“JCI”) unlawfully inflates the political strength of non-inmate residents in the district that houses the prison (District 3) and dilutes the voting strength of those living in all of the other districts in the county. The incarcerated population at JCI constitutes 43.2 percent of the voting-age population in the district. The ACLU argues that, the total population deviation when the prison is excluded at 42.63%, is far outside the constitutional limits on population deviation under the “one person, one vote” principle.¹² As a result, every four non-inmate residents of District 3 have as much political influence in county and school affairs as seven residents in any other district. Moreover, Jefferson County’s decision to count non-resident inmates also underrepresents minority voting strength in the community as a whole. When the prison is excluded from the total population count, the Black voting age population decreases from 47.62 percent to 32.73 percent, and the Hispanic voting age population decreases from 7.35 percent to 2.80 percent.

5. Rhode Island

In Rhode Island, the ACLU has been working to address this issue through litigation and legislation. The problem is especially acute in Rhode Island because of the state’s small size and the fact that its entire prison system is concentrated in one city, Cranston. Because everybody incarcerated at the prison is counted as a resident of Cranston, but barred from voting there, three voters in the City Council district where the prison is located have as much voting power as four voters in every other City Council district. In

February 2014, the ACLU filed a lawsuit challenging this malapportionment, and in September 2014, a federal judge denied the City's motion to dismiss the case.¹³ In addition, for the last three years, the ACLU has promoted legislation that would require all prisoners to be counted, for redistricting purposes only, at their last known address. In 2015 and 2014, the bill passed the Rhode Island Senate with bipartisan support, only to die in the House.¹⁴

6. New Hampshire

In New Hampshire, the ACLU has been advocating against the prison-based gerrymandering engaged in by the City of Concord. The Concord population according to the 2010 census is 42,695. Concord consists of 10 voting wards, each of which elects a representative to the local City Council. The goal behind the city's 2010 Redistricting Plan, which is currently in effect, is to have each of the City's 10 wards contain approximately 4,270 residents with a target deviation of +/-5%. However, Concord's 2010 Redistricting Plan, relying on Census Bureau data, specifically includes in the population of Ward 3 the Concord State Prison for Men, which houses 1,531 inmates.¹⁵ Thus, these inmates represent 34 percent of Concord's Ward 3's 4,459 population, though its prisoners are unable to vote.¹⁶ As a result of the inclusion of the prison population in Ward 3, the voting power of Ward 3's approximately 3,000 voting residents—who represent 66 percent of Ward 3's population—is strengthened, while the voting power of residents of the other nine wards is significantly diluted. The voting population size of Ward 3 represents an approximately 30 percent deviation from the target 4,270-per-ward population size.

7. Connecticut

In Connecticut, the ACLU continues to work towards a districting system that accurately reflects "one person one vote" principle by counting prisoners in their home communities rather than the location where they are incarcerated. The majority of Connecticut's prison beds are located in five small towns. Connecticut currently counts the people incarcerated in those prisons as residents of the towns in which the prisons are located. As a result, seven legislative districts are counted as having more than 1,000 additional residents than have actually chosen to live in those districts willingly. Earlier this year, the ACLU supported Senate Bill 980, which had a public hearing before the state Senate's judiciary committee. If passed, Senate Bill 980 would have made clear that the population of a prison should not be included as part of the population of the legislative district in which the prison is located.

8. New Jersey

In New Jersey, the ACLU has supported legislation to end prison-based gerrymandering in the last several legislative sessions. New Jersey's demographic realities illustrate how the current system unfairly inflates or deflates the voting power of certain communities. Camden County, a largely urban county, has only six percent of the state's population, but its residents account for 12 percent of the state's prisoners. Essex County, too, sends a disproportionate number of people to prison: It is home to less than nine percent of New Jerseyans, but its residents account for 16 percent of its incarcerated population. On the other hand, rural Cumberland County is home to three large prisons, which account for almost five percent of the total county population. This means the voting power of residents living in Cumberland County is artificially inflated by a significant amount as a result of the prisoners being counted there, and voting power in Camden and Essex counties is likewise diminished.

9. Wisconsin

In Wisconsin, a state prison population of fewer than 5,000 persons in 1978 has, by 2014, grown to more than 22,000 persons. Wisconsin has, by far, the highest rate of incarceration of African-American men in the United States, with about 1 in 8 working-age

African-American men behind bars. Wisconsin similarly leads the nation in incarceration of Native American men, with about 1 in 13 working-age Native American men behind bars. These individuals are routinely incarcerated far from their home communities, they cannot and do not vote while incarcerated, and their interests are seldom represented in the communities in which they are counted for census purposes. Meanwhile, the communities from which these prisoners come, to which they are likely to return, and with whose other residents they share policy interests are deprived of political representation. The disparity is so stark that, planning maps for the Milwaukee metropolitan area make special note of the fact that minority population concentrations outside the central city are due to incarcerated populations.¹⁷

Additionally, at the federal level, the ACLU has met with Director John H. Thompson to call on the Census Bureau to change the “usual residence” rule as it relates to people in prison.

Thank you for this opportunity to comment on the Residence Rule and Residence Situations. Because the ACLU believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address. Please contact _____, Legislative Policy Analyst, at _____, if we can provide further information.

¹ 2020 Decennial Census Residence Rule and Residence Situations, 80 Fed. Reg. 28, 950 (May 20, 2015).

² ACLU, EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT REDISTRICTING BUT WERE AFRAID TO ASK 10, 28 (2010), available at <https://www.aclu.org/report/everything-you-always-wanted-know-about-redistricting-were-afraid-ask>.

³ SENTENCING PROJECT, FACT SHEET: TRENDS IN U.S. CORRECTIONS 2 (2015), available at http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf.

⁴ PRISON POLICY INITIATIVE, PRISON-BASED GERRYMANDERING IN ILLINOIS (2010), available at http://www.prisonersofthecensus.org/factsheets/il/IL_state.pdf.

⁵ Peter Wagner, *Breaking the Census: Redistricting in an Era of Mass Incarceration*, 1243, 1241-1260 (2012), available at <http://open.wmitchell.edu/cgi/viewcontent.cgi?article=1471&context=wmlr>; PRISON POLICY INITIATIVE, NEW YORK’S CENSUS ADJUSTMENT ACT (2010), available at http://www.prisonersofthecensus.org/factsheets/ny/NY_census_adjustment_act.pdf.

⁶ N.Y. CORRECT. LAW § 71(8) (2012).

⁷ Prison Policy Initiative, Prison Gerrymandering Project: Solutions, <http://www.prisonersofthecensus.org/solutions.html> (last visited July 20, 2015).

⁸ See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014, and the House of Representatives on August 14, 2014).

⁹ For additional information on the successful reform achieved in Maryland, please see comments jointly submitted by the ACLU of Maryland and the Maryland State Conference of the NAACP.

¹⁰ *Fraser v. Jasper County*, South Carolina, School District, No. 9:14-2578 (D. S.C. Apr. 30, 2015).

¹¹ *Id.* (Remedial Order), available at http://www.aclusouthcarolina.org/files/9314/3162/5709/2015-04-30_JasperCtyRemedialOrder.pdf.

¹² *Calvin et al. v. Jefferson County* (N.D. Fla. filed Mar. 9, 2015) (Complaint), available at <https://aclufl.org/resources/calvin-et-al-v-jefferson-county-prison-gerrymandering-complaint/>.

¹³ *Davidson v. City of Cranston*, 42 F.Supp. 3d 325 (D. R.I. 2014).

¹⁴ Press Release, Prison Policy Initiative, Rhode Island Senate votes to end prison gerrymandering (Mar. 5, 2015), available at <http://www.prisonersofthecensus.org/news/2015/03/05/risenate-s0239/>.

¹⁵ However, under New Hampshire law, inmates are not deemed to be domiciled in Ward 3 by virtue of their imprisonment. See N.H. RSA 654:2-a.

¹⁶ See N.H. RSA 607-A:2, I(a).

¹⁷ For additional information on the impact in Wisconsin, please see comments submitted by the ACLU of Wisconsin, the Benedict Center, the Justice Initiatives Institute (JII), the NAACP-Milwaukee Branch, and WISDOM.

c130

I am writing in response to your federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015) to urge you to count incarcerated people in their home districts.

My name is _____ and I live and work in Essex County in northern New York, near the border with Canada. I live in the state's largest and most sparsely populated Senate district. My Senate district has more people incarcerated in state prisons than any other district in the state.

I would like to focus my comment on documenting that my county does not consider incarcerated people to be residents of our county. Prior to the passage of Part XX in 2010 that ended prison gerrymandering in New York State, counties like mine had a choice as to whether to use the prison populations in county redistricting. My county, and all neighboring counties that also contained prisons, all choose not to count the prison populations when drawing county districts or designing weighted voting systems.

My county, Essex, justified its decision in its local law with a lengthy discussion on the practical and legal grounds of why inmates are not residents of the county. While I understand that more than 200 counties across the United States do this as well, I have read that my county was the one of the few to put its reasoning in writing and then vote it in to law.

For that reason, I would like to share with you part of Essex Local Law No 144 of 2012:

“Persons incarcerated in the state and federal correctional institutions have been convicted of criminal acts constituting felonies and their presence in Essex County is considered involuntary. These incarcerated persons: are not residents of the County since they are here involuntarily and can be relocated by the Commissioner of Corrections at the latter’s discretion; are not entitled to vote and thus are not voters in Essex County; and receive no services from the County - except when they commit new criminal acts and are brought before County Court, or when they are entitled to assignment of counsel as indigents in connection with parole hearings under New York Executive Law Article 12-B. Persons incarcerated in state and federal correctional institutions live in a separate environment, do not participate in the life of Essex County, and do not affect the social and economic character of the towns in which they are located.

“The inclusion of these federal and state correctional facility inmates unfairly dilutes the votes or voting weight of persons residing in other towns within Essex County.”

Very similar language was also used in Essex County Local Law No. 1 of 2003. Recognizing that you may not have ready access to my small county’s local laws, I have attached the 2003 and 2012 laws to this letter.

I urge you to follow the lead of Essex County New York and count incarcerated people as residents of their pre-incarceration addresses and not as residents of my county.

Thank you for your consideration.

c131

As a coalition of groups involved with the 2011 Massachusetts Redistricting process, we submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to change the way the Census Bureau counts incarcerated people. Rather than counting them at the particular facility that they happen to be located at on Census day, we urge you to count them at their home addresses.

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census and for the voting strength of certain communities.

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, which are located far from the actual homes of incarcerated people. Just two examples of specific impacts in Massachusetts include:

- Without using prison populations as padding, 5 Massachusetts House districts drawn after the 2000 Census did not meet constitutional population requirements. For example, while each House district in Massachusetts should have had 39,682 residents, the 3rd Suffolk District, which claimed the population of the Suffolk County House of Corrections, had only 36,428 actual residents. This means that the actual population of the district was 8.2% smaller than the average district in the state.
- When the city of Gardner last updated their districts in 2001, they were faced with the prospect of giving the residents on the eastern side of the city, near the state prison, extra influence over city affairs, or rejecting the flawed Census counts. The City Council ruled to reject the Census counts because doing otherwise would have given each group of 8 people who live near the prison as much say over city affairs as every group of 10 residents elsewhere in the city.

In 2011, advocates like us asked the Massachusetts Joint Committee on Redistricting to reverse the “usual residence” policy like Gardner did and to count persons at their legal address prior to incarceration, rather than in prison for state districts. The Committee agreed with us that the way prisoners are counted does a disservice to the state and should be changed. However, the Committee and legal counsel thought that the Massachusetts state Constitution, which dictates that the federal census be the basis for determining the representative, senatorial, and councillor districts, would prevent Massachusetts from unilaterally changing this rule for these districts. Instead, the Committee recommended to the General Court that it adopt a resolution calling for such a change to send to Congress and to the Census Bureau. Such a resolution was passed on August 14, 2014 (attached).

In fact, currently four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. But as we have seen, this is not an approach that is unilaterally applicable.

For these reasons, we urge you to change Census Bureau policy to count incarcerated people as residents of their home address, rather than at the place of their incarceration. Thank you for this opportunity to comment on the Residence Rule and Residence Situations.

***The Massachusetts General Court
Resolutions***

**URGING THE CENSUS BUREAU TO PROVIDE REDISTRICTING DATA THAT COUNTS PRISONERS
IN A MANNER CONSISTENT WITH THE PRINCIPLES OF “ONE PERSON, ONE VOTE”.**

WHEREAS, OBTAINING AN ACCURATE COUNT OF THE POPULATION IS SO VITAL TO REPRESENTATIVE DEMOCRACY THAT THE FRAMERS OF THE UNITED STATES CONSTITUTION ADDRESSED THE ISSUE OF THE CENSUS AND APPORTIONMENT IN THE OPENING PARAGRAPHS OF THE CONSTITUTION; AND

WHEREAS, THE MASSACHUSETTS CONSTITUTION REQUIRES THAT FEDERAL CENSUS DATA BE THE BASIS FOR STATE REDISTRICTING; AND

WHEREAS, THE CENSUS BUREAU CURRENTLY HAS A POLICY OF COUNTING INCARCERATED PEOPLE AT THE ADDRESS OF THE CORRECTIONAL INSTITUTION, EVEN THOUGH FOR OTHER LEGAL PURPOSES THEIR HOME ADDRESS REMAINS THEIR LEGAL RESIDENCE; AND

WHEREAS, THIS CENSUS DATA RESULTS IN DISTORTIONS OF THE ONE-PERSON, ONE-VOTE PRINCIPLE IN DRAWING ELECTORAL DISTRICTS IN MASSACHUSETTS, DILUTING THE REPRESENTATION OF THE MAJORITY OF DISTRICTS THAT DO NOT CONTAIN PRISONS; AND

WHEREAS, THE SIMPLEST SOLUTION TO THE CONFLICT BETWEEN FEDERAL CONSTITUTIONAL REQUIREMENTS OF "ONE PERSON, ONE VOTE" AND MASSACHUSETTS CONSTITUTIONAL REQUIREMENTS OF USING THE FEDERAL CENSUS IS FOR THE CENSUS BUREAU TO PUBLISH REDISTRICTING DATA BASED ON THE LOCATION OF AN INCARCERATED PERSON'S RESIDENCE, NOT PRISON LOCATION; AND

WHEREAS, THE CENSUS BUREAU HAS ALREADY RECOGNIZED THE DEMAND FROM STATES AND COUNTIES FOR DATA THAT BETTER REFLECTS THEIR ACTUAL POPULATIONS, AND HAS AGREED TO RELEASE DATA ON PRISON POPULATIONS TO STATES IN TIME FOR REDISTRICTING, ENABLING SOME STATES TO INDIVIDUALLY ADJUST THE POPULATION DATA USED FOR REDISTRICTING; AND

WHEREAS, PUBLIC LAW 94-171 REQUIRES THE CENSUS BUREAU TO WORK WITH STATES TO PROVIDE GEOGRAPHICALLY RELEVANT DATA AND THE CENSUS BUREAU HAS BEEN RESPONSIVE TO STATE'S DATA NEEDS FOR THE PAST 3 DECADES; NOW THEREFORE BE IT

RESOLVED, THAT THE MASSACHUSETTS GENERAL COURT HEREBY URGES THE CENSUS BUREAU, IN THE NEXT CENSUS AND THEREAFTER, TO PROVIDE STATES WITH REDISTRICTING DATA THAT COUNTS INCARCERATED PERSONS AT THEIR RESIDENTIAL ADDRESS, RATHER THAN THE ADDRESS OF THE CORRECTIONAL INSTITUTION WHERE THEY ARE TEMPORARILY LOCATED; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THESE RESOLUTIONS BE TRANSMITTED FORTHWITH BY THE CLERK OF THE SENATE TO THE DIRECTOR OF THE CENSUS BUREAU.

c132

I hope you are doing well. I am writing on behalf of the Prison Justice League (P JL) to comment in response to the Census Bureau's federal register notice regarding Residence Rule and Residence Situations 80 FR 28950 (May 20, 2015). P JL is a civil rights organization that works to improve conditions in Texas prisons through litigation, advocacy, and by empowering our members. As a civil and human rights organization that works with incarcerated people every day, I urge you to change the current system of counting prisoners where they are incarcerated instead of at their home address.

The prison system in Texas is one of the largest in the nation, incarcerating over 150,000 individuals across the state. Incarceration rates disproportionately impact communities of color, particularly African Americans. Although African Americans represent only 12% of the total state population, they represent over 30% of the prison population.

Furthermore, most incarcerated people reside in urban counties before being sent to prison but most prisons are in rural parts of the state. In general, rural areas of the state are white and conservative, while urban areas are more diverse and less conservative. Counting prisoners in prison for census purposes distorts the population data that is so critical to accurately apportion congressional districts.

Thank you for the opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to count everyone in the correct place. The Prison Justice League believes in a population count that accurately represents communities, and we urge you to count incarcerated people as residents of their home address.

000130

The National LGBTQ Task Force is pleased to have the opportunity to comment on the Residence Rule and Residence Situations for the 2020 Decennial Census. We applaud the efforts of the Census Bureau to count people experiencing homelessness. This comment seeks to highlight the unique ways that lesbian, gay, bisexual, transgender, and queer (LGBTQ) people often experience homelessness. Changing pieces of language and adding examples that more clearly reflect the reality of LGBTQ people experiencing homelessness will help ensure an accurate population count and therefore adequate resource distribution.

Of course, the utility of having an accurate count of LGBTQ people experiencing homelessness will increase significantly if sexual orientation and gender identity measures are included on the census survey, something that the National LGBTQ Task Force continues to recommend. Even without such measures, however, the LGBTQ community will benefit from being fully counted.

Research Findings

1. LGBTQ People Are Disproportionately Likely to Experience Homelessness

LGBTQ youth, including those questioning their sexual orientation or gender identity, face high levels of rejection from their homes, pervasive discrimination in service-providing institutions, and significant lack of access to the safety net systems designed to house and protect vulnerable youth. One study indicates that fully one half of LGBTQ youth experience negative reactions from family members when they come out as LGBT, while one quarter are ejected from their homes.ⁱ While the foster care and adoption system acts as a safety net to protect those youth who are rejected from their families or have no family to start with, reactions to expression of sexual orientation or gender identity in this system may be even worse. Youth often run away from foster and group homes because they are mistreated or harassed,ⁱⁱ and a full one-third of all youth who come out as LGBT while in the care of social services experience a violent sexual assault.ⁱⁱⁱ In addition, studies show that 12%-36% of youth report being homeless at least once after being emancipated from foster care.^{iv}

In addition, LGBTQ youth are disproportionately represented in child welfare and juvenile justice systems,^v face increased victimization at school,^{vi} and lack protections against employment and housing discrimination in a majority of states.^{vii} Housing discrimination has a particularly stark impact on transgender and gender non-conforming people – 19% of respondents in one study were denied a home or apartment and 11% were evicted because of their gender identity or expression.^{viii}

Because of this multi-faceted discrimination and the resultant inability to find refuge, LGBTQ youth face homelessness at alarming rates. Difficulties in counting youth experiencing homelessness render an exact number difficult to report, but estimates range from just over 500,000 to 1.7 million.^{ix} Of this population, an estimated 20% to 40% of homeless youth in the United States identify as – or believe they may be – LGBTQ,^x compared to an estimated 5% to 7% of youth in the general population.^{xi} Thus, LGBTQ youth are disproportionately represented in the homeless population.

LGBTQ adults also face pervasive discrimination, particularly in the employment and housing contexts. They also face disproportionate rates of poverty. Same-sex couples are more likely to live in poverty, especially if they are African American and/or have children.^{xii} And transgender people are four times more likely to live in extreme poverty (making less than \$10,000 a year) than cisgender people.^{xiii} In addition, 19% of transgender and gender non-conforming people reported being homeless at some point in their lives, and 1.7% were homeless at the time of the study, compared to an estimated 0.9% of the general population.^{xiv} Thus, while we lack statistics on the adult homeless population, there is strong reason to believe that LGBTQ adults are also more likely to experience homelessness.

2. LGBTQ People Experience Homelessness in Unique Ways

In addition, LGBTQ people tend to experience homelessness in unique ways. Research indicates that shelters can be difficult places for LGBTQ youth and adults. LGBTQ youth may worry that shelters will contact the local child and family services office and attempt to reconnect them with their families, many of which are openly hostile about the youth's sexual orientation or gender identity. In addition, a 2010 survey of transgender people found that 29% had been turned away from a shelter because of their transgender status, 42% were forced to stay in facilities designated for the wrong gender, and others encountered a hostile environment.^{xv} These circumstances make transgender people less likely to seek shelter altogether, or to do so intermittently.

LGBTQ youth and adults use various strategies to secure shelter. Many LGBTQ youth end up “couch-surfing,” staying with friends or acquaintances for short or indefinite periods of time.^{xvi} And a recent study of LGBTQ youth experiencing homelessness found that they are 7 times more likely to trade sex for shelter than their heterosexual counterparts.^{xvii} Similarly, 25% of transgender and gender non-conforming people report staying with friends or family, and 12% report having sex with people in order to sleep in a bed.^{xviii}

Recommendations to the Residence Rule and Residence Situations

The tendency of LGBTQ people to experience homelessness in unique ways yields two important considerations for counting them through the Census. First, because LGBTQ people are less likely to use group shelters, they are less likely to be counted there on Census Day. Second, to the extent that they couch-surf or exchange sex for a place to sleep, LGBTQ people may be less likely to be regarded as “residents” by those with whom they are staying. Census respondents might assume that such people have another residence where they spend more time or might otherwise dismiss counting them as part of their residence. This is especially likely if they are staying somewhere else on Census Day. LGBTQ youth might be particularly likely to be overlooked and uncounted because Census respondents might mistakenly assume that the youth are being counted by their parents or guardians.

This pattern is compounded by the fact that LGBTQ people are disproportionately likely to experience homelessness, amounting to a strong probability that many LGBTQ people are left uncounted. Because the Decennial Census has implications for apportioning seats in the House of Representatives, it is important that we count the U.S. population accurately and in full. And because resources are distributed based on these figures, an accurate count is necessary to get crucial support to members of the LGBTQ community who are experiencing homelessness.

The following recommendations attempt to address the concern that this group is being overlooked and uncounted in Census reporting.

- 1. Residence Rule – Add a fourth bullet point that better captures LGBTQ people experiencing homelessness and provides clearer guidance for Census respondents**
 - a. Explanation: The rule itself addresses people in facilities and shelters, but it does not expressly address other people experiencing homelessness. In addition, it does not provide clear guidance to Census respondents -- it does not address how to determine whether someone has a usual residence, nor does it address situations where people have a place where they live and sleep more than anywhere else but not “most of the time.” The suggested language remedies this issue.
 - b. Recommendation: Add the following as a fourth bullet point:

- *Someone who stays at different places periodically or intermittently might not have a usual residence. Ask them whether they have a place where they live and sleep more than anywhere else. If the answer is 'Yes,' they should be counted at that place. If the answer is 'No,' they should be counted where they are on Census Day."*

2. Residence Situations

- **Situation 2. Visitors on Census Day – Eliminate this category and, instead, include its examples in Situation 1**
 - a. Explanation: “Visitor” is a vague term that could include people who are living and sleeping at a place temporarily. Because LGBTQ people experiencing homelessness are more likely to couch-surf or stay with people temporarily, they might be understood as “visitors” by Census respondents with whom they are staying. The examples provided in Situation 2, however, involve people who have other residences, and they instruct the Census respondent not to count them. This type of situation is better reflected in Situation 1: “People Away From Their Usual Residence on Census Day.” By getting rid of Situation 2 and instead incorporating its examples into Situation 1, Census respondents will be less likely to mistakenly consider a temporary guest who *should* be counted as part of their residence as a “visitor” who should not be counted as part of their residence.
 - b. Recommendation: Eliminate the heading for Situation 2, re-label its two examples to “b” and “c” respectively, and include them in Situation 1.
- **Situation 3. People Who Live in More Than One Place – Change the heading to “People With Multiple Residences”**
 - a. Explanation: The current heading of this section – “People Who Live in More Than One Place” – could apply to LGBTQ people experiencing homelessness. But the following section (Situation 4) handles such people better, providing clearer examples and guidance. To avoid the possibility that a Census respondent might be confused as to how to categorize a person staying with them or might not read Section 4, the heading of Section 3 should more adequately distinguish people who travel for work or travel seasonally between residences from people who are experiencing homelessness and ensure that all people get counted.
 - b. Recommendation: Change this heading to “*People With Multiple Residences.*”
- **Situation 4. People Without a Usual Residence**
 - a. Explanation: This section gives examples of where people experiencing homelessness might be counted (i.e. soup kitchens, mobile food vans, and outdoor locations). These examples, however, represent a more typical conception of homelessness, which often does not align with LGBTQ people experiencing homelessness. Because Census respondents might overlook youth or adults who are staying with them for short or indefinite periods, including this as another example would be illustrative and provide clearer guidance.
 - b. Recommendation: Add the following:

(d) Couch-surfers, youth experiencing homelessness, or other people staying in your residence for short or

indefinite periods of time—Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If time is equally divided, or if a usual residence cannot be determined, they are counted at the residence where they are staying on Wednesday, April 1, 2020 (Census Day).

- **Situation 8: Nonrelatives of the Householder**

a. Explanation: This section gives examples of people who might be staying in one’s home and guidance about how to count them. Because the heading of this section references the “householder,” it might be more likely to be read by the head of a household than other sections with less descriptive headings (e.g. People Without a Usual Residence). In addition, because it reference “nonrelatives,” this section is particularly relevant to householders who have provided space for someone experiencing homelessness. Thus, including a more specific example of people experiencing homelessness would be illustrative and provide clearer guidance to Census respondents.

b. Recommendation: Add the following:

(f) *Couch-surfers, youth experiencing homelessness, or other people staying in your residence for short or indefinite periods of time*—Counted at the residence where they live and sleep most of the time. If there is no residence where they live and sleep most of the time, they are counted where they live and sleep more than anywhere else. If time is equally divided, or if a usual residence cannot be determined, they are counted at the residence where they are staying on Wednesday, April 1, 2020 (Census Day).”

The National LGBTQ Task Force urges the U.S. Census Bureau to integrate these recommendations into the Residence Rule and Residency Situations for the 2020 Decennial Census. Thank you for taking the time to consider them. If you have any questions regarding these comments, please contact _____, Senior Policy Counsel, at _____ or _____.

ⁱ National LGBTQ Task Force, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006), at 2 (citing Thompson, S. J., Safyer, A. W. & Pollio, D. E., *Differences and Predictors of Family Reunification Among Subgroups of Runaway Youths Using Shelter Services*, 25 SOCIAL WORK RESEARCH (2001)).

ⁱⁱ Lambda Legal, *National Best Practices for Serving LGBT Homeless Youth*, at 1 (Apr. 2009).

ⁱⁱⁱ National LGBTQ Task Force, *supra* note 1.

^{iv} National Alliance to End Homelessness, *LGBTQ Homeless Youth Fact Sheet*, <http://www.safeschoolscoalition.org/LGBTQhomelessFactSheetbyNAEH.pdf> (last visited July 20, 2015).

^v Office of Juvenile Justice & Delinquency Prevention, *LGBTQ Youths in the Juvenile Justice System*, <http://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf> (last visited July 20, 2015).

^{vi} GLSEN, THE 2011 NATIONAL SCHOOL CLIMATE SURVEY (2012), *available at* <http://www.glsen.org/press/2011-national-school-climate-survey>.

^{vii} *State Nondiscrimination Laws in the U.S.*, National LGBTQ Task Force, http://www.thetaskforce.org/static_html/downloads/reports/issue_maps/non_discrimination_5_14_color_new.pdf (last updated May 21, 2014).

^{viii} NAT’L LGBTQ TASK FORCE & NAT’L CTR. FOR TRANSGENDER EQUALITY, INJUSTICE AT EVERY TURN (2012), at 4, *available at* http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf [*hereinafter* INJUSTICE AT EVERY TURN].

^{ix} NAT’L ALLIANCE TO END HOMELESSNESS, THE STATE OF HOMELESSNESS IN AMERICA 2012, at 13 (Jan. 2012).

^x *LGBTQ Youth Homelessness in Focus*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, http://usich.gov/issue/lgbt_youth/lgbt_youth_homelessness_in_focus/ (last visited July 20, 2015).

^{xi} See Jerome Hunt & Aisha C. Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth*, CTR. FOR AM. PROGRESS (June 20,

	<p>2012), https://www.americanprogress.org/issues/lgbt/report/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/.</p> <p>^{xii} Badgett, M.V. Lee, Durso, Laura E., & Schneebaum, Alyssa, <i>New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community</i>, THE WILLIAMS INSTITUTE (June 2013), http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-poverty-update-june-2013/.</p> <p>^{xiii} INJUSTICE AT EVERY TURN, <i>supra</i> note 8, at 2.</p> <p>^{xiv} ID. at 106.</p> <p>^{xv} ID.</p> <p>^{xvi} <i>LGBTQ Youth Homelessness in Focus</i>, <i>supra</i> note 10.</p> <p>^{xvii} Meredith Dank et al., <i>Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex</i> (Feb. 15, 2015), http://www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ysww-engaged-survival-sex/view/full_report.</p> <p>^{xviii} INJUSTICE AT EVERY TURN, <i>supra</i> note 8, at 106.</p>
c134	<p>The League of Women Voters of Delaware urges the Bureau to correct its long-standing practice of counting incarcerated individuals as residents of the prison cells where they happen to be located on Census day rather than their home communities. This practice has created the problem known as "prison-based gerrymandering."</p> <p>We believe that the Census Bureau's current method of assigning residence to incarcerated people is bad for democracy and inconsistent with the principle of "one person, one vote" as enunciated by the Supreme Court in <i>Reynolds v. Sims</i> (1964).</p> <p>When legislative districts are drawn based on the census numbers, incarcerated individuals become "ghost constituents" of districts that contain prisons. In Delaware, 25 percent of male prisoners and 40% of female prisoners are on pre-trial detention. They and others who are not felons are eligible to vote by absentee ballot at their home address, not at the location of the prison. Even felons, who are eligible to vote after completing their sentences, typically spend less than the ten years between Census counts and will be back in their home districts before the next Census.</p> <p>Allocating prisoners to legislative districts where the prison is located artificially inflates the political power of the districts where the prisons are located, while their home communities—often predominantly poor and minority—suffer the inverse effects of losing representation and voting strength for a decade. This issue has been exacerbated as our prison population has soared in the last few decades and, as a result, has increased the inequity of the current residence rule.</p> <p>In 2010, Delaware became the second state to pass a law to end prison-based gerrymandering. House Bill 384 (145th General Assembly) required the Department of Correction to collect the home addresses of incarcerated people and required the legislature to draw its districts on the basis of Census Bureau data corrected to count incarcerated people at their home addresses.</p> <p>The bill was sponsored by Rep. Helene Keeley and Senator Margaret Rose Henry with several additional sponsors and cosponsors. Although Senator Henry represents a legislative district that contains a prison currently counted as part of her district, she and other legislators recognized that the issue of fairness and accuracy in statewide redistricting should take precedence over individual concerns.</p> <p>Unfortunately, even though our Department of Correction provided home addresses, Delaware was unable to arrange for the geocoding of this address data in time for the legislature to meet its deadline for finalizing their redistricting proposals. As a result, our legislature reluctantly postponed full implementation until 2021.</p> <p>A change in the Bureau's residence rule for incarcerated people would allow Delaware - and other states - to eliminate the inequities of prison-based gerrymandering and meet the state's needs in a much more streamlined and cost-effective manner.</p>

We urge the Bureau to correct its residence rule for prisoners for the 2020 Census!

c135

The City of Havelock respectfully responds to your request for comments on the 2010 Census Residence Rule. As the proud host city to Marine Corps Air Station Cherry Point, Havelock seeks to ensure that the heroes who live among us are fairly and adequately counted.

At the center of the issue is the question of where their usual residence is. We contend there is no question that whether deployed for a short period or even in time of war, our military associated with this base and those similarly situated, have their usual residence here. This is where their families are and clearly where they intend to return after a deployment.

Havelock, Craven County and similar military communities were deeply affected by the count during the 2010 Census that set the service member's Census enumeration as their Home of Record, but left confused family members in the same household to reconcile a directive that they be considered residents of this community. For many, they simply did not fill out the forms because of this confusion.

We ask that you treat our military as you do others who have work that requires them to travel or temporarily be somewhere for that work. Their intentions are to return to their usual residence where their family and community ties exist.

We appreciate this opportunity to speak about an issue that has significantly impacted our community's status and ability to serve these dedicated service members. We stand ready to speak further on this issue and thank you for receiving this and our attached comments.

City of Havelock, NC

Response to Federal Register Request for comments on the 2020 Census Count Issues

Specifically: Census of Military Persons during Deployments, wartime and normal rotation

June 2015

Summary

During the 2010 Census, Vietnam era guidance was used to count deployed military at their home of record rather than from the bases and host communities where they lived. Family members were to be counted at their homes on or in the communities around the bases, but many families incorrectly assumed the guidance also applied to them, and did not complete Census documents reflecting their status. For the State of North Carolina, thousands of servicemembers were enumerated at locations that had little to do with them, and for the host communities around the bases, the loss of an accurate count resulted in perceptions of a poor economy, reduced revenues based on population and a much reduced base count on which a decade of estimates are now based.

Request

To work with the services to determine the best method of counting, including temporary deployments and deployments during wartime or simply count the military with their spouses where that is their usual residence, even if both spouses are deployed.

The City requests deployed military members be counted at their usual residence in 2020. That is the usual residence from which they deployed from, and the one to which they intend to return. The City believes this rule, which follows the logic of other persons temporarily away from their home working are counted at their usual place of residence, should apply both in wartime and for non-wartime deployments.

Background

Guidance for the 2010 military counts came from a specific publication:

*"The military overseas population includes U.S. military personnel deployed for **wartime** efforts and U.S. military personnel on U.S. military vessels with a homeport outside the United States." Citation from 2010 Census publication D-3277*

From the Residency rules in the public notice for Military Persons:

"1(a) People away from their usual residence on Thursday, April 1, 2010 (Census Day), such as on a vacation or a business trip, visiting, traveling outside the U.S., or working elsewhere without a usual residence there (for example, as a truck driver or traveling salesperson)—Counted at the residence where they live and sleep most of the time. (80 FR 28950)

"9(a) U.S. military personnel living in military barracks in the U.S.—Counted at the military barracks.

"9(b) U.S. military personnel living in the U.S. (living either on base or off base) but not in barracks—Counted at the residence where they live and sleep most of the time. (80 FR 28951)

"9(c) U.S. military personnel on U.S. military vessels with a U.S. homeport—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport. (80 FR 28951)

Effects from the 2010 Census in our area:

1. **Single Military** who were stationed at area bases (communities) who were **deployed** were **not counted** as **residents** of their bases.
2. **Military with families** (on or off bases) who were deployed were **not counted where their families were**.
3. **Military associated persons living off base were less likely to fill out Census forms when their military member was told they would be counted elsewhere**

Our View

The premise of the rules cited in the request for comment Federal Register Residency Rules directs that if someone is temporarily away from their usual place of residence, they should be counted at their usual place of residence. The City of Havelock encourages this premise to apply to military persons who are temporarily deployed.

For purposes of our discussion, we used the Marine Corps term deployed, which in most cases indicates a temporary assignment, duty or otherwise not permanent assignment for an individual or a unit. A temporary assignment could be up to a year or more.

In 2010, a large number of military persons assigned to bases within North Carolina were counted at their home of record because they were deployed. Many of those persons assigned in North Carolina, but not counted in North Carolina, were temporarily assigned to the War on Terror or assigned to routine training. The publically facing basis was the application of a rule cited in the 2010 Census

publication D-3277 which as stated above, called on wartime deployments to be counted at their home of record.

For those assigned to Marine Corps Air Station Cherry Point, it was clear that they were to return to the base from where they deployed and where their families and loved ones were still in residence, and not return to their home of record. In the case of a single service member who resides in the barracks, the barracks rooms are reassigned to different service members during the deployed period but a room at the same base will be assigned upon the service members return from deployment.

Because they were assigned to units associated with area bases, the service members have a usual (not necessarily specific) residence on or nearby the bases. Their assignment, even in wartime, is temporary and they intend to return to their usual residence on or nearby the bases from which they were deployed.

It is estimated that the 2010 Census had about 25,000 to 34,000 troops from North Carolina counted elsewhere. Nationally, about 1.4 million persons were counted away from their assigned bases in 2010. NC gained 30,298 in counting the home of record status for all troops. This count does not accrue to local jurisdictions, but only to the entire state's population count for apportionment.

The failure to count these troops as residents led to perceptions of a significant loss of population for our community. It caused those who read the headlines to back away from economic advances for our community. Additionally, the lower count robbed local communities of allocated revenues based on population used to support the military families and other citizens of our community.

The counting of military personnel on Military vessels with a U.S. homeport also needs adjustment. Marines from North Carolina bases deploy on U.S. vessels home ported in other states. Married service members have an onshore residence in the State of North Carolina but single service members who have given up their barracks room or residence for the duration of the deployment were not counted in North Carolina. These service members are not considered permanent "Ships Company" and should not be counted at the ships homeport. Service Members from deployed Marine Units, even on Ships, should be counted at their permanent assigned duty station or base.

Home of Record frequently not accurate

During the preparation for the 2010 Census, City officials contacted the Special Populations branch to inquire about military counts. Technical Paper 62 was cited as the guidance for the directive in 2010 Census publication D-3277. The paper reflected that Congressional intent was to have military deployed, temporarily or otherwise, be counted in the Census. A system that would count the personnel was identified but "because of a lack of funding and other constraints...the DOD cancelled its plans" and a decision was reached to count deployed persons at their home of record as the first option.¹

The Home of Record is completely unrelated to the definitions used in the Residency Rule for usual residence and that the application of the premise of using their usual residence is most accurate.

Secondary Effect

Because the deployed military member was counted at a home of record in 2010, their remaining family members who should have been counted in their shared usual residence (and where the military member will most likely return) were sometimes confused about their status. Many families declined to be counted locally because of the confusion. Some believed filling out the form would change their status in contradiction to the military member's status for other purposes. Many states allow military on active duty to remain a citizen of their state for tax purposes, without regard for their usual residence during this period.

Through the partnership with the US Census, our community's Complete Count Committee launched billboards and messages from trusted voices to encourage military families whose active member or members were being counted at their home of record to fill out the Census questionnaire indicating what was truly their usual residence in the community.

Routinely Marine troops are deployed as part of a Marine Expeditionary Unit. Primarily, these are US Navy ship-based and roam a specific theater frequently being given assignments based on world events. Assignments were normally six-months, but world conditions and circumstances drive the length of the deployment. Proud of the moniker as the "President's 9-1-1 force," other Marine units may deploy by other means to a theater based on world events or on standby. In each case, the units intend to perform their assignments and return back to the base from which they deployed.

Counting Marine troops aboard ships as being residents of the homeport of the ship does not represent their usual residence as the ship is merely a transport and platform on which they perform their duties. In most cases, the ships arrive at ports in North Carolina or off shore where they pick up the service members assigned to the deploying units.

"Rear Presence"

Marine units deployed frequently have a full-time presence at the base whether or not it is deployed. This is further evidence of the relative permanence of their base operations and more evidence that members of that unit should clearly be counted as part of the base host community where they come from; either in base housing or as living off base.

Even if the unit does not have a rear presence, the clear evidence of usual residence is that they validate their intention to return to the Marine bases because that is where their families live either on base or in the community. This demonstration of rear presence is demonstrated at the celebrations of returning deployed persons met by families who largely are residents of the community.

Suggestions for the 2020 Census

The City supports actions that would cause the administration of the services to present the count of troops as they are assigned for a duty station. For troops assigned a foreign base, they are part of the overseas population. For troops assigned a main on shore base, they should be counted there even if they are temporarily deployed. They clearly intend to return to the assigned base after their deployment, and believe that to be their usual residence.

We believe that each service should be challenged to prepare the count of deployed persons.

- For military persons living in a barracks, the count should reflect their assignment to that base and should be filled out by the military as part of the normal Quarters count.
- For military persons living with their families, the count should reflect their usual residence, whether it is on base or off base. Families with a deployed member should be encouraged to mark the temporally deployed persons as deployed and the base to which the member is assigned.

The City of Havelock is proud of our military members and wants to accurately count persons in our community.

¹ US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Karen M. Mills, Technical Paper 62, "Americans Overseas in U.S. Censuses" (portions are attached)

Resources and References

	<p>Census Publication Page 7 US Census 2010 Publication D-3277: A Guide for US Military Personnel</p> <p>US Census Special Population Programs Branch Communication Page 9 October 2009 Email Exchange with Special Population Programs Branch including guidance document from US Census. Portions of Technical Paper 62 are included in the responses from the Special Population Programs Branch.</p> <p>Reaction Letters Page 23 Collection of Letters including responses from US Census officials</p> <p>Reaction and Results Page 33 Some of the work of the Complete Count Committee and some results, graphics and discussion about Census counts</p>
c136	<p>Common Cause Georgia submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Making sure that census figures accurately reflect a county’s population ensures that officeholders are held accountable by citizens who actually live in their district. Even the perception of ‘prison gerrymandering’ erodes trust in the system, further exacerbating low voter turnout and political engagement. Ending it would perceptibly improve our democracy.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Butts County, Georgia, for example, residents in District 3 of the county are given twice as much influence over county affairs because 49% of their district is incarcerated.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. See The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on</p>

	<p>July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 Common Cause Georgia believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c137	<p>I submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day. I now live in Kentucky, which I’m sure has its fair share problems with prison gerrymandering, but I’m writing to draw your attention to the trouble that the Bureau’s prisoner miscount caused for us in Arizona, where I lived at the start of this decade. As I am sure you know, in 2010 the Bureau yet again counted anyone who happened to be in a prison or jail on Census day as if they were residents of that facility’s location. When it came time to redistrict, there was a lot of discussion about what to do about that. The Arizona Independent Redistricting Commission eventually decided to use the Bureau’s data, but at the same time to be mindful that incarcerated people were counted in the wrong place. So as the state redistricted, it kept in mind that the data they relied on included a large number of non-voting incarcerated people, and made sure to keep an eye on any potential electoral consequences. The Commission was particularly worried about how the data might misrepresent minority voting strength so they excluded prison populations when performing their Voting Rights Act analysis. Without keeping a close eye on the inaccuracies in the Bureau’s data, the voting strength of Arizona’s Tribal communities would have been particularly affected. Thank you for this opportunity to comment on the Residence Rule and Residence Situations. I urge you to count incarcerated people as residents of their home address, and hope that I don’t need to relive Arizona’s troubles in my new home state in 2020.</p>
c138	<p><i>This comment submission contains graphics and cannot be displayed in this table. It is available as Appendix Attachment c138.</i></p>
c139	<p>Common Cause New Mexico and the Central New Mexico Chapter of Progressive Democrats of America submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause New Mexico urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of our core mission to promote civic engagement and accountability in government. So is ensuring that every eligible American’s vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district while also unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy. And it hurts the communities from which these incarcerated persons hail.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the explosion in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of “one person, one vote” but also with the federal Voting Rights Acts of 1965, which protects minority communities’ opportunities “to participate in the political process and to elect representatives of their choice.”</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p>

	<p>In New Mexico, the practice of prison-based gerrymandering distorts our districts. Two districts drawn after the 2000 Census include more than 1,000 incarcerated people as constituents. The actual residents of districts 8 and 62 are being granted about 4% more influence than the residents of each other district. On the local level, in the city of Hobbs, 21% of people in District 5, drawn after the 2000 Census, were incarcerated at the Lea County Correctional Facility. This means that every 79 residents in District 5 had as much political power as 100 residents in the other districts.¹</p> <p>Aztec City drew districts based on actual resident populations after the 2000 Census, rejecting prison-based gerrymandering. New prisons constructed in Cibola and Union counties over the last decade will require county officials to decide for the first time whether they will count incarcerated persons in the prison districts.² If the Census Bureau were to right an outdated mode of counting, then counties with new prisons would have proper guidance to follow.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) have taken a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>This ad hoc approach in a few states, counties, and municipalities is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation's foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations; we appreciate the Bureau's aim to count everyone in the right place in keeping with changes in society and population realities. Because Common Cause New Mexico and the Central New Mexico Chapter of Progressive Democrats of America believe in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their last-known home addresses.</p> <p>¹ See Prison Policy Initiative, Fixing Prison-Based Gerrymandering After the 2010 Census: New Mexico, (Jul. 15, 2015, 7:53 PM), http://www.prisonersofthecensus.org/50states/NM.html</p> <p>² Id.</p>
c140	<p>I serve as a Senator in the Georgia State Senate, representing District _____, and I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located when the Census is taken.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated</p>

	<p>people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Georgia, this results in decennial misallocation of constituents among state legislative districts. Additionally, about 35 of our counties, cities, and school boards have their districts skewed by the Bureau's 2010 prisoner miscount. The largest vote dilution is 36%.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. In our state alone 16 counties, cities, and school boards each adjusted the census data to avoid skewing their districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state and local jurisdiction to have to adjust the Census' data to incarcerated people in their home district.</p> <p>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 our democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as resident of their home address.</p>
c141	<p>I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>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 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.</p> <p>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 I believe in a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.</p>
c142	<p>Common Cause Illinois submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause Illinois urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Common Cause Illinois is committed to ensuring that all individuals are given equal representation. If changes are not made to the existing process, incarcerated people will continue to incorrectly skew the results of the census, enhancing the political clout of people who live near prisons while diluting the overall voting power of all other Illinoisans.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p>

	<p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, this resulted in 11 House districts that derived 2 or more percent of their population from people incarcerated at correctional facilities located within the districts. There are also important racial considerations at play in the state, where African Americans are considerably overrepresented in Illinois prisons and jails. Across the state, African Americans make up 15% of the total population but account for 56% of the incarcerated population.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 Common Cause Illinois believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c143	<p>I represent the _____ Senate District in New York State and submit this comment in response to the Census Bureau's federal register to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>In 2010, New York State joined California, Delaware and Maryland to pass legislation to adjust the Census' population totals to count incarcerated people as residents of their original homes; and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p>

	<p>But this ad hoc approach is neither efficient nor universally implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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 democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.</p>
c144	<p>The Brennan Center for Justice at New York University School of Law submits this comment in response to the Census Bureau's federal register notice regarding the 2020 Decennial Census Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). For the reasons set forth below, we respectfully ask the Census Bureau build on the changes it made in conjunction with the 2010 Census and update the usual residence rule for the 2020 Census so that all incarcerated persons are counted at their home address rather than the prison facility where they are located on Census Day.</p> <p>Founded in 1995 to honor the extraordinary contributions of Justice William J. Brennan, Jr., the Brennan Center is a not-for-profit, nonpartisan think tank and public interest law institute that seeks to improve systems of democracy and justice. Based on the findings of our research, we have long expressed concerns about the negative societal impact of counting prisoners where they are incarcerated and urged that they be enumerated at their pre-incarceration home addresses instead. In New York, we participated heavily in the drafting of a landmark law passed by the legislature in 2010 which required that the state's redistricting agency reallocate prisoners to their home communities for purposes of apportionment. We subsequently successfully defended the law from legal challenges.¹</p> <p>The high rate of mass incarceration in the United States continues to exacerbate the urgency of counting incarcerated people at their home address. The number of people incarcerated in state and federal prisons has dramatically risen from approximately 200,000 in 1970 to more than 1.5 million in 2013.² Although some states have begun to enact criminal justice reforms to reduce the high rate of incarceration, the likelihood is that a high number of people still will be imprisoned on Census Day in 2020.</p> <p>This high rate of incarceration creates a significant distortive effect when it comes to apportionment, particularly at the state legislative level. This is because most incarcerated persons are being held in facilities located far away from their home communities, often in rural communities. For example, ten years ago about 91% of people incarcerated in New York were held in upstate New York facilities despite the fact that 66% of the inmates were from New York City. This meant that communities in New York City were unrepresented in the state's legislature. Similar sorts of distortions are common across the United States. While New York's state legislature addressed the imbalance through legislation in 2010, many states continue to count inmates where prisons are located because they are not able for a variety of reasons to make adjustments on their own.</p> <p><i>Prisoners lack ties to the communities where they are incarcerated.</i></p> <p>As detailed in our 2004 report, <i>Accuracy Counts: Incarcerated People and the Census</i>, statistics, legal precedent, and historical context all make changing the way incarcerated persons are counted a matter of pressing public policy.³ In the forward to the report, Dr. Kenneth Prewitt, Director of the U.S. Bureau from 1998 to 2001, powerfully argued that, "Counting people in prison as residents of their home communities offers a more accurate picture of the size, demographics, and needs of our nation's communities." Dr. Prewitt went on to emphasize two themes that continue to be relevant today: "Incarcerated people have virtually no contact with the community surrounding the prison. Upon release the vast majority return to the community in which they lived prior to incarceration." A decade later, those concerns remain pressing.</p>

Counting incarcerated persons where they are imprisoned, as Dr. Prewitt said in his forward, "ignores the reality of prison life." Prisoners have only tenuous connection at best to the communities where prisons are located. They are unable to vote, utilize local parks, enroll in schools, or visit libraries in the communities where they are being held. They have no connection to civic life outside of the prison facility. By contrast, prisoners maintain much stronger ties to their home communities. In fact, the U.S. Department of Justice estimated in 1999 that 55% and 63% of state and federal prisoners, respectively, had children that were minors, a high percentage of whom reside in prisoners' home communities. It is not surprising then that the vast majority of the more than 680,000 persons released from prison each year return to the communities they resided in prior to their incarceration.

Counting prisoners in their home communities would be more consistent with how prisoners are treated for other purposes

Finally, considering incarcerated individuals as residents of the area where their prison facility is located is at odds with how most jurisdictions define the residency of prisoners. For instance, over 100 years ago, the New York Court of Appeals held in *New York v. Cady* (1894)⁴ that a prisoner's legal residence is where he or she chooses to live as opposed to where that person is incarcerated. Likewise, the Sixth Circuit in *Stifel v. Hopkins* (1973)⁵ determined that there is a rebuttable presumption that a person's residence prior to incarceration remains his or her residence unless that person intends to change it. Many states have similar residence rules that govern residency, venue in judicial proceedings, and voting.⁶ Changing the usual residence rule to be consistent with practice of the majority of states would bring the federal rule in line with what states have long recognized: prisoners are not part of the communities where prisons are located.

Thank you again for the opportunity to comment on the 2020 Decennial Census Residence Rule and Residence Situations as the Census Bureau strives to count each person in his or her correct location. Because of the importance of a population count that accurately portrays communities throughout the United States, we ask that you update the usual residence rule to count incarcerated individuals as residents at their home addresses. We are happy to answer any questions.

¹ *Little v. LATFOR*, No. 2310/2011 (N.Y. Sup. Ct., Albany Cnty Dec. 1, 2011).

² E. ANN CARSON, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013, *available at* <http://www.bjs.gov/content/pub/pdf/p13.pdf>.

³ PATRICIA ALLARD AND KIRSTEN D. LEVINGSTON, BRENNAN CTR. FOR JUSTICE, ACCURACY COUNTS: INCARCERATED PEOPLE & THE CENSUS (2004), *available at* http://www.brennancenter.org/sites/default/files/legacy/d/RV4_AccuracyCounts.pdf.

⁴ *New York v. Cady*, 143 N.Y. 100 (1894).

⁵ *Stifel v. Hopkins*, 477 F.2d 1116, 1124 (6th Cir. 1973).

⁶ PATRICIA ALLARD AND KIRSTEN D. LEVINGSTON, BRENNAN CTR. FOR JUSTICE, ACCURACY COUNTS: INCARCERATED PEOPLE & THE CENSUS 12 n.65-67 (2004), *available at* http://www.brennancenter.org/sites/default/files/legacy/d/RV4_AccuracyCounts.pdf.

c145 As _____ of the Delaware Housing Coalition, I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations.

Our organization relies on population data that accurately represents communities. Each year, we publish/update two publications that depend on Census data and that housing organizations throughout the state depend on for data that they use in planning their programs and that helps them apply for funding: *Who Can Afford to Live in Delaware?*, a comprehensive report on housing affordability, and *Out of Reach* that focuses on rental data.

	<p>We are very concerned about the Bureau’s practice of counting incarcerated individuals at the prison location since this skews population data. Most particularly, this undercounts male and African American Delawareans in our cities. I therefore urge you to count incarcerated people at their home address, rather than at the particular facility where they happen to be located on Census day.</p>
c146	<p><i>This comment submission contains graphics and cannot be displayed in this table. It is available as Appendix Attachment c146.</i></p>
c147	<p>This message is in response to the May 20, 2015 Federal Register Notice regarding the “2020 Decennial Census Residence Rule and Residence Situations” (https://federalregister.gov/a/2015-12118). As part of a state agency that utilizes Census Bureau data on a daily basis, I want to emphasize that the determination and communication of an easily-interpreted and logically consistent residence rule for each type of residence situation is essential for coherent and useful census tabulations. This includes communication from the Census Bureau on how respondents should interpret the often-used Residence Rule phrase “most of the time.”</p> <p>Along with easily-interpreted and logically consistent rules, consistent communication and application of the rules by residence type from place to place across the country is critical. To provide this, I think the Census Bureau must ensure (1) adequate and uniform training of 2020 Census field workers, along with readily available guidelines and contacts, <i>especially</i> to manage less common residence situations, and (2) clear communication of residence rules and guidelines to 2020 Census partners and respondents (the public) as part of 2020 Census <i>preparation</i>. A designated point-of-contact for residence determination may also be useful for Census Bureau staff, as well as 2020 Census partners and respondents.</p> <p>I also want to encourage the Census Bureau to provide 2020 Census summary file tabulations based on (2010 Census form question 10 or equivalent) “Does Person [X] sometimes live or stay somewhere else?” (including tabulations of the follow-up information from respondents who answer Yes). I have not heard discussion of this by Census Bureau staff before, but to help facilitate the best interpretation and use of decennial census data at the state and local level throughout the decade, I think it’s important that it be considered.</p> <p>Finally, I want to note that for any 2020 version of the 2010 Census Individual Census Report form (special form used for group quarters enumeration), Military Census Report form, or alternative forms used in enumeration, the Census Bureau should consider a question to the effect of “Do you sometimes live or stay somewhere else?” (including the follow-up information about that residence for respondents who answer Yes, equivalent to the regular 2010 Census form question 10). (For the 2010 Census, my record is that there was Individual Census Report question 7 “(If No) What is the full address of a place where you live or stay MOST OF THE TIME?” (I believe there was research on different versions of this question) but that was only for the subset of respondents who answered No to question 6 “Do you live or stay at this facility MOST OF THE TIME?” and, additionally, it didn’t provide the additional follow-up information about that other residence.)</p> <p>Please let me know if you have any questions or if any further information would be helpful, and thank you for all your work to ensure a successful 2020 Census.</p>
c148	<p>I am writing in response to your May 20 federal register notice regarding the Residence Rule and Residence Situations. I am a Professor of Sociology. I and my colleagues use Census data in a wide variety of ways to understand patterns of inequality in the United States. My own research has focused on identifying the causes and consequences of racial disparities in incarceration. As part of this research, I have discovered many cases in which the population characteristics of smaller rural counties have been extremely distorted by counting prisoners in the places where they are incarcerated. There would be a more accurate representation of the social characteristics of different places if people were counted where they resided at the time of their sentencing.</p> <p>As I do quantitative analysis, I took the time to dig a little more into available statistics provided by the Prison Policy Initiative on county-level counts of incarcerated and non-incarcerated persons by race for my state of Wisconsin. There are seven Wisconsin counties in which incarcerated people are 3.2%-6.4% of the county’s total enumerated population, a large enough fraction to distort local socioeconomic measures.</p>

	<p>Only five Wisconsin counties are more than 2% Black for their non-incarcerated populations. Due to the locations of prisons, in 10 of Wisconsin's 72 counties, a <i>majority</i> (in some cases over 80%) of the apparent Black "residents" of the county are incarcerated, in another 6 counties 25-50% of the apparent Black residents are incarcerated, and in another 7 between 10-25% of the apparent residents are incarcerated. These incarcerated "residents" are unlikely to have resided in that county before incarceration and their presence distorts local statistics.</p> <p>Although aggregate Census data do not permit identifying the home county of those incarcerated, using the criterion of counties whose non-incarcerated Black population is less than 2% and have a higher percentage of the state's Black prisoners than their percentage in the population, I estimate that at least 2.3% of the state of Wisconsin's total Black population (all ages, incarcerated and not) is attributed to "White" counties where they are imprisoned instead of to the place they resided before incarceration. This seems like a pretty large shift to me. As a citizen I am concerned about the undemocratic aspects of shifting representation from minorities and cities to predominantly-White rural areas.</p>
c149	<p>The undersigned members of the Massachusetts Coalition for Effective Public Safety (CEPS) submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). A number of CEPS members not listed here have already sent letters to the Bureau on behalf of their respective organizations. We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>CEPS is a coalition of advocates, program providers, parolees, formerly incarcerated men and women, friends and relatives of prisoners, and human rights activists who have joined forces to promote and safeguard the human rights of all people across the Commonwealth of Massachusetts and focus on parole, solitary confinement and medical release reform.</p> <p>We are, therefore, particularly troubled by the Census Bureau's interpretation of the residence rule to count incarcerated people as if they were residents of the prison locations rather than residents of their communities. When this data is used for redistricting it results in prison gerrymandering; prisons inflate the political power of those people who live near them. This misallocation of constituents shifts political priorities, delaying justice for our communities.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census and for our democracy.</p> <p>And while some states have been able to address the prison gerrymandering problem to some extent on their own, our legislature ran into a complication with the state constitution, and so passed a resolution calling on the Bureau to solve the problem instead.</p> <p>We echo our legislators' call and urge you to count incarcerated people at home.</p> <p>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.</p>
c150	<p>I am writing in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015), to urge you to count incarcerated people at their home address.</p> <p>I am a _____ of the David J. Epstein Program in Public Interest Law and Policy at UCLA School of Law. Prior to joining</p>

UCLA I was the _____ for the Campaign for Youth Justice, a national nonprofit devoted to removing youth from the adult criminal justice system. My research focus is on the dangers of incarceration for youth and its impact on families and communities of color.

Although I am not a demographer, I can clearly see the practical results of the Bureau's decision to count incarcerated people as if they resided at the particular facility that they happen to be located at on Census day. When the Bureau's data is used for redistricting, it inflates the political power of people who live near prisons. The result of this arrangement is compounding policy choices that are against the best interests of the communities most impacted by incarceration

And while I am proud that California is one of the states leading the way to ameliorate the skewing effects of the Bureau's miscount, I wish that it were not necessary. In 2011 California was the fourth state in the country to pass a law to adjust Census data for state-wide redistricting. The new law will take effect for the 2020 round of redistricting and requires the Department of Corrections to report the home addresses of incarcerated people to the Citizens Redistricting Commission so that the Commission may count incarcerated people at home for redistricting purposes.

Even before the state took action, virtually all California counties with large prisons took it upon themselves to avoid prison gerrymandering within their own governments. These include Amador, Del Norte, Imperial, Kern, Kings, Lassen, Madera, Monterey, San Luis Obispo, and Tuolumne counties. Madera County actually went as far as to pass a resolution explaining why they could not use the Bureau's data as-is for redistricting (the resolution is attached).

Therefore it may at first glance appear that my state has the prison gerrymandering problem solved, but even we would greatly benefit from the Bureau updating its methodology to count incarcerated people at home. For example, our redistricting commission is independent of the legislature, so even if the state adjusts the Bureau's data to count incarcerated people at home, there is a chance that the commission might default to the Census data published by the Bureau. And taking a bigger picture view, it makes little sense for each state or county government across the country to have to make these necessary adjustments on their own.

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. I believe that a strong democracy and fair criminal justice policy depend on a population count that accurately represents all communities, so I urge you to count incarcerated people as residents of their home address.

BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA

In the Matter of
BOARD OF SUPERVISORS

Resolution No.: 2011 - 100
A RESOLUTION REGARDING PRISON
POPULATIONS AND SUPERVISORIAL
DISTRICTS

WHEREAS, the U.S. Census currently counts incarcerated people as residents of their place of incarceration; and

WHEREAS, the Constitution of the State of California, Article II Section 4, states "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony."; and

WHEREAS, almost all of the people incarcerated at the correctional facilities located within the borders of our County are not residents of our County; and

WHEREAS, these incarcerated persons do not become residents of the County when they are incarcerated, since they are here involuntarily and can be relocated by the state Department of Corrections and Rehabilitation; and

WHEREAS, persons incarcerated in state and federal correctional institutions live in a separate environment, do not vote or otherwise participate in the life of Madera County, cannot build enduring ties in Madera County, and do not individually affect the social and economic character of the towns in which the correctional facilities are located; and

WHEREAS, although these individuals are counted by the U.S. Census as if they were residents of our County, in the past the County has not used these Census counts to draw legislative districts; and

WHEREAS, when the County uses prison populations to draw legislative districts, it gives extra influence to the districts that contain the prisons. For example, the two prisons in District 2 house approximately 7,000 inmates. Dividing the total county wide population of 150,865 by the five Supervisorial districts allows for a population of 30,173 per district. Seven thousand out of that 30,173 are inmates, or 23 percent of the population of District 2. This leaves each group of 77 people in District 2 as much say over county issues as 100 people in the other four districts; and

WHEREAS, this prison-based gerrymandering contradicts the basic principles of equal representation embraced by the State of California and federal Constitutions; and

WHEREAS, the counties of Amador, Del Norte, Imperial, Kern, Kings, Lassen, Monterey, San Luis Obispo, and Tuolumne, as well as more than 100 counties across the United States avoid the problem of prison-based gerrymandering by ignoring the prison populations when drawing legislative districts; and

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Madera, State of California, that the Board will remove the prison populations from the redistricting data used to draw County legislative districts.

The foregoing Resolution was adopted this 24th day of May _____, 2011, by the following vote:

c151 United Congress of Community and Religious Organizations (UCCRO) is writing in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

UCCRO is a coalition of seven community-based organizations covering communities in the Chicagoland area that's been working on the issue of prison gerrymandering for over 4 years. These communities which are largely African American and Hispanic account for about 20 percent of statewide prisoners statewide, and nearly half of city of Chicago prisoners in the state. Though these prisoners are released to the communities of their legal address the vast majority are counted in the prison districts where they are incarcerated, giving those prison districts additional representation because of the inflated count. Prison gerrymandering is bad for democracy and is a practice that needs to be corrected to reflect the true demographics of the all of the communities impacted. Illinois law says that a prison cell is not a residence.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

- 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 located far from the actual homes of incarcerated people. In Illinois, this resulted in about 56 percent of the prison population being black. In Illinois blacks are incarcerated nearly ten times the rate of whites. Yet there are counties that receive counties that receive an unfair advantage in political power. One county for example is Lee County that counts 25% of its population from a federal; prison, thereby giving every group of 75 people the political clout of 100 people in surrounding districts.

Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universality implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. *See* The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).

United Congress of Community and Religious Organizations call upon the Census Bureau to change its practice as well.

We appreciate 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 UCCRO believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

c152

The Southern Center for Human Rights (SCHR) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). SCHR urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

The Southern Center for Human Rights (SCHR) is a non profit law firm based in Atlanta, Georgia, that dedicated to providing legal representation to people facing the death penalty, challenging human rights violations in prisons and jails, seeking through litigation and advocacy to improve legal representation for poor people accused of crimes, and advocating for criminal justice reform on behalf of those affected by the system in the Southern United States.

In the course of carrying out our work, it has become increasingly clear that it is imperative to end prison gerrymandering so that we may ensure equal representation throughout Georgia. SCHR urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

Georgia has a relatively high incarceration rate, currently locking up more than one person for each group of 200 people. But many of the state's prisons are located in sparsely populated areas, resulting in a significant distortion in how the Census portrays these communities. In ten Georgia counties, more than 10% of the county's Census population is incarcerated. Twenty percent of Calhoun County is incarcerated.

	<p>These are not the most punitive counties in the state, they just happen to be the places where the prisons are located.</p> <p>Nine Georgia House Districts drawn after the 2000 Census derived more than 5% of their required population from incarcerated, disenfranchised people. One district was almost 11% incarcerated, giving every 89 people who live in that district with the prison as much influence as 100 people who live in another other district in the state that does not contain a large prison.</p> <p>There are significant political differences between the places that most incarcerated individuals come from and the places where they are incarcerated. An analysis by the state Department of Corrections found more Georgia prison inmates come from Atlanta zip code 30318 than any other of the state's 965 ZIP codes. Atlanta as a whole is city that strongly votes with the Democratic Party, yet due to prison gerrymandering, residents of conservative Butts County (Georgia District 3) were given twice as much influence over county affairs as residents of other districts because 49% of District 3 was incarcerated at the Georgia Diagnostic and Classification Center.</p> <p>Either the Census Bureau needs to change how it counts prisoners, or states like Georgia need to find their own ways to count their population prior to redrawing district boundary lines. Otherwise, the geographic and racial disparities in our criminal justice system will continue to spill over into our electoral system.</p> <p>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 SCHR believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c153	<p>The Fortune Society (Fortune) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Fortune urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>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 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.</p> <p>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 The Fortune Society believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p> <p>Please do not hesitate to contact me by email at _____ or by phone at _____, if you have any questions regarding this letter.</p>
c154	<p>In 2010, the U.S. Census Bureau counted deployed service members as part of the population of their home of record. During this time, there were approximately 10,000 service members stationed at Fort Campbell who were deployed from the installation at the time of the census. Furthermore, over 250,000 United States military personnel were temporarily deployed overseas in support of contingency operations, or for other short-term missions. Home of record is generally defined as the permanent home at the time of entry or re-enlistment into the Armed Forces as included in personnel files; when a deployment ends, soldiers return to their home base--not their original home town or home of record.</p> <p>This once a decade head count sets a baseline population upon which annual estimates are based for the next ten years. Many federal and state assistance programs use formulas based on the decennial census or derivatives from the decennial census data. With the current methodology, the communities in which these service members reside prior to deployment are deprived of potentially large sums of federal and state funding.</p>

	<p>By using the last duty station to count deployed service members the 2020 Census data will depict a more accurate representation of where the deployed service members live prior to deployment and in return allow the communities where these service members live access to more funding to provide services and programs for the military members and their dependents during the following ten year period.</p> <p>Thank you for consideration of this request.</p>
c155	<p>In response to the Federal Census Bureau 's Register Notice regarding the Residence Rules and Residence Situation 8 FR 28950 (5/20/2015), New Jersey Association on Correction hereby advises the following comment; New Jersey Association on Correction urges you to count those incarcerated as residents of their home address rather than then the address of the particular facility they happen to be located in on Census Day.</p> <p>In the 2010 Census, prison cells were designated as residences which therefore determined a disproportionate population of males both African American and Latino. 5,393 census blocks were located far from the actual homes of the incarcerated population. When this data is used for redistricting, prisons inflate the political power of those who live near them.</p> <p>Thank you for the opportunity to comment on the Bureau's efforts to count everyone in the right place. New Jersey Association on Correction believes in a population count that is accurate.</p> <p>Thank you for your consideration.</p>
c156	<p>Arkansas Voices for the Children Left Behind submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be imprisoned at on Census day.</p> <p>Arkansas Voices for the Children Left Behind advocates for the children of incarcerated parents and, therefore, we are very concerned about ensuring equal representation for the home communities of these children.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>I frequently visit Arkansas prisons and have observed a few similarities between the different prisons in the state. First, the prisons are located far away from the home communities of incarcerated people. It often takes a significant amount of time and expense for children to visit their incarcerated parents, straining incredibly important relationships. Second, the prisons are located in parts of the state with vastly different demographics than the home communities of incarcerated people. Nationally, 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 located far from the actual homes of incarcerated people.</p> <p>Because Arkansas is not one of the four states that have found a statewide solution to counting incarcerated people at home, particular</p>

	<p>Arkansas counties are underrepresented politically because the state's prison population comes disproportionately from some counties such as Sebastian County (home for 4.3% of the state but 8.3% of its incarcerated people) and Crittenden County (home for 1.8% of the state, but 3.9% of its incarcerated people). Further, since Blacks are overrepresented in Arkansas prisons and jails, they are going to bear the brunt of prison gerrymandering. Blacks are incarcerated four times more than Whites in Arkansas.</p> <p>In addition to the handful of states that have ended prison gerrymandering, there are over 200 counties and municipalities that have individually adjusted their population data to avoid prison gerrymandering, but this ad hoc approach is not always possible. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations. Arkansas Voices for the Children Left Behind previously called upon the Census Bureau to change its practice back in February 2013, and we are glad to see that the Bureau is taking a step forward to count everyone in the right and most accurate place. Because Arkansas Voices for Children Left Behind believes in a population count that accurately represents communities — especially those hardest hit by incarceration — we urge you to count incarcerated people as residents of their home address.</p>
c157	<p>Justice For Families (J4F) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Our organization and members urge you to count those that are incarcerated at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>J4F is a national organization that was created by families, for families that have been impacted by the criminal justice system and incarceration. We have nearly 3000 families in 38 states and the District of Columbia. As families that remain behind when our loved ones are incarcerated, we understand and live with the consequences of unequal representation in the Census data. The majority of our families live in poor communities of color that have little to no say in their local and state government, thus making an already vulnerable community even more vulnerable. Our families' experiences have proven time and again that the best solutions to community problems come from the impacted community. When the community is denied accurate representation in the Census data, their solutions and voices go unheard while the voices of those who have no stake and little understanding of the community are given greater value and power.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the nation's incarcerated population has more than quadrupled to over two million people. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Illinois, for example, 60% of incarcerated people have their home residences in Cook County (Chicago), yet the Bureau counted 99% of them as if they resided outside Cook County.</p>

	<p>When this data is used for redistricting, prisons artificially inflate the political power of the areas where the prisons are located. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.</p> <p>New York State is not the only jurisdiction taking action. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 J4F believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c158	<p>As the _____ and _____ of AmericanTribune.org, please count our voice in favor of counting prisoners at their home addresses.</p> <p>As a former prisoner myself, I'm aware that every prisoner has his/her home address listed in their personnel files.</p> <p>Prisons, prison staff and the respective communities in which they may be temporally housed all expect that prisoners will return to their own respective communities. The courts and parole/probation departments expect and anticipate that eventuality. If the prisoner should change his/her "home address," then that is vetted and approved by this latter authority and their new home residence so listed.</p> <p>As a rule, most if not all "prison communities" have passed local ordinances that REQUIRE prisoners, not already members of those respective communities, <u>to vacate the area within a certain time period upon release</u> (usually 2-hrs-or-so) under penalty of law.</p> <p>Prisoners are routinely advised of this ordinance by prison staff and given a certain minimal stipend and a bus ticket to accomplish that purpose. They are usually not simply released directly from their respective institution, but are driven to such transportation within a certain time constraint to effect their passage from the community. Home/friend pick-ups from the institution is discouraged if not prohibited.</p> <p>As with college students and others, it only makes accurate and reasonable sense to count prisoners from their listed home commitment/address for any proper home census to be accurate.</p> <p>Thank you for this opportunity to speak to this issue.</p>
c159	<p>Ex-Prisoners and Prisoners Organizing for Community Advancement (EPOCA) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people in their home districts, rather than in districts where they are temporarily incarcerated, and are often barred by state law from voting.</p> <p>We are ex-prisoners and current prisoners, along with allies, friends and family, working together to create resources and opportunities for those who have paid their debt to society. We believe that social change can only be led by the people who most need the change. Therefore, those of us who have the least advantage, the least power within the traditional system, have to work together to change the situation ourselves. And as such we are particularly impacted and troubled by the Census Bureau's interpretation of the residence rule. Counting incarcerated people as if they were residents of the prison locations rather than residents of their communities hurts our democracy and further disempowers our communities.</p>

	<p>EPOCA believes that a population count that accurately represents communities is a prerequisite to equal representation, and so we urge you to count incarcerated people as residents of their home addresses.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>In Massachusetts, there are currently four districts that meet federal minimum population requirements only because the Bureau counted correctional facilities' populations as if the people incarcerated there were actual residents of those districts. So the 8th Plymouth, 37th Middlesex, 7th Middlesex, and 12th Worcester districts each have actual resident populations that are 5.6% to 7.4% smaller than the ideal district size.</p> <p>While some states have been able to address the problem to some extent on their own, our legislature ran into a complication with the state constitution, and so passed a resolution calling on the Bureau to solve the problem instead.</p> <p>We echo their call and urge you to count incarcerated people at home.</p> <p>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.</p>
c160	<p>I represent the _____ district of _____ and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they are located at on Census day.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, which has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology once again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a population that is disproportionately male, African-American or Latino into just 5,393 Census blocks that are located far from the actual homes of incarcerated people. In Massachusetts, law already states that a prison cell is not a residence. The city of Gardner had to choose in 2001 whether or not to give residents who lived in a close proximity to the state prison extra impact on city affairs or deny the inaccurate Census counts. The source of this information can be located at http://www.prisonersofthecensus.org/50states/, along with examples from other states affected by prison gerrymandering.</p>

	<p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust to the Census' population totals to count incarcerated people at home. Over 200 counties and municipalities all individually have to adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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 democracy relies on a population count that accurately represents communities, I encourage you to count incarcerated people as residents of their home address.</p>
c161	<p>We write to submit our comments in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge the Census Bureau to count incarcerated people at their permanent home of record address rather than at their place of incarceration for the 2020 Decennial Census.</p> <p>During the last redistricting cycle, the Special Joint Committee on Redistricting received a tremendous amount of testimony and advice on the issue of group quarters and the counting of prisoners at their last place of residence rather than where they are incarcerated. It was pointed out to the Committee that prisons are frequently located in areas geographically and demographically removed from the home communities of incarcerated persons. By counting prisoners at their place of incarceration, rather than the legal address of the person prior to incarceration, the relative strength of votes by residents in that district are inflated at the expense of voters in all other districts in the Commonwealth. The Massachusetts legislature, acting on this testimony and a recommendation by the Committee, sent to the Director of the Census Bureau on August 14, 2014 a resolution urging that the next Census "counts incarcerated persons at their residential address rather than the address of the correctional institution where they are temporarily located".</p> <p>The U.S. Census continued use of the "usual place of residence" rather than a "legal residence" when counting prison populations means individual states and localities are required to produce their own methodologies for counting prisoners. Currently, California, Delaware, Maryland, and New York take a state-wide approach to adjust the Census' population totals to count incarcerated people at home address. As you may know, the approaches used by Maryland and New York were challenged in court. Other states may face issues such as we do in Massachusetts where the state Constitution dictates that the federal census be the basis for determining our representative, senatorial, and councillor districts. The question becomes how the counting of prisoners can be handled in the future? We believe that the likelihood of continued uncertainty on the appropriate enumeration of prisoners may result in further litigation on this matter as long as states unilaterally attempt to tailor U.S. Census figures to meet local needs. The most expedient and streamlined avenue for changing the method for counting prison populations lies with the Census Bureau changing their prisoner residence rule procedure. This would provide a systematic and consistent tabulation approach for calculating Congressional re-apportionment and one that is uniform for redistricting in all 50 states. Such a change on the federal level will rectify the perceived inequalities in counting prisoners and eliminate costly litigation for states to defend redistricting plans based on adjusting local prison populations.</p> <p>Accordingly, we urge you to change Census Bureau policy to count incarcerated people as residents of their home address, rather than at the place of their incarceration.</p> <p style="text-align: center;"><i>The Massachusetts General Court Resolutions</i></p>

**URGING THE CENSUS BUREAU TO PROVIDE REDISTRICTING DATA THAT COUNTS PRISONERS
IN A MANNER CONSISTENT WITH THE PRINCIPLES OF "ONE PERSON, ONE VOTE".**

WHEREAS, OBTAINING AN ACCURATE COUNT OF THE POPULATION IS SO VITAL TO REPRESENTATIVE DEMOCRACY THAT THE FRAMERS OF THE UNITED STATES CONSTITUTION ADDRESS THE ISSUE OF THE CENSUS AND APPORTIONMENT IN THE OPENING PARAGRAPHS OF THE CONSTITUTION; AND

WHEREAS, THE MASSACHUSETTS CONSTITUTION REQUIRES THAT FEDERAL CENSUS DATA BE THE BASIS FOR STATE REDISTRICTING; AND

WHEREAS, THE CENSUS BUREAU CURRENTLY HAS A POLICY OF COUNTING INCARCERATED PEOPLE AT THE ADDRESS OF THE CORRECTIONAL INSTITUTION, EVEN THOUGH FOR OTHER LEGAL PURPOSES THEIR HOME ADDRESS REMAINS THEIR LEGAL RESIDENCE; AND

WHEREAS, THIS CENSUS DATA RESULTS IN DISTORTIONS OF THE ONE-PERSON, ONE-VOTE PRINCIPLE IN DRAWING ELECTORAL DISTRICTS IN MASSACHUSETTS, DILUTING THE REPRESENTATION OF THE MAJORITY OF DISTRICTS THAT DO NOT CONTAIN PRISONS; AND

WHEREAS, THE SIMPLEST SOLUTION TO THE CONFLICT BETWEEN FEDERAL CONSTITUTIONAL REQUIREMENTS OF "ONE PERSON, ONE VOTE" AND MASSACHUSETTS CONSTITUTIONAL REQUIREMENTS OF USING THE FEDERAL CENSUS IS FOR THE CENSUS BUREAU TO PUBLISH REDISTRICTING DATA BASED ON THE LOCATION OF AN INCARCERATED PERSON'S RESIDENCE, NOT PRISON LOCATION; AND

WHEREAS, THE CENSUS BUREAU HAS ALREADY RECOGNIZED THE DEMAND FROM STATES AND COUNTIES FOR DATA THAT BETTER REFLECTS THEIR ACTUAL POPULATIONS, AND HAS AGREED TO RELEASE DATA ON PRISON POPULATIONS TO STATES IN TIME FOR REDISTRICTING, ENABLING SOME STATES TO INDIVIDUALLY ADJUST THE POPULATION DATA USED FOR REDISTRICTING; AND

WHEREAS, PUBLIC LAW 94-171 REQUIRES THE CENSUS BUREAU TO WORK WITH STATES TO PROVIDE GEOGRAPHICALLY RELEVANT DATA AND THE CENSUS BUREAU HAS BEEN RESPONSIVE TO STATE'S DATA NEEDS FOR THE PAST 3 DECADES; NOW THEREFORE BE IT

RESOLVED, THAT THE MASSACHUSETTS GENERAL COURT HEREBY URGES THE CENSUS BUREAU, IN THE NEXT CENSUS AND THEREAFTER, TO PROVIDE STATES WITH REDISTRICTING DATA THAT COUNTS INCARCERATED PERSONS AT THEIR RESIDENTIAL ADDRESS, RATHER THAN THE ADDRESS OF THE CORRECTIONAL INSTITUTION WHERE THEY ARE TEMPORARILY LOCATED; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THESE RESOLUTIONS BE TRANSMITTED FORTHWITH BY THE CLERK OF THE SENATE TO THE DIRECTOR OF THE CENSUS BUREAU.

c162

I am writing in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you and your colleagues at Census to count incarcerated people at their home address, rather than at the particular facility in which they happen to be located on Census day.

I am a Professor of Law at the University of Michigan Law School, and my work focuses on criminal law and criminal justice policy. I am also an empirical economist. I use data in my work, and I know how important data can be, both in arriving at truth and in helping us understand the world. It also affects the world, as you well know. Counting incarcerated people in the wrong place inflates the

political power of people who live near prisons, when those counts are used for redistricting or other purposes. As you can imagine, this practice has serious repercussions for state legislative decisions that impact incarceration, but also it can have a huge impact on representational equality in the small communities that host the facilities.

I'm pleased to note that Michigan has been at the forefront of how to deal with such population quirks. In our state, cities and counties are required to adjust their redistricting data to exclude people in state institutions who are not residents of the county or city where the facility is located. (Mich. Comp. Laws Ann. §§ 117.27a(1)(5) and 46.404(g), respectively.) Essentially, localities are forbidden from engaging what is now commonly termed "prison gerrymandering" (though these statutes date back to the 1960s). At the same time, the state clearly views Census data as generally the best data to use for redistricting; the same statutes identify the "latest official published figures of the United States official census" as the default source of data, but then creates an exemption for cases where the Bureau's data falls short of Michigan's standards of accuracy (such as counting incarcerated people in the wrong place).

I believe that a strong democracy and fair criminal justice policy depend on a population count that accurately represents all communities. Accordingly, I urge you to count incarcerated people as residents in the jurisdiction of their home address. 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.

c163

I am writing concerning Federal Register Notice [Docket Number 150409353-5353.01] requesting comments regarding the 2020 Decennial Census Residence Rule and Residence Situations.

I wish to begin by saying that these residence rules, developed through the Bureau's extensive experience through many decennial censuses, should remain as they are stated in the above referenced notice.

I am particularly concerned about proposals to adjust group quarters residence rules for those incarcerated in prisons. The primary rule governing decennial census counts is that the enumeration should represent a "snapshot" of where persons are residing on Census Day, not where they formerly resided.

Such adjustments will only open the door to further manipulation of the census counts to suit the sociological and political goals of persons proposing such rule changes.

Furthermore, these changes could embroil the Bureau in political conflicts and decrease the confidence of the American public in the neutrality of the decennial census process. It could also decrease the participation rate in the enumeration.

The Decennial Census process is becoming increasingly difficult and expensive to administer. Prison adjustment is a very complex process and will only add to the expense and timely completion of the enumeration. The Bureau should concentrate its resources on a full and accurate count, and avoid such complex diversions.

Initiating such an arbitrary and expensive modification to the census residence rules could also endanger the Bureau's appropriations, if the Bureau has money for doing prison adjustment, maybe they need less funding.

It is also possible that these adjustments could alter the numbers determining the reapportionment of the seats of the U. S. House among the States, bring on unnecessary litigation.

The experience of the three states which engaged in prison adjustment following the 2010 Decennial Census process (New York, Maryland and Delaware) demonstrated that the procedures used yielded questionable results and, in some cases allocating inmate counts to general,

	<p>rather that specific locations due to lack of sufficient information.</p> <p>It is also notable that the three states which engaged in prison adjustment in 2011 are Democrat-controlled states, and this adjustment would not have been done were it not advantageous to the party in power. Once again, the Bureau should not act as an agent for increasing partisan advantage.</p> <p>There is also a lack of thorough nationwide studies by neutral entities which analyze the affect of prison adjustment on the redistricting process in all of the different States. It is possible that these adjustments could adversely affect the redistricting process for minority districts. Particularly in rural areas were minority districts may be drawn.</p> <p>Another issue is that if group quarters residence rules are modified to remove individual counts from the group quarters for prisoner enumeration to disperse these counts throughout each state, then why not perform the same adjustments on other group quarters, such as college dorms and nursing homes.</p> <p>Also, the Bureau will have to deal with the issue that adjustment of individual counts for group quarter, from where they resided on Census Day to their former residence, may involve moving these counts to other states.</p> <p>Because of the expense and complexity of initiating this process on a nationwide basis, I believe such adjustments should be left up to the individual states, and not be imposed by the Federal Government.</p> <p>For these reasons, I oppose changes to the residence rules stated in the Federal Register notice, and urge the Bureau to readopt the previous rules.</p>
c164	<p>I am writing concerning Federal Register Notice [Docket Number 150409353-5353-01] requesting comments regarding the 2020 Decennial Census Residence Rule and Residence Situations.</p> <p>I believe such adjustments should be left up to the individual states, and not be imposed by the Federal Government. I adamantly oppose changes to the residence rules stated in the Federal Register notice. Please urge the Bureau to re-adopt the previous rules.</p>
c165	<p>I serve as a Representative in the _____ Legislature, representing residents of _____, which includes a large incarcerated population in a county House of Correction, and I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in tum, rests on an accurate count of the nation's population.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p>

	<p>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 located far from the actual homes of incarcerated people.</p> <p>This problem is hardly limited to our state; and currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universally implementable. In Massachusetts, for example, we concluded that the state constitution did not allow us to pass similar legislation, so we sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>And even if we could solve the problem ourselves, it makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.</p> <p>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 democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.</p>
c166	<p>I represent the ____ District, ____ and I submit this comment in response to the Census Bureau's federal register notice regarding the Resident Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population. In Massachusetts incarcerated individuals who are allowed to vote are required to vote by absentee ballot, thus have never been allowed to vote in the town or city where the incarcerated individual is housed. Many of these municipalities' already received special tax privileges; they should not also, receive special political favors by the federal government through the Census Bureau.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S totaled less than half a million. But since then, the number of incarcerated people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>By designating a prison cell as a resident in the 2010 Census, the Census Bureau concentrated a population that is disproportionately males, urban, and African-American or Latino into just 5,393 Census blocks that are located far from the actual homes of incarcerated people.</p> <p>Impacts at the state level include but are not limited to the following:</p> <ul style="list-style-type: none"> • Without using prison populations as padding, 5 Massachusetts House districts drawn after the 2000 Census did not meet constitutional population requirements.

- For example, each House district in Massachusetts should have had 39,682 residents. The 3rd Suffolk District, which claimed the population of the Suffolk County House of Corrections, however, had only 36,428 actual residents. This means that the actual population of the district was 8.2% smaller than the average district in the state.
- Crediting all of Massachusetts' incarcerated people to a few locations, far from home, enhances the political clout of the people who live near prisons, while diluting voting power of all other Bay Staters.

Impacts at the local level include but are not limited to the following:

- Some cities grapple with the Census Bureau prison counts that threaten to distort voting rights. Cities, for example, must also draw city council districts based on population. But because these council districts are so much smaller than state legislative districts, a single large prison can have a huge effect.

Currently, four states (California, Delaware, Maryland, New York) are taking a state-wide approach to adjust the Census' population totals that is to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universality implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the Census' data to count incarcerated people in their home district.

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 Democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.

I would like to thank you in advance for your kind consideration on this matter.

c167

I am writing concerning Federal Register Notice [Docket Number 150409353-5353-01] requesting comments regarding the 2020 Decennial Census Residence Rule and Residence Situations.

I wish to begin by saying that these residence rules, developed through the Bureau's extensive experience through many decennial censuses, should remain as they are stated in the above referenced notice.

I am particularly concerned about proposals to adjust group quarters residence rules for those incarcerated in prisons. The primary rule governing decennial census counts is that the enumeration should represent a "snapshot" of where persons are residing on Census Day, not where they formerly resided.

Such adjustments will only open the door to further manipulation of the census counts to suit the sociological and political goals of persons proposing such rule changes.

Furthermore, these changes could embroil the Bureau in political conflicts and decrease the confidence of the American public in the neutrality of the decennial census process. It could also decrease the participation rate in the enumeration.

	<p>The Decennial Census process is becoming increasingly difficult and expensive to administer. Prison adjustment is a very complex process and will only add to the expense and timely completion of the enumeration. The Bureau should concentrate its resources on a full and accurate count, and avoid such complex diversions.</p> <p>Initiating such an arbitrary and expenses modification to the census residence rules could also endanger the Bureau's appropriations. If the Bureau has money for doing prison adjustment, maybe they need less funding.</p> <p>It is also possible that these adjustments could alter the numbers determining the reapportionment of the seats of the U. S. House among the States, bring on unnecessary litigation.</p> <p>The experience of the three states which engaged in prison adjustment following the 2010 Decennial Census process (New York, Maryland and Delaware) demonstrated that the procedures used yielded questionable results and, in some cases allocating inmate counts to general, rather than specific locations due to lack of sufficient information.</p> <p>It is also notable that the three states which engaged in prison adjustment in 2011 are Democrat- controlled states, and this adjustment would not have been done were it not advantageous to the party in power. Once again, the Bureau should not act as an agent for increasing partisan advantage.</p> <p>There is also a lack of thorough nationwide studies by neutral entities which analyze the affect of prison adjustment on the redistricting process in all of the different States. It is possible that these adjustments could adversely affect the redistricting process for minority districts. Particularly in rural areas where minority districts may be drawn.</p> <p>Another issue is that if group quarters residence rules are modified to remove individual counts from the group quarters for prisoner enumeration to disperse these counts throughout each state, then why not perform the same adjustments on other group quarters, such as college dorms and nursing homes.</p> <p>Also, the Bureau will have to deal with the issue that adjustment of individual counts for group quarter, from where they resided on Census Day to their former residence, may involve moving these counts to other states.</p> <p>Because of the expense and complexity of initiating this process on a nationwide basis, I believe such adjustments should be left up to the individual states, and not be imposed by the Federal Government.</p> <p>For these reasons, I oppose changes to the residence rules stated in the Federal Register notice, and urge the Bureau to readopt the previous rules.</p>
c168	<p>Democracy North Carolina submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>We are interested in ending prison gerrymandering because our mission is to achieve a government that is truly of the people, by the people, and for the people. By violating the constitutional principle of "one person, one vote," prison gerrymandering stands in the way of our mission.</p> <p>As you know, American demographics and living situations have changed dramatically in the 225 years since the first Census, and the</p>

	<p>Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census and for the political representation of residents of urban areas of North Carolina.</p> <p>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 located far from the actual homes of incarcerated people. In North Carolina, after the 2000 Census, seven residents of Anson County's District 6 — where a prison is located — had as much influence as <i>ten</i> residents of any of Anson County's other districts. Anson County did not redistrict after the 2010 Census so this problem still persists.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state- wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is inefficient. For example, even though North Carolina state law says a prison cell is not a residence, that policy is not integrated into redistricting decisions at the state or local level. Public officials in Caswell County and Columbus County, two rural counties with significant prison populations, had to take extra steps to specifically avoid prison gerrymandering.</p> <p>Along with other organizations, we previously called upon the Census Bureau to change its practice of counting incarcerated people in February 2013, and we once again urge you to count incarcerated people as residents of their home address.</p> <p>We 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.</p>
c169	<p>Neighbor to Neighbor submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). We urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Neighbor to Neighbor is a membership organization comprised of low-income, working class, and people of color. We are dedicated to achieving economic and environmental justice. We build the power of our members through issue and electoral organizing. We operate chapters in Lynn, Worcester, Springfield and Holyoke, where poverty and unemployment rates are high. Many of our members and their families have and continue to be deeply affected by the issue of mass incarceration. Given the challenges our members face coupled with our focus on civic engagements, we have a particular concern in ending prison gerrymandering and ensuring equal representation.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated</p>

	<p>people as more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Massachusetts, this resulted in roughly 10,000 people counted at their facility location rather than their actual home, which is their legal address for other purposes.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>But this ad hoc approach is neither efficient nor universality implementable. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>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 Neighbor to Neighbor believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c170	<p>I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be imprisoned at on Census day.</p> <p>My son is incarcerated in Texas, and I am a member of the Mothers of Incarcerated Sons Society, a support group for families of incarcerated individuals.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 located far from the actual homes of incarcerated people. In Rhode Island, this practice has a disproportionate effect on African-American and Latino communities since African-Americans are incarcerated at a rate almost nine times as much as Whites are. The incarceration rate for Latinos in Rhode Island is three times higher than that for Whites.</p>

	<p>Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home and avoid prison gerrymandering, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>Unfortunately, this is not the case in Rhode Island. Even though Rhode Island law states that a prison cell is not a residence, incarcerated people are included in population counts for redistricting. This is worrisome because currently, all of the state's prisons are clustered in Cranston.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations. I am glad to see that the Bureau is taking a step forward to count everyone in the right and most accurate place. I believe that the Census should accurately represent communities, and therefore I urge you to count incarcerated people as residents of their home address.</p>
<p>c171-247</p> <p><i>Note: Comment submissions 171-247 were sent as a group and are identical except for the name of the sender.</i></p>	<p>In Christian County, Kentucky we take great pride in our continued relationship with Fort Campbell. We strive to provide a community where soldiers and their families always feel welcome; never taking for granted the hard work, dedication and sacrifice that our military families make for our country. Fort Campbell is home to the Army's most deployed contingency forces. As a community, we embrace the cycles of deployment and ensure our military members and their families receive access to high quality services and programs.</p> <p>We take pride in serving those that serve our country. It is important that our service members are included as part of this community in the census. This once a decade head count sets a baseline population upon which annual estimates are based for the next ten years. Many federal and state assistance programs use formulas based on the decennial census or derivatives from the decennial census data. With the current methodology, the communities in which these service members reside prior to deployment are deprived of potentially large sums of federal and state funding; funding that is used to benefit the community including the service members and their families.</p> <p>By using the last duty station to count deployed service members the 2020 Census data will depict a more accurate representation of where the deployed service members live prior to deployment and in return allow the communities where these service members live access to more funding to provide services and programs for the military members and their dependents during the following ten year period.</p> <p>Thank you for consideration of this request.</p>
<p>c248</p>	<p>Common Cause Florida submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause Florida urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of our core mission to promote civic engagement and accountability in government. So is ensuring that every eligible American's vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy. And it hurts the communities from which these incarcerated persons hail.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the explosion in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of "one person, one vote" but also with the federal Voting Rights Acts of 1965 which protects minority communities' opportunities "to participate in the political process and to elect representatives of their choice."</p>

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census. In Florida, the growth of the prison population in recent decades has been enormous. In 2000, there were 71,616¹ individuals incarcerated by the Florida Department of Corrections, whereas today there are just over 102,000² individuals incarcerated, an increase of 42.4%. In that same time period, Florida's population grew by only 17.6%.³

Because of the rise in incarceration rates, the practice of allocating incarcerated persons to prison districts substantially skews redistricting. This is especially true because prisons are frequently located in areas geographically and demographically removed from the home communities of incarcerated persons.

An example of this skewed redistricting can be found in Florida's House District 10. After the 2000 Census, the ideal population for each State House district in Florida was 133,186 residents. But more than 7% of House District 10 is incarcerated disenfranchised people from other parts of the state, which makes the population of House District 10 really about 7% smaller than the ideal district size. This means that every 93 people in House District 10 have as much voting power and representation as 100 people elsewhere in the state. Similar distortions can be found in House Districts 12, 5 and 7. Ultimately, everyone in Florida who does not live in a district that contains a prison has their voting strength and representation diluted in the Florida State Legislature as compared to districts that are padded with a prison population.

The distortion is even greater at the local level. In the Calhoun County Board of County Commissioners, for example, 48% of the people in District 4 are incarcerated at the Calhoun Correctional Institution. As a result, the actual residents of District 4 are given almost twice as much political clout as people elsewhere in the county. Significant distortion of voting power also occurs in several other counties, including Baker, Hardee, Jefferson, and Wakulla Counties.

A handful of Florida counties proactively reject prison-based gerrymandering and base their county districts on actual residents instead of prison populations. Gulf County is one such county that already bases its districts on actual populations, not prison populations, by excluding the prison population from its redistricting data for purposes of local redistricting. Although the Florida Attorney General issued an opinion stating that Gulf County must include prison populations when drawing its county districts, the county ignored this advice in favor of drawing districts based on the constitutional and democratic principle of “one person, one vote.” Columbia, Hamilton, Holmes, and Madison Counties also base their county districts on actual residents and exclude prison populations.

Currently, four states (California, Delaware, Maryland, and New York) have taken a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

This ad hoc approach in a few states, counties, and municipalities is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation's foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.

	<p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations; we appreciate the Bureau's aim to count everyone in the right place in keeping with changes in society and population realities. Because Common Cause Florida believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their last-known home addresses.</p> <p>¹ Prison Populations on June 30, 2000, Prison Policy Initiative, available at http://www.prisonersofthecensus.org/resources/prisons2000.html.</p> <p>² About the Florida Department of Corrections, Florida Department of Corrections, available at http://www.dc.state.fl.us/about.html; Trends in Admission Populations May 2011, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/pop/monthly/index.html.</p> <p>³ Florida By the Numbers, Florida House of Representatives Redistricting Committee, available at http://censusvalidator.blob.core.windows.net/mydistrictbuilderdata/Public%20Participation/Redistricting - By the Numbers.pdf.</p>
c249	<p>Common Cause in Wisconsin submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause Wisconsin urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of our core mission to promote civic engagement and accountability in government. So is ensuring that every eligible American's vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy. And it hurts the communities from which these incarcerated persons hail.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the explosion in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of “one person, one vote” but also with the federal Voting Rights Acts of 1965 which protects minority communities' opportunities “to participate in the political process and to elect representatives of their choice.”</p> <p>The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>Currently, four states (California, Delaware, Maryland, and New York) have taken a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and over 200 counties and municipalities individually adjust population data to avoid prison gerrymandering when drawing their local government districts. This is the direction all states should follow.</p> <p>Wisconsin, though, continues to count incarcerated persons the way the Census Bureau does. In 2011, the legislature used 5,583 incarcerated people to pad out the population of District 53. Without the incarcerated populations, the district is 10% below the required size. This gives every 90 residents of the 53rd district the same influence as 100 residents of any other district in the state.</p> <p>Not only do the Census Bureau's methods skew our district populations, but they also paint a flawed picture of their demographic makeup. District 53, for example, seems to have a large African-American population, larger than 74 other districts. But of the 2,784 African-Americans in the district, all but 590 are incarcerated. The day the people incarcerated in the district are allowed to vote again,</p>

	<p>they will be on a bus, heading back to their home districts. The Census counts the prison districts' incarcerated populations as if they resided there even though they are not a part of this district and never will be – they don't use the roads, visit the libraries, enjoy the state's public education, or walk through the parks. For all purposes, they simply do not reside in these districts.</p> <p>But even these examples are nearly unremarkable compared to the dramatic vote distortions that people face in their local governments. For example, 80% of a district in Juneau County is incarcerated. This gives every 20 residents of that district the same voting power as 100 residents of any other ward. To say that this is unfair would be an understatement. Yet Juneau is hardly the only county significantly affected; 75% of District 2 in Waupun County is incarcerated, 62% of Adams County's Districts 13 and 5 are incarcerated, 53% of a district in Juneau City is incarcerated, and 51% of Jackson County's District 12 is incarcerated, to name a few.</p> <p>Nevertheless, there 6 cities and counties rejected the Census Bureau's prison counts, successfully adjusting their redistricting population to create fair districts.</p> <p>This ad hoc approach is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation's foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations; we appreciate the Bureau's aim to count everyone in the right place in keeping with changes in society and population realities. Because Common Cause Wisconsin believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their last-known home addresses.</p>
c250	<p>The Texas Criminal Justice Coalition submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). The Texas Criminal Justice Coalition urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>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 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.</p> <p>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 the Texas Criminal Justice Coalition believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.</p>
c251	<p>I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be imprisoned at on Census day.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Census to update its methodology again.</p>

	<p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>As a volunteer for the Alternatives to Violence Project and someone who has facilitated workshops in a handful of California state prisons, I know that California prisons are often located far away from the home communities of incarcerated people. Fortunately, California is one of the states that have ended prison gerrymandering, and there are over 200 counties and municipalities that have also individually adjusted their population data to avoid prison gerrymandering.</p> <p>But, nationally, 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 located far from the actual homes of incarcerated people. In California, African-Americans are incarcerated at a rate almost seven times as much as whites are.</p> <p>Further, it is not always possible for states to end prison gerrymandering on their own. The Massachusetts legislature, for example, concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses. <i>See</i> The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations. I am glad to see that the Bureau is taking a step forward to count everyone in the right and most accurate place. I believe that the Census should accurately represent communities, and therefore I urge you to count incarcerated people as residents of their home address.</p>
c252	<p>I am a former member of the Vermont House of Representatives (2008-2014) and currently _____ of Vermonters for Criminal Justice Reform, and I submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census Day.</p> <p>From my years of experience serving as an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population. And in my work with Vermonters for Criminal Justice Reform I see the results of how a malapportioned legislative system creates and perpetuates unjust laws.</p> <p>As you know, American demographics and living situations have changed drastically in the 225 years since the first census, and the census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the growth in the prison population requires the Bureau to update its methodology again.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the census.</p> <p>By designating a prison cell as a residence in the 2010 census, the Census Bureau concentrated the nation's entire incarcerated population into just 5,393 census blocks that are located far from the actual homes of incarcerated people. In Vermont this means that the residents of</p>

places like Burlington, Rutland and Bennington, are instead systematically counted at the location of the state's seven prisons—or out of state in the private prison in Baldwin, Michigan.

This miscount is unjustifiable anywhere, but **my state exemplifies the incongruity between the Census Bureau's residence rules and where people actually reside.** While prisoners remain residents of their home address in all states, in Vermont they also retain the right to vote while in prison. So they are represented by, and vote for, their home legislator, but at redistricting time, they are counted toward the constituency total of the legislators who have prisons in their districts.

Currently, four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the census's population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

But this ad hoc approach is neither efficient nor universally implementable. It makes far more sense for the Bureau to provide accurate redistricting data in the first place, rather than leaving it up to each state to have to adjust the census's data to count incarcerated people in their home district.

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 democracy relies on a population count that accurately represents communities, I urge you to count incarcerated people as residents of their home address.

July 14, 2015

Karen Humes,
Chief of the Population Division
U.S. Census Bureau
Via email to POP.2020.Residence.Rule@census.gov

Re: Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015)

Dear Ms. Humes,

The Texas Civil Rights Project respectfully submits these comments in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations 80 FR 28950 (May 20, 2015).

We strongly urge you to count incarcerated people at their home addresses rather than their prison addresses, because the current system grossly distorts the census results. This is particularly true in Texas.

- Texas consistently is at or near the highest rate of incarceration in the United States.
- Most convictions are in Texas' urban areas, but most prisons are in very rural areas.
- African Americans are disproportionately affected: they represent only 11.8% of the state population but 31% of the prison population.

When the census counts inmates at their prison addresses, it reinforces state political dynamics which contribute to the phenomenon of mass incarceration in Texas.

A. Texas' prison population has grown vastly since 1980

In 1978, Texas' prison population was 24,575.¹

The 2014 prison population was 150,361.² That is a **511%** increase in 36 years.

The increase is largely the result of the state legislature creating longer and longer sentences for the same crimes.

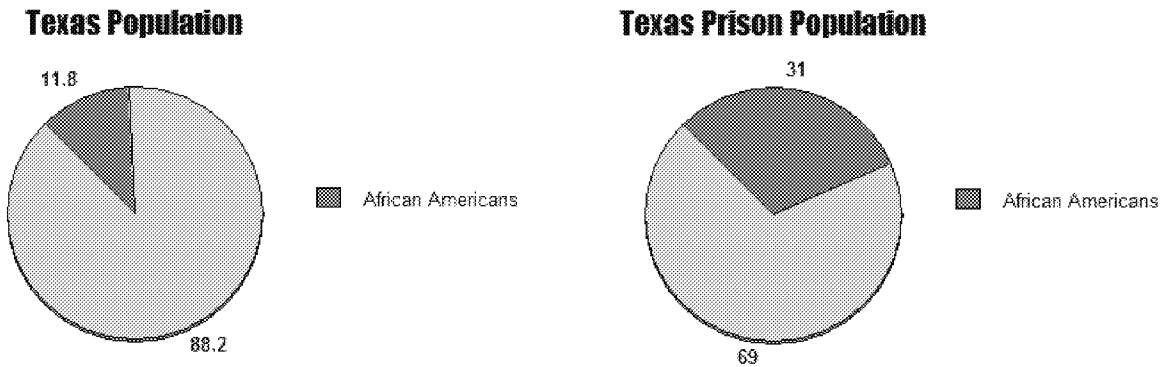
¹ *Ruiz v. Estelle*, 503 F. Supp. 1265, 1275 (S.D.Tex 1980).

² TDCJ Statistical Report FY 2014, available at http://tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

B. African American residents are disproportionately affected.

African Americans represent roughly **11.8%** of the Texas population.

However, they represent about **31%** of Texas' prison population.



Most Texas prisoners are incarcerated for a short time. Half the people convicted every year are sentenced to two years or less, and another quarter are sentenced to 3-5 years. State law does not permit prisoners to vote, but they become eligible again after being released and finishing parole (if applicable).³

C. Prisoners are mostly from urban areas, but prisons are mostly in rural areas.

In 1978 there were 17 prisons in Texas with a total capacity for 27,253 inmates. They were distributed across **7 counties**.⁴

Today, there are 109 prisons with a total capacity for 160,023 inmates, distributed across **52 counties**.



³ Texas Election Code 11.002(4).

⁴ See Appendix A.

Counting prisoners where they are incarcerated but cannot vote – in regions of the state that are primarily rural, white, and conservative – results in the state government being disproportionately rural, white, and conservative. It simultaneously disenfranchises some residents while empowering others, which creates a snowballing effect for mass incarceration. It is no accident that the Texas prison population has not only grown since 1980, but that the growth continued to accelerate through the 1990's.

As a civil rights advocate, I strongly encourage you to change the current system. Not only would it make the electoral system more representative generally, it might be essential to breaking the cycle of mass incarceration in Texas in our lifetimes.

Appendix A

Prison	Year	Inmate Capacity	County	Total prison capacity
Huntsville	1849	1705	Walker	1705
Wynne	1883	2621	Walker	4326
Jester I	1885	323	Fort Bend	4649
Vance	1885	378	Fort Bend	5027
Clemens	1893	1215	Brazoria	6242
Goree	1907	1321	Walker	7563
Ramsey	1908	1891	Brazoria	9454
Stringfellow	1908	1212	Brazoria	10666
Central (closed 2013)	1909	950		(not counted toward current total)
Darrington	1917	1931	Brazoria	12597
Eastham	1917	2474	Houston	15071
Scott	1919	1130	Brazoria	16201
Ferguson	1962	2421	Madison	18622
Byrd	1964	1365	Walker	19987
Coffield	1965	4139	Anderson	24126
Ellis	1965	2482	Walker	26608
Mountain View	1975	645	Coryell	27253
Beto	1980	3471	Anderson	30724
Crain	1980	2115	Coryell	32839
Hilltop	1981	553	Coryell	33392
Jester III	1982	1131	Fort Bend	34523
Luther	1982	1316	Grimes	35839
Powledge	1982	1137	Anderson	36976
Hospital Galveston	1983	365	Galveston	37341
Pack	1983	1478	Grimes	38819
Terrell	1983	1603	Brazoria	40422
Estelle	1984	3480	Walker	44852
Bridgeport	1987	200	Wise	45052
Michael	1987	3305	Anderson	48357
Skyview	1988	562	Cherokee	48919
Bridgeport	1989	520	Wise	49439
Cleveland	1989	520	Liberty	49959
Daniel	1989	1384	Scurry	51343
Estes	1989	1040	Johnson	52383
Hobby	1989	1384	Falls	53767
Kyle	1989	520	Hays	54287
Clements	1990	3798	Potter	58085
Hightower	1990	1384	Liberty	59469

Hughes	1990	2984	Coryell	62453
Lewis	1990	2232	Tyler	64685
Roach	1991	1884	Childress	66569
Boyd	1992	1372	Freestone	67941
Briscoe	1992	1384	Frio	69325
Cotulla	1992	606	La Salle	69931
Duncan	1992	606	Angelina	70537
Fort Stockton	1992	606	Pecos	71143
Jordan / Baten	1992	1008	Gray	72151
Marlin	1992	606	Falls	72757
McConnell	1992	2900	Bee	75657
Robertson	1992	2984	Jones	78641
San Saba	1992	606	San Saba	79247
Smith	1992	2234	Dawson	81481
Tulia	1992	606	Swisher	82087
Gurney	1993	2128	Anderson	84215
Jester IV	1993	550	Fort Bend	84765
Lockhart*	1993	500	Caldwell	85265
Lockhart*	1993	500	Caldwell	85765
Polunsky	1993	2984	Polk	88749
Stiles	1993	2981	Jefferson	91730
Torres	1993	1384	Medina	93114
Garza East	1994	2458	Bee	95572
Garza West	1994	2278	Bee	97850
Gist	1994	2276	Jefferson	100126
Glossbrenner	1994	612	Duvall	100738
Havins	1994	596	Brown	101334
Holliday	1994	2128	Walker	103462
Lynaugh	1994	1416	Pecos	104878
Middleton	1994	2128	Jones	107006
Montford	1994	1044	Lubbock	108050
Neal	1994	1732	Potter	109782
Sayle	1994	632	Stephens	110414
Stevenson	1994	1384	DeWitt	111798
Wallace	1994	1448	Mitchell	113246
Allred	1995	3,722	Wichita	116968
Bartlett	1995	1049	Williamson	118017
Bradshaw	1995	1980	Rusk	119997
Cole	1995	900	Fannin	120897
Connally	1995	2148	Karnes	123045
Dalhart	1995	1398	Hartley	124443
Diboll	1995	518	Angelina	124961
Dominguez	1995	2276	Bexar	127237
Formby	1995	1100	Hale	128337

Goodman	1995	612	Jasper	128949
Halbert	1995	612	Burnet	129561
Henley	1995	576	Liberty	130137
Hodge	1995	989	Cherokee	131126
Hutchins	1995	2276	Dallas	133402
Johnston	1995	612	Wood	134014
LeBlanc	1995	1224	Jefferson	135238
Lindsey	1995	1031	Jack	136269
Lychner	1995	2276	Harris	138545
Moore, B.	1995	500	Rusk	139045
Moore, C.	1995	1224	Fannin	140269
Murray	1995	1341	Coryell	141610
Ney	1995	576	Medina	142186
Plane	1995	2291	Liberty	144477
Rudd	1995	612	Terry	145089
Segovia	1995	1124	Hidalgo	146213
Telford	1995	2872	Bowie	149085
Wheeler	1995	576	Hale	149661
Willacy County	1995	1069	Willacy	150730
Mineral Wells (closed 2013)	1995	2103		(not counted toward current total)
Dawson (closed 2013)	1995	2216		(not counted toward current total)
Hamilton	1996	1166	Brazos	151896
Sanchez	1996	1100	El Paso	152996
Young	1996	455	Galveston	153451
Kegans	1997	667	Harris	154118
Lopez	1997	1100	Hidalgo	155218
Travis County	1997	1161	Travis	156379
Ware	1997	508	Mitchell	156887
Woodman	1997	900	Coryell	157787
East Texas	2004	2236	Rusk	160023



City of Jacksonville

Office of the Mayor

PO Box 128 • Jacksonville NC 28541-0128 • 910 938-5224

July 15, 2015

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

And via email: POP.2020.Residence.Rule@census.gov

Reference: Notice and Request for Comment: **2010 Census Residence Rule**

Madam:

The City of Jacksonville respectfully responds to your request for comments on the 2010 Census Residence Rule. As the proud host city to Marine Corps Base Camp Lejeune and Marine Air Station New River, Jacksonville seeks to ensure that the heroes who live among us are fairly and adequately counted.

At the center of the issue is the question of where their usual residence is. We contend there is no question that whether deployed for a short period or even in time of war, our military associated with these bases and those similarly situated, have their usual residence here. This is where their families are and clearly where they intend to return after a deployment.

Jacksonville, Onslow County and similar military communities were deeply affected by the count during the 2010 Census that set the servicemember's Census enumeration as their Home of Record, but left confused family members in the same household to reconcile a directive that they be considered residents of this community. For many, they simply did not fill out the forms because of this confusion.

We ask that you treat our military as you do others who have work that requires them to travel or temporarily be somewhere for that work. Their intentions are to return to their usual residence where their family and community ties exist.

We appreciate this opportunity to speak about an issue that has significantly impacted our community's status and ability to serve these dedicated servicemembers. We stand ready to speak further on this issue and thank you for receiving this and our attached comments.

City of Jacksonville, NC

Response to Federal Register Request for comments on the 2020 Census Count Issues

Specifically: Census of Military Persons during Deployments, wartime and normal rotation

May 2015

Summary

During the 2010 Census, Vietnam era guidance was used to count deployed military at their home of record rather than from the bases and host communities where they lived. Family members were to be counted at their homes on or in the communities around the bases, but many families incorrectly assumed the guidance applied also to them, and did not complete Census documents reflecting their status. For the State of North Carolina, thousands of servicemembers were enumerated at locations that had little to do with them, and for the host communities around the bases, the loss of an accurate count resulted in perceptions of a poor economy, reduced revenues based on population and a much reduced base count on which a decade of estimates are now based.

Request

To work with the services to determine the best method of counting, including temporary deployments and deployments during wartime or to simply count the military with their spouses where that is their usual residence, even if both spouses are deployed.

The City requests deployed military members be counted at their usual residence in 2020. That is the usual residence from which they deployed from, and the one to which they intend to return. The City believes this rule, which follows the logic of other persons temporarily away from their home working are counted at their usual place of residence, should apply both in wartime and for non-wartime deployments.

Background

Guidance for the 2010 military counts came from a specific publication:

*"The military overseas population includes U.S. military personnel deployed for **wartime** efforts and U.S. military personnel on U.S. military vessels with a homeport outside the United States." Citation from 2010 Census publication D-3277*

From the Residency rules in the public notice for Military Persons:

"1(a) People away from their usual residence on Thursday, April 1, 2010 (Census Day), such as on a vacation or a business trip, visiting, traveling outside the U.S., or working elsewhere without a usual residence there (for example, as a truck driver or traveling salesperson)—Counted at the residence where they live and sleep most of the time. (80 FR 28950)

"9(a) U.S. military personnel living in military barracks in the U.S.—Counted at the military barracks.

"9(b) U.S. military personnel living in the U.S. (living either on base or off base) but not in barracks—Counted at the residence where they live and sleep most of the time. (80 FR 28951)

“9(c) U.S. military personnel on U.S. military vessels with a U.S. homeport—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport. (80 FR 28951)

Effects from the 2010 Census in our area:

1. **Single Military** who were stationed at area bases (communities) who were **deployed** were **not counted** as **residents** of their bases.
2. **Military with families** (on or off bases) who were deployed were **not counted where their families were.**
3. **Military associated persons living off base were less likely to fill out Census forms when their military member was told they would be counted elsewhere**

Our View

The premise of the rules cited in the request for comment Federal Register Residency Rules directs that if someone is temporarily away from their usual place of residence, they should be counted at their usual place of residence. The City of Jacksonville encourages this premise to apply to military persons who are temporarily deployed.

For purposes of our discussion, we used the Marine Corps term deployed, which in most cases indicates a temporary assignment, duty or otherwise not permanent assignment for an individual or a unit.

In 2010, a large number of military persons assigned to bases within North Carolina were counted at their home of record because they were deployed. Many were assigned to the War on Terror, and some were assigned to routine training. The publically facing basis was the application of a rule cited in the 2010 Census publication D-3277 which as stated above, called on wartime deployments to be counted at their home of record.

For those assigned to Camp Lejeune Marine Corps Base and the Marine Corps Air Station New River it was clear that they were to return to the bases from where they deployed and where their families and loved ones were still in residence, and not return to their home of record.

Because they were assigned to units associated with area bases, the servicemembers have a usual residence on or nearby the bases. Their assignment, even in wartime, is temporary and they intend to return to their usual residence on or nearby the bases from which they were deployed.

It is estimated that the 2010 Census had about 25,000 to 34,000 troops from North Carolina counted elsewhere. Nationally, about 1.4 million persons were counted away from their assigned bases in 2010. NC gained 30,298 in counting the home of record status for all troops. This count does not accrue to local jurisdictions, but only to the entire state's population count for apportionment.

The failure to count these troops as residents led to perceptions of a significant loss of population for our community. It caused those who read the headlines to back away from economic advances for our community. Additionally, the lower count robbed local communities of allocated revenues based on population used to support the military families and other citizens of our community.

Home of Record frequently not accurate

During the preparation for the 2010 Census, City officials contacted the Special Populations branch to inquire about military counts. Technical Paper 62 was cited as the guidance for the directive in 2010 Census publication D-3277. The paper reflected that Congressional intent was

to have military deployed, temporarily or otherwise, be counted in the Census. A system that would count the personnel was identified but "(b)ecause of a lack of funding and other constraints...the DOD cancelled its plans" and a decision was reached to count deployed persons at their home of record as the first option.¹

In many cases, the Home of Record for a US Marine may indicate the recruiting station where they entered service rather than from the community they came. Years after entering the service, the home of record may not reflect their usual residence. The City believes the Home of Record is completely unrelated to the definitions used in the Residency Rule for usual residence and that the application of the premise of using their usual residence is most accurate.

Secondary Effect

Because the deployed military member was counted at a home of record in 2010, their remaining family members who should have been counted in their shared usual residence (and where the military member will most likely return) were sometimes confused about their status. The City of Jacksonville found many families who declined to be counted locally because of the confusion. Some believed filling out the form would change their status in contradiction to the military member's status for other purposes. Many states allow military on active duty to remain a citizen of their state for tax purposes, without regard for their usual residence during this period.

Through the partnership with the US Census, our community's Complete Count Committee launched billboards and messages from trusted voices to encourage military families whose active member or members were being counted at their home of record to fill out the Census questionnaire indicating what was truly their usual residence in the community.

Routinely Marine troops are deployed as part of a Marine Expeditionary Unit. Primarily, these are US Navy ship-based and roam a specific theater frequently being given assignments based on world events. Assignments were normally six-months, but world conditions and circumstances drive the length of the deployment. Proud of the moniker as the "President's 9-1-1 force," other Marine units may deploy by other means to a theater based on world events or on standby. In each case, the units intend to perform their assignments and return back to the base from which they deployed.

Counting Marine troops aboard ships as being residents of the homeport of the ship does not represent their usual residence as the ship is merely a transport and platform on which they perform their duties. In most cases, the ships arrive at ports in North Carolina or off shore where they pick up the service members assigned to the deploying units.

"Rear Presence"

Marine units deployed frequently have a full-time presence at the base whether or not it is deployed. This is further evidence of the relative permanence of their base operations and more evidence that members of that unit should clearly be counted as part of the base host community where they come from; either in base housing or as living off base.

Even if the unit does not have a rear presence, the clear evidence of usual residence is that they validate their intention to return to the Marine bases because that is where their families live either on base or in the community. This demonstration of rear presence is demonstrated at the celebrations of returning deployed persons met by families who largely are residents of the community.

¹ US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Karen M. Mills, Technical Paper 62, "Americans Overseas in U.S. Censuses" (portions are attached)

Congressional Attention

The City of Jacksonville worked with other communities to bring attention to the application of counting deployed troops during wartime at their home of record, and elicited a series of letters drawing attention to the issues. A majority of the State's 2010 Congressional delegation and a House Committee on military affairs signed two letters.

In addition to the work done by the City of Jacksonville prior to the Census, the City convened a group at the Onslow County Multipurpose Complex April 6, 2011 to gain State attention to the matter. Representatives from Cumberland County, Fayetteville, Craven County, Havelock, Wayne County and Goldsboro attended. Governor's Census Liaison Bob Coats was helpful in relaying the issue to others and interpreting Census actions.

Suggestions for the 2020 Census

The City supports actions that would cause the administration of the services to present the count of troops as they are assigned for a duty station. For troops assigned a foreign base, they are part of the overseas population. For troops assigned a main on shore base, they should be counted there even if they are temporarily deployed. They clearly intend to return to the assigned base after their deployment, and believe that to be their usual residence.

We believe that each service should be challenged to prepare the count of deployed persons.

- For military persons living in a barracks, the count should reflect their assignment to that base and should be filled out by the military as part of the normal Quarters count.
- For military persons living with their families, the count should reflect their usual residence, whether it is on base or off base. Families with a deployed member should be encouraged to mark the temporarily deployed persons as deployed and the base to which the member is assigned.

The City of Jacksonville is proud of our military members and wants to accurately count persons in our community.

Resources and References

Census Publication US Census 2010 Publication D-3277: A Guide for US Military Personnel	Page 7
US Census Special Population Programs Branch Communication October 2009 Email Exchange with Special Population Programs Branch including guidance document from US Census. Portions of Technical Paper 62 are included in the responses from the Special Population Programs Branch.	Page 9
Reaction Letters Collection of Letters including responses from US Census officials	Page 23
Reaction and Results Some of the work of the Complete Count Committee and some results, graphics and discussion about Census counts	Page 33



IT'S IN OUR HANDS

WHAT YOU NEED TO KNOW

Sound Off for the 2010 Census: A Guide for U.S. Military Personnel

Where Will You and Your Family Be Counted?

People in the United States will be counted at their usual residence, the place where they live and sleep most of the time. This place is not necessarily the same as the person's voting residence, legal residence, or permanent residence. Determining usual residence is easy for most people—but it may not be so apparent for people in the military and their families.

- U.S. military personnel residing in the United States are counted at the residence where they live and sleep most of the time. This residence might be on or off the military installation.
- Crews of military vessels with a U.S. homeport are counted at the onshore residence where they live and sleep most of the time. If they do not report an onshore residence, they are counted at their vessel's homeport.
- U.S. military personnel stationed outside the United States, including dependents living with them, will be counted as part of the U.S. overseas population using administrative records from the Department of Defense. These persons stationed overseas will be included in the state totals used to determine the allocation of seats in the U.S. House of Representatives. The military overseas population includes U.S. military personnel deployed for wartime efforts and U.S. military personnel on U.S. military vessels with a homeport outside the United States.

An Overview of the 2010 Census for the Armed Forces.

Military installations in the United States appoint a project officer to work with the Local Census Office (LCO). The LCO trains base personnel, provides materials, and assists with any questions or problems during the census.

- Armed forces personnel, who live in military group quarters such as barracks/dormitories, disciplinary barracks/jails, or military treatment facilities, will be given a special census form called a Military Census Report (MCR). Personnel assigned to a military group quarter will be counted at the group quarter.
- U.S. military personnel on board Navy and Coast Guard vessels with a U.S. homeport will receive a Shipboard Census Report (SCR) to complete. If they have an onshore address, they can claim it as their home address. If not, they will be counted on board the ship at its homeport.
- People living in family housing on base in the United States will receive the standard census questionnaire through the mail.
- Vessel personnel, who also have an onshore address, will receive the standard census questionnaire at their home address **AS WELL AS A SHIPBOARD CENSUS REPORT ON BOARD THE SHIP**. Please complete both the standard census questionnaire and the Shipboard Census Report. When completing the Shipboard Census Report, make sure to write in the full address **OF YOUR ONSHORE RESIDENCE IF you live or stay THERE** most of the time.

U S C E N S U S B U R E A U

U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU

United States
Census
2010 000184

The 2010 Census: Quick, Easy, and Confidential.

- 2010 Military Census Reports contain 6 questions and are simple to fill out.
- By law, the Census Bureau cannot share an individual's census questionnaire responses with anyone, including other federal agencies and law enforcement entities.

Your Participation Is Vital.

The U.S. Constitution directs the Census Bureau to conduct a complete count of all people living in the United States every 10 years. Census information helps in determining how federal, state, local, and tribal governments make decisions affecting the people of this country and how over \$400 billion per year of taxpayers' money is allocated by government. Participating in the census is in everyone's best interest. People who answer the census help their communities obtain state and federal funding for neighborhood improvements, such as deciding where to build schools, hospitals, and roads, or about services for the elderly, job training, and more. The best way to make sure people like yourself are counted in the census is to fill out the form and encourage others to do so.

By law, the Census Bureau cannot share individual answers it receives with anyone. Also, we do not share individual answers with welfare agencies, courts, police, or the military. Census workers are sworn to secrecy. The Census Bureau workforce understands the importance of safeguarding confidential data. They know that if they give out any information, they can face a \$250,000 fine and jail time.

For additional information about the 2010 Census, visit the Census Bureau's Internet site at <http://www.census.gov> or call one of our Regional Census Centers across the country:

Regional Census Center	Phone Number
Atlanta	404-335-1555
Boston	617-223-3700
Charlotte	704-936-5300
Chicago	312-454-2700
Dallas	214-267-6900
Denver	720-475-3640
Detroit	313-396-5200
Kansas City	816-994-2000
Los Angeles	818-717-6700
New York City	212-971-8810
Philadelphia	215-717-1020
Seattle	425-908-3000

D-3277

U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU

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U.S. Census Bureau

United States
Census
2010 000185

BC-DOC-000006968

US Census Special Population Programs Branch Communication

[REDACTED]

From: brian.de.vos@census.gov
Sent: Tuesday, October 13, 2009 8:55 AM
To: [REDACTED]
Subject: Counting military deployed for the 2010 Census
Attachments: Tech Paper 62.pdf; Home of Record 4903.pdf

[REDACTED], below is some information on how we count military personnel stationed or deployed overseas. We have used the same procedures for counting overseas military personnel and dependents since 1990. The address that military personnel enter on their Census questionnaire will not affect their Home of Record. I will pass this information on to our PR department. I will also bring this up at our next scheduled meeting with the Department of Defense in November.

The Census Bureau will obtain counts of U.S. military and federal civilian employees stationed overseas and their dependents living with them that can be allocated to a home state for the purpose of reapportioning seats in the U.S. House of Representatives. The term "overseas" is defined as anywhere outside the 50 U.S. States and the District of Columbia. Federal government departments and agencies will provide overseas certified counts by home state from their administrative records.

These overseas data are used for apportionment purposes only. Overseas counts are not included in PL94 for Congressional redistricting or SF1. The data do not provide the sub-state geographical precision required to allocate this group to jurisdictions below the state level.

These procedures and data products for federally affiliated Americans living overseas follow the same processes that were in place during Census 2000.

Overseas military personnel, both stationed and deployed (including the National Guard), will be included in the overseas count in Census 2010.

They are counted administratively using counts from the Defense Manpower Data Center (DMDC), Department of Defense, based on home of Record (HOR) information as close to April 1, 2010, as possible. When HOR is not available we use legal residence and if that is not available then we use last duty station. The counts are added to the resident population totals for each state and used to determine the apportionment counts for the 2010 Census.

Below are some documents on our decision to use HOR for the overseas counts

Pages 5 and 6 of Tech Paper 62, provide information on the decision to go with HOR.
(See attached file: Tech Paper 62.pdf)

(See attached file: Home of Record 4903.pdf)

Brian De Vos
Decennial Management Division
Special Population Programs Branch
Project Manager
3H584B
301-763-3422

"You can bank your money, but you can't bank your time" - Kevn Kinney

From: brian.de.vos@census.gov
Sent: Tuesday, October 20, 2009 9:16 AM
To: [REDACTED]
Cc: brian.de.vos@census.gov; james.l.dinwiddie@census.gov; annetta.clark.smith@census.gov; pamela.h.white@census.gov; dora.b.durante@census.gov
Subject: RE: Counting military deployed for the 2010 Census

Good morning [REDACTED]. Thank you for interest and support in the 2010 Census. See answers below and let me know if you have any more questions.

Brian De Vos
 Decennial Management Division
 Special Population Programs Branch
 Project Manager
 3H584B
 301-763-3422

"You can bank your money, but you can't bank your time" - Kevn Kinney

[REDACTED]
 [REDACTED] > To
 10/19/2009 11:14 AM "'brian.de.vos@census.gov'"
 AM <brian.de.vos@census.gov>
 cc
 Subject
 RE: Counting military deployed for
 the 2010 Census

Sir,
 I appreciate your response and your explanation. Since this send, I've been discussing this with many persons.

Several questions have repeatedly been asked of me:
 1. "If the person is living off base, they have a family here, they get a Census questionnaire, do they record the family member living here?"

- 1. Military personnel living off base will receive the standard Census questionnaire. All members of the household should be entered on this form with the exception of a family member deployed overseas.
 - a. Scenario 1 - John, Mary and their 2 children live off base.
 - i. Result - John, Mary and the 2 children should be

entered on the standard Census questionnaire that they receive in the mail.

- b. Scenario 2 - John, Mary and their 2 children live off base but John was deployed to Iraq on March 1, 2010.
 - i. Result - John is counted in the overseas population via administrative records from the Department of Defense. John will not have to fill out any Census forms.
 - ii. Result - Mary and the 2 children receive a standard Census questionnaire in the mail. Mary and the 2 children should be entered on the standard Census questionnaire. John should NOT be entered on the questionnaire since he is being counted in the overseas population.

2. "What about apartments where two or more service members are living. One or more are deployed and the remaining person gets the Census form. Are they wrong to report the person as living there but deployed?"

--- 2. Military personnel living off base will receive the standard Census questionnaire. Everyone at the address should be entered on this form with the exception of the resident deployed overseas.

- a. Scenario 1 - John and Rob share an apartment off base.
 - i. Result - John and Rob fill out 1 standard Census questionnaire for the address and they should both be entered on the form.
- b. Scenario 2 - John and Rob share an apartment off base but John was deployed to Iraq on March 1, 2010.
 - i. Result - John is counted in the overseas population via administrative records from the Department of Defense. John will not have to fill out any Census forms.
 - ii. Result - Rob will receive a standard Census questionnaire in the mail. Rob should be entered on the standard Census questionnaire. John should NOT be entered on the questionnaire since he is being counted in the overseas population.

3. Is there any more underlying specific guidance for the military persons who are designated as "project officer" for this activity?

--- Each GQ (barrack/dormitory, disciplinary barrack/jail, military treatment facility) will be asked to provide a "Project Officer" to help with the Census. The Project Officer will be trained between March 16-27, 2010 on how to enumerate the GQ. This training will provide a step by step guide on how to enumerate the GQ and will take about 2 hours. We ask that the Project Officer enumerate the GQ on April 1, 2010 or soon after.

--- Non GQ addresses will be enumerated by Census staff and will require an escort while on the installation.

[REDACTED]

[REDACTED]

Technical Paper 62

Americans Overseas in U.S. Censuses

by
Karen M. Mills

U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

- Data were readily available from administrative records for Americans overseas affiliated with the Federal Government. Data on overseas Armed Forces personnel, Federal civilian employees, and their dependents living with them could be obtained from the Departments of Defense and State and the Office of Personnel Management (OPM).
- Complete or even adequate counts of private Americans overseas not affiliated with the Federal Government could not be obtained in 1960 and 1970, when special efforts were made to enumerate these persons, and there was some question as to whether this universe could be properly defined. Major problems associated with obtaining an accurate count of this component included the voluntary basis on which this group had to be enumerated (respondents had to go to a U.S. embassy or consulate to obtain a form), the lack of up-to-date embassy and consulate mailing lists for Americans living in their jurisdictions, and the definitional problem of who should be included in such an enumeration.

With regard to the definitional issue, many alternatives could be considered. For example, should an enumeration of private Americans overseas include all persons with a claim to U.S. citizenship? Only U.S. citizens who intended to return to the United States? All persons born in the United States (some of whom would have gone on to become citizens of the country in which they currently resided)? Only those citizens eligible to vote? Only those tied financially to the United States, such as Social Security beneficiaries or employees of U.S. or multinational corporations? People having dual (U.S. and second-nation) citizenship?

It was believed that even if a clear operational definition of this universe could have been developed, it still would have been necessary to contact a much broader range of potential respondents in order to identify those who actually met the conceptual criteria for inclusion.

The 1990 census, for only the second time in census history, included certain components of Americans overseas in the apportionment population. The overseas components included were members of the Armed Forces, Federal civilian employees, and their dependents living with them. Counts of these persons were obtained from 30 Federal departments and agencies and were based primarily on administrative records.

A significant factor in the Census Bureau's decision to allocate segments of the overseas population to their home State for apportionment purposes was the substantial amount of bipartisan congressional support given to this matter late in the 1980 decade. Several bills requiring inclusion of overseas military personnel in the apportionment counts were introduced in both houses of the 100th and 101st Congresses.

The Department of Commerce, in an August 1989 press release, announced plans to include overseas military and civilian DOD employees in the 1990 census apportionment

population. In addition, the Deputy Director of the Census Bureau testified before the House Subcommittee on Census and Population in September 1989 that the Bureau would include overseas military and civilian DOD employees and their associated dependents in the 1990 apportionment counts. He cited several reasons for the decision:

- The 1969 Justice Department opinion recognizing that the Director of the Census Bureau had discretionary authority to decide whether to include overseas Americans in the apportionment population.
- Bipartisan congressional support for including overseas military personnel.
- The DOD's decision that it could provide the necessary data to the Bureau in time to meet the December 31, 1990 deadline for reporting apportionment counts to the President.

About the time of the hearing, the DOD, with technical assistance from the Census Bureau, planned to enumerate its overseas personnel and dependents concurrent with the 1990 stateside census enumeration. These data would be used by the Bureau for inclusion in the apportionment counts and by DOD for a variety of programs.

The Deputy Director further testified that these overseas personnel and their dependents would have maintained a usual residence in the United States had they not been assigned abroad in fulfillment of their military and professional obligations.

Because of a lack of funding and other constraints, in December 1989, the DOD cancelled its plans to conduct an overseas enumeration but agreed to provide overseas counts from its existing automated administrative records. The DOD identified three alternative methods from its administrative files for determining home State affiliation of its overseas military personnel:

- Home of record—State declared by the member of the Armed Forces to be the permanent home at time of entry or reenlistment into the service. Home of record is used to determine the travel stipend granted upon discharge (derived from personnel files).
- Legal residence—State of residence a member declares for State income tax withholding purposes (derived from payroll files).
- Last duty station—State location of the facility to which the member was assigned before going overseas (derived from personnel files).

After reviewing the three data sources available in DOD records for providing counts, the Census Bureau concluded in July 1990 that DOD's "home of record" was the most consistent with the concept of "usual residence," used since 1790 as the basis for determining residency in the decennial census. Also, home of record was the concept used in allocating most overseas military personnel in the 1970 census.

In many cases, legal residence might reflect a State chosen because it had no or low taxes or one where military personnel were exempt from paying income taxes. A 1987 General Accounting Office report had indicated that a significant proportion of military personnel declared their legal residence in one of the States that did not tax personal wages or exempted all military pay from their income.

The use of last duty station, reflecting the location of the last facility to which a person was assigned, would result in counting some military personnel and their dependents in States other than their actual previous U.S. residence. For example, those assigned to the Pentagon would be counted as District of Columbia residents even though they might have actually lived in Maryland or Virginia (although physically located in Virginia, the Pentagon has a duty station of the District of Columbia).

Furthermore, one bill requiring the inclusion of overseas military personnel and dependents in the apportionment population (H.R. 4903) mandated the use of "home of record." That bill passed the House of Representatives in June 1990, and a similar proposal (S. 2675) had been referred to the appropriate Senate committee for consideration.⁶

In response to the strong congressional support for the use of home of record data, the Commerce Department decided to use those data, supplemented and improved with DOD's automated records for missing information, as the basis for including overseas military and dependents in the 1990 apportionment counts.

A June 1990 Congressional Research Service report for Congress found that allocating military personnel by State using home of record most closely resembled the State-by-State distribution of the resident population. An allocation based on last duty station varied from the resident population distribution by 10 times as much as home of record, and legal residence, by nearly 3 times as much.

In addition to the arrangement made with DOD for obtaining counts of its overseas military personnel, the Census Bureau obtained counts of overseas personnel by home State from 29 other Federal agencies. These counts were based principally on administrative records from the employing agency. The DOD also conducted a survey of

⁶Once the Census Bureau decided to include overseas military personnel and their dependents in the apportionment population, no further action was taken in the 101st Congress on this matter.

its overseas civilian employees and dependents using a short, self-administered questionnaire.

As in the 1970 census, allocations of the 1990 overseas population for apportionment purposes were made at the State level only. This population was not included, therefore, in the substate counts used for redistricting because the administrative records did not contain detailed (street/place) addresses.

In May 1991, the Commonwealth of Massachusetts filed a legal challenge against the Secretary of Commerce and others. One of the issues in the case was the constitutionality and/or legality of including overseas U.S. military and Federal civilian employees and their dependents living with them in the 1990 census counts used to apportion the U.S. House of Representatives. Massachusetts lost its 11th House seat by a narrow margin as a result of the apportionment after the 1990 census. This seat, the 435th House seat allocated under the apportionment formula, was shifted to Washington State.

The 1990 census apportionment, calculated by the "method of equal proportions" that had been used since the 1940 census, assigned a priority value to each congressional seat. Constitutionally, every State starts with one seat. Under the method of equal proportions, additional seats are added to each State's delegation based on the priority value for that State's next seat relative to the other 49 States' priority values for their next seats. Using the 1990 apportionment population, Washington's 9th seat was the 435th and last seat assigned; Massachusetts' 11th seat would have been the 436th.

In February 1992, a three-judge panel of the U.S. District Court for the District of Massachusetts held that the decision of the Secretary of Commerce to include overseas military and Federal civilian employees and their dependents living with them in the apportionment counts was "arbitrary and capricious" under the standards of the Federal Administrative Procedure Act.

In an appeal by the Commerce Department, the U.S. Supreme Court in June 1992 unanimously reversed the three-judge panel's decision. Thus, the Secretary of Commerce's decision to allocate Federal military and civilian personnel serving abroad and their dependents living with them to the State population totals for purposes of apportioning the U.S. House of Representatives was allowed to stand and, as a result, Massachusetts lost a seat in the House of Representatives.

1980 CENSUS

The U.S. population abroad reported in the 1980 census was 995,546. As of April 1, 1980, this figure comprised—

- land-based U.S. military personnel stationed abroad and their dependents living with them.
- crews of U.S. Navy vessels deployed to the 6th or 7th Fleets.
- Federal civilian employees stationed abroad and their dependents living with them.

Thus, the overseas population in 1980 was restricted to those Americans affiliated with the Federal Government and their dependents living abroad with them. It did not include private U.S. citizens abroad for an extended period or crews of U.S. merchant marine vessels outside American waters, as was true for both the 1960 and 1970 censuses. Also unlike 1970, no component of Americans overseas was included in the apportionment population for 1980.

Information on the federally-affiliated population overseas was obtained from administrative records rather than by direct enumeration. The Department of Defense (DOD) provided counts of its military and civilian employees stationed abroad and their dependents living with them. The Office of Personnel Management and Department of State provided counts for all other overseas Federal employees and their dependents abroad. No provision was made in 1980 for the enumeration of any component of the overseas population on census report forms, as had been done in censuses since 1950.

The modifications to recent past enumeration procedures were made for the following reasons: The number of Americans overseas who were affiliated with the Federal Government was smaller than in 1970; the data were readily available from administrative records for the major population groups overseas; there was no legal requirement for the direct enumeration of Americans overseas or

for including Americans overseas in the apportionment population; and the 1960 and 1970 census experience had shown that the count of Americans living overseas who were not affiliated with the Federal Government could not be obtained in a complete manner, nor could this group be readily defined.

Crew members of U.S. merchant marine vessels outside U.S. territorial waters on April 1, 1980, were not enumerated or otherwise counted in the 1980 census. Masters of such vessels completed a location report (D-3091) but, if outside territorial waters, crew members were not required to complete a Shipboard Census Report (Form D-23), the individual enumeration form for crews of vessels in the 1980 census.

Residence Rules

Entries relating to the overseas population in the table of residence rules contained in the 1980 *Questionnaire Reference Book* for stateside enumeration were the following:

<i>Type of Person</i>	<i>Resident of—</i>
Member of the Armed Forces:	
Assigned to a military vessel which is deployed to the 6th or 7th Fleet.	The vessel
American citizen abroad:	
Employed by U.S. Government with place of duty abroad or member of the family of such person living with him or her.	DO NOT LIST
Any other American working or living abroad for extended period of time.	DO NOT LIST

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To amend title 13, United States Code, to ensure that military personnel stationed outside the United States are not excluded from any census of population. (Engrossed as Agreed to or Passed by House)

101st CONGRESS

2d Session

H. R. 4903

AN ACT

To amend title 13, United States Code, to ensure that military personnel stationed outside the United States are not excluded from any census of population.

HR 4903 EH

101st CONGRESS

2d Session

H. R. 4903

AN ACT

To amend title 13, United States Code, to ensure that military personnel stationed outside the United States are not excluded from any census of population.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCLUSION OF CIVILIAN AND MILITARY PERSONNEL STATIONED ABROAD.

Section 141 of title 13, United States Code, is amended--

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

`(g) Effective beginning with the 1990 decennial census of population, in taking any tabulation of total population by States for purposes of the apportionment of Representatives in Congress among the several States, the Secretary shall take appropriate measures to ensure that--

`(1) each member of the armed forces assigned to a post of duty outside the United States shall be included, together with any of the member's dependents who reside at or near the same post; and

`(2) each member of the armed forces, and any dependent of any such member, included in accordance with paragraph (1) shall be enumerated as if residing at such member's `home of record', as defined by the Department of Defense for administrative purposes.'.

SEC. 2. ADDITIONAL REPORTING REQUIREMENT.

Not later than 6 months after submitting the report required under section 141(b) of title 13, United States Code, with respect to the 1990 decennial census of population to the President, the Secretary of Commerce shall submit to the appropriate committees of Congress a report setting forth--

(1) for each State, what portion of the total population reported for such State under such section 141(b) consisted of--

(A) members of the armed forces (or their dependents) stationed (or living) abroad; or

(B) civilian employees of the Federal Government (or their dependents) stationed (or living) abroad;

(2) which departments or agencies of the Federal Government participated in any program or measures designed to provide for the inclusion of individuals described in paragraph (1) (A) or (B) in the 1990 decennial census of population; and

(3) what criteria were used by each such department or agency in attributing individuals described in paragraph (1) (A) or (B) to particular States for purposes of such census.

Passed the House of Representatives June 26, 1990.

Attest:

Clerk.

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OFFICE OF
The U.S. Trade Representative
Washington, D.C. 20230

July 23, 1990

Honorable Herbert H. Kohl
United States Senate
Washington, D.C. 20510

Dear Senator Kohl:

As you are aware, the Department of Commerce (DOC) reached an agreement with the Department of Defense (DOD) last year to include overseas military personnel and their dependents in the 1990 census counts to be used to reapportion the U.S. House of Representatives. It was agreed that the home state affiliation of such persons would be determined in a manner as consistent as possible with the concept of "usual residence" used by the Census Bureau for two hundred years to count the nation's population.

After reviewing the alternative data sources identified by DOD for providing such counts, DOC has decided to use home of record designations in existing DOD administrative records rather than the legal residence or last U.S. duty station of military personnel to determine home state affiliation. Census Bureau technical staff believe that home of record is most consistent with our policy for determining residency.

In a recent letter to House Armed Services Committee Chairman Les Aspin, Assistant Secretary of Defense Christopher Jehn stated that last duty station most closely approximates the "usual residence" concept. However, because last duty station merely reflects the location of the facility to which a person is assigned, many military personnel and their dependents would be counted in states other than their actual previous residence (such as those assigned to the Pentagon, who would be counted as D.C. residents even though they lived in Maryland or Virginia). The option of using legal residence was rejected because in many cases legal residence may be a place where the person has never lived.

While Assistant Secretary Jehn's letter indicated that approximately ten percent of DOD's personnel files are missing home of record data, DOD has agreed to use all automated records available to supplement these files in order to provide data of sufficient quality for apportionment purposes. Bureau staff will work closely with DOD staff to assure the quality of those data.

Sincerely,

Michael R. Darby
Under Secretary
for Economic Affairs

Reaction Letters

IKE SKELTON, MISSOURI, CHAIRMAN
 JOHN SPRATT, SOUTH CAROLINA
 SOLOMON P. ORTIZ, TEXAS
 GENE TAYLOR, MISSISSIPPI
 NEIL ABERCROMBIE, HAWAII
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 VIC SNYDER, ARKANSAS
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 ROBERT ANDREWS, NEW JERSEY
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 JAMES R. LANGEVIN, RHODE ISLAND
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 LARRY KISSELL, NORTH CAROLINA
 MARTIN HEINRICH, NEW MEXICO
 FRANK M. KRATOVIL, JR., MARYLAND
 ERIC J.J. MASSA, NEW YORK
 BOBBY BRIGHT, ALABAMA
 SCOTT MURPHY, NEW YORK
 DAN BOREN, OKLAHOMA

HOUSE COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED ELEVENTH CONGRESS

March 11, 2010

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 TODD RUSSELL PLATTS, PENNSYLVANIA

ERIN C. CONATON, STAFF DIRECTOR

The Honorable Barack Obama
 The White House
 1600 Pennsylvania Ave, NW
 Washington, DC 20500

Dear Mr. President:

We were gratified to hear during the State of the Union message of the First Lady's efforts "to forge a national commitment to support military families." As she pointed out in January in her address to military wives, that national commitment is not only reflected in the \$8.8 billion you have requested for military family programs in your fiscal year 2011 defense budget, but also must be accompanied by the efforts of citizens and others outside the Department of Defense.

However, we believe that the process now underway for the 2010 Census will jeopardize the ability of states and local communities to help forge and fully participate in that national commitment. The problem arises in the way that the 2010 Census will count the 250,000 or more military personnel temporarily deployed overseas from the United States and its territories in support of contingency operations, or for other short-term missions. This is not a question of adding additional money to state and local programs, but rather an effort to ensure outdated rules do not inhibit the ability of states and local communities to support military families as a result of the loss of funds they would normally have been eligible for in other than census years. We believe the matter deserves your immediate attention and corrective action.

Under rules established in 1970, all military personnel stationed overseas will be counted among the totals of the state of their home of record – that is, the place from which they entered the military service, or re-enlisted in the service. If a home of record is not available in Department of Defense administrative records, then the service member will be counted in the state of his or her legal residence; and, if neither of the first two data elements is available, then the overseas service member will be counted in the state of the base of his or her last duty station. In most cases that means the base or location from which the service member deployed overseas.

These counting rules may have made sense in 1970 for the Vietnam-era military that was heavily composed of draftees. Such allocation rules do not make sense today for the all-volunteer

force that is heavily and frequently deployed, causing the military populations residing on those bases, the local areas around those bases, and states to be severely, but temporarily reduced. For example, in November 2009, the North Carolina population, concentrated largely around Camp Lejeune and Fort Bragg, shrank by nearly 28,000 service members temporarily deployed on contingency operations. No state or territory or local areas near a military base is exempt from such reductions.

Many federal and state assistance programs use formulas based on the decennial census or derivates from the decennial census data. As a result, military overseas population data based on the home of record deprives the state and local areas, where those service members actually live most of the time, of potentially large sums of federal and state funding. Reduced funding means that those local communities and states to will have a reduced ability to support the military populations with which they are inextricably linked. For example, a recent estimate of the impact in Onslow County, North Carolina, near Camp Lejeune, cited potential losses of up to \$4 million under current decennial census rules for counting military personnel stationed overseas.

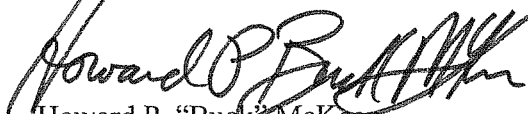
Given the potential for similar significant financial impacts across the nation, we urge you to direct the Secretary of Commerce, the Secretary of Defense, and the Director of the United States Census to take the necessary administrative actions to adopt for the 2010 and future decennial censuses the following method of counting our military men and women, who are temporarily deployed from the United States to overseas contingency missions, or other short term overseas assignments: Such persons must be counted, first in the state of their most recent base of stateside assignment; then, if such data is not available, by their legal residence; and, finally, by their home of record.

We understand that there are many issues related to residency and census counting. These can and should be examined over the long term. In the near term, the resolution of those issues should not be tied to the immediate need to address the ability of states and local communities to join the national commitment to support military families.

Therefore, we look forward to assisting you in measures to ensure there is no loss of federal or state and local resources to assist local communities in maintaining and improving military family quality of life. We thus anticipate your favorable commitment to the course of action we have proposed.

We look forward to your response.

Sincerely,



Howard P. "Buck" McKeon
Ranking Member

Cc: Secretary of Defense
Secretary of Commerce
Director of the United States Census

Kent Starks

Todd R Platts

Michael R Turner

Robert J Witt

Bill Shuster

Greg Foke

Walter B. Jones

Cathy Thompson Rodger

Doug Lamborn

Congress of the United States
Washington, DC 20515

March 31, 2010

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We are writing to express our concern that the 2010 Census will jeopardize North Carolina's ability to be fairly counted. The problem is the way the 2010 Census will count the more than 33,000 military personnel temporarily deployed overseas from North Carolina. Please do not penalize the communities that these men and women rely on when they are stateside. We believe the matter deserves your immediate attention and corrective action.

Under rules established in 1970, military personnel stationed overseas are counted by the state of their home of record – that is, the place from which they entered military service, or re-enlisted in the service. If a home of record is not available in the Department of Defense records, the service member will be counted in the state of his or her legal residence; and, if neither of the first two data elements are available, then the overseas service member will be counted in the state of the military base of his or her last duty station. In most cases that means the base or location from which the service member deployed overseas.

These rules may have made sense for the Vietnam-era military that was heavily composed of draftees. But they do not make sense for today's all-volunteer force that is frequently deployed, causing the military populations residing on and around bases to be severely, but temporarily, reduced. For example, in November 2009, North Carolina's military population shrank by nearly 28,000 service members who were temporarily deployed overseas.

Many federal and state programs use formulas tied to the decennial census. As a result, counting deployed military personnel based on current census rules will deprive military communities, where those service members actually live most of the time, of funding they are rightly entitled to. Reduced funding means North Carolina's military communities' ability to support their military populations is compromised. For example, a recent estimate of the impact in Onslow County, North Carolina, home of Marine Corps Base Camp Lejeune, cited potential losses of up to \$4 million annually.

Given the potential for similar significant financial impacts in the North Carolina communities around Fort Bragg, Pope Air Force Base, Seymour Johnson Air Force Base, and MCAS Cherry Point, we urge you as Commander in Chief to direct your administration to change the method of counting military personnel who are temporarily deployed outside the United States to the following: Such persons must be counted, first in the state of their most

recent base of stateside assignment; then, if such data is not available, by their legal residence; and finally, by their home of record.

On behalf of North Carolina's military communities, we thank you for your consideration of this urgent request and look forward to your favorable commitment to the course of action we have proposed.

Sincerely,


Rep. Walter B. Jones (NC-3)


Rep. Howard Coble (NC-6)

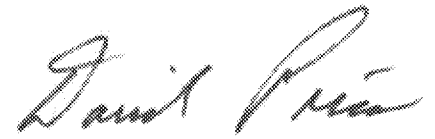

Rep. Mel Watt (NC-12)



Rep. G.K. Butterfield (NC-1)


Rep. Mike McIntyre (NC-7)



Rep. Sue Myrick (NC-9)


Rep. Virginia Foxx (NC-5)


Rep. David Price (NC-4)


Rep. Brad Miller (NC-13)


Rep. Larry Kissell (NC-8)


Rep. Patrick McHenry (NC-10)



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

May 25, 2010

The Honorable Walter B. Jones, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Representative Jones:

Thank you for your letter to President Obama concerning the counting of overseas military personnel in the 2010 Census. The President asked me to respond to your concerns.

The current order of priority for determining the home State of overseas military personnel was established by the Census Bureau for use in 1990 Census and was based on discussions with Congress and the Department of Defense at that time.

In 1990 the U.S. House of Representatives considered a bill (H.R. 4903) requiring the inclusion of overseas military personnel and their dependents in the apportionment population and mandating the use of "home of record." H.R. 4903 passed the House of Representatives in June 1990. A similar proposal (S. 2675) was referred to the appropriate Senate committee for consideration, but it was not acted upon. A June 1990 Congressional Research Service report found that "home of record" most closely resembled the State-by-State distribution of the resident military population. The Congressional Research Service report further stated that an allocation of the Federally-affiliated overseas population by legal residence varied from the resident military population distribution by three times as much as "home of record." The last duty station varied from the resident population distribution by ten times as much.

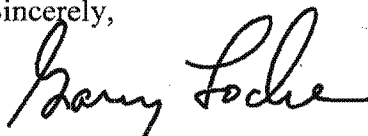
Therefore, in response to the strong congressional support for the use of "home of record" data, the Census Bureau decided to use those data—supplemented by legal residence and last duty station for missing information—as the basis for including overseas military and their dependents living with them in the 1990 and 2000 apportionment counts. For the 2010 Census, the Census Bureau decided in January 2007 that it would continue the 1990 and 2000 method of counting Federally-affiliated overseas personnel in the apportionment counts.

The Honorable Walter B. Jones, Jr.
Page 2

As you know, the decennial census is the largest domestic mobilization that our country undertakes. Planning for this undertaking requires years of testing and coordination. It is too late in the process to consider changing the plan for counting overseas military personnel in the 2010 Census; however, we will revisit these issues as we begin planning for future decennial censuses.

Thank you for your inquiry. If we can be of further assistance, please contact April Boyd, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

A handwritten signature in cursive script that reads "Gary Locke". The signature is written in black ink and is positioned above the printed name.

Gary Locke



1168703
 UNITED STATES DEPARTMENT OF COMMERCE
 The Secretary of Commerce
 Washington, D.C. 20230

Alexander
 B. ...
 ...

April 7, 2010

The Honorable Beverly Eaves Perdue
 Governor of North Carolina
 Raleigh, NC 27699-0301

Dear Governor Perdue:

Thank you for your letter proposing that the U.S. Census Bureau to reverse the order of priority for determining the count of deployed armed service members by using the member's last military base of deployment.

The Census Bureau established the order of priority for determining overseas military personnel's home state for use in the 1990 Census. This order resulted from discussions with Congress and the Department of Defense at that time.

In 1990 a bill requiring the inclusion of overseas military personnel and dependents in the apportionment population (H.R. 4903) mandated the use of home of record. That bill passed the House of Representatives in June 1990, and a similar proposal (S. 2675) was referred to the appropriate Senate committee for consideration.

A June 1990 Congressional Research Service (CRS) report found home-of-record data most closely resembled the state-by-state distribution of the resident population. The CRS report further stated that allocating the federally affiliated overseas population by legal residence varied from the resident population distribution by three times as much as home of record. Allocating by last duty station varied from the resident population distribution by ten times as much.

In response to the strong Congressional support for the use of home-of-record data, the Census Bureau decided to use those data as the basis for including overseas military and dependents in the 1990 and 2000 apportionment counts. Legal-residence and last-duty-station data were supplemented for missing information.

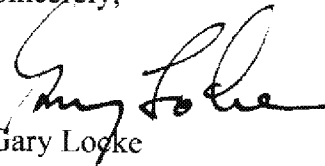
For the 2010 Census, the Census Bureau decided in January 2007 to repeat the 1990 and 2000 method of counting federally affiliated overseas personnel in the apportionment counts.

As you know, the decennial census is the largest peacetime mobilization that our country undertakes. Planning for this once-a-decade civic procedure requires years of testing and coordination. While it is too late in the process to consider such a change for the 2010 Census, we will consider revisiting the issue as we begin planning for the 2020 Census.

The Honorable Beverly Eades Perdue
Page 2

If you have any questions, please have a member of your staff contact Louisa F. Miller, Assistant Division Chief for Census Programs with the Population Division of the U.S. Census Bureau. Ms. Miller can be reached at (301) 763-2481.

Sincerely,



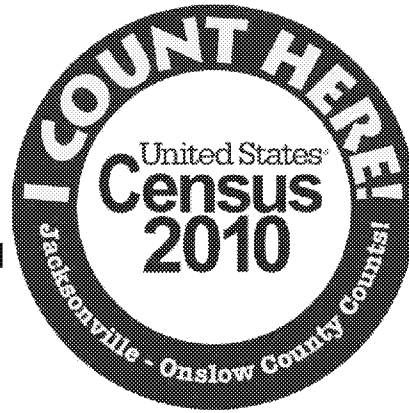
Gary Locke

Reaction & Results

The Complete Count Committee Work

Military Enumeration Campaign

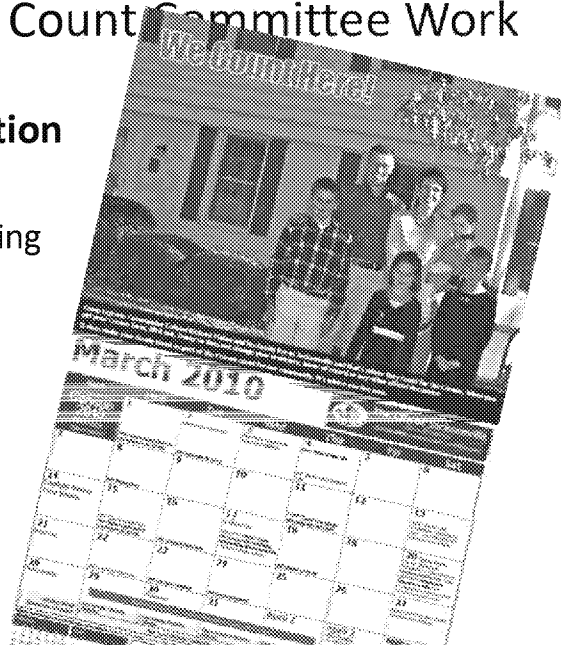
- Inclusive: You are a part of our community
- This is where you should fill out your form



The Complete Count Committee Work

Military Enumeration Campaign

- Trusted Voices Giving Signals
- Jacksonville City Calendar



The Complete Count Committee Work

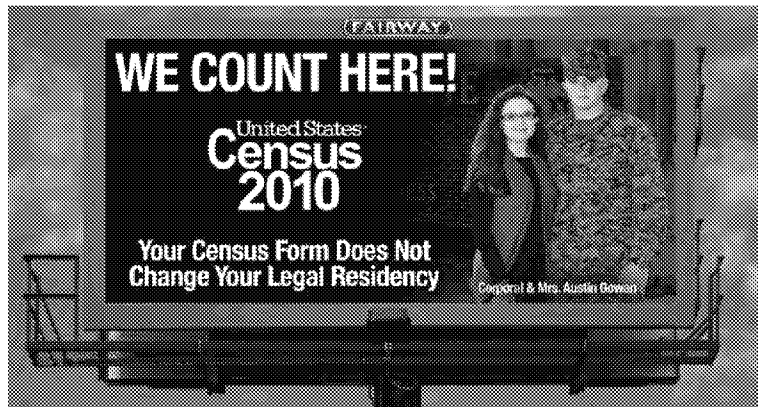
Military Enumeration Campaign

- Military Growth Task Force Support

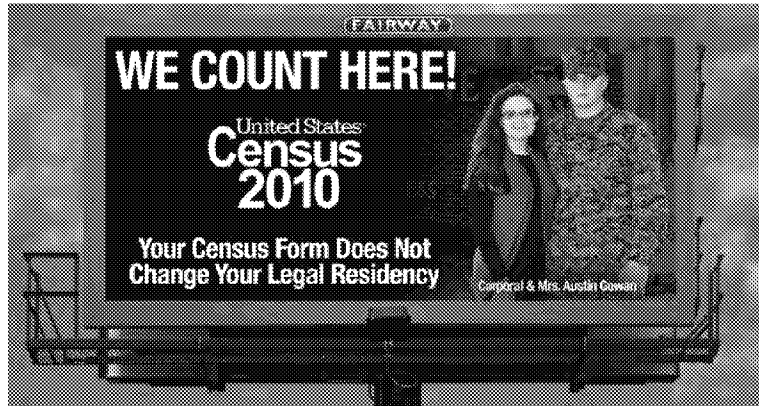
- Billboards
- Globe Placements
- Daily News Placements



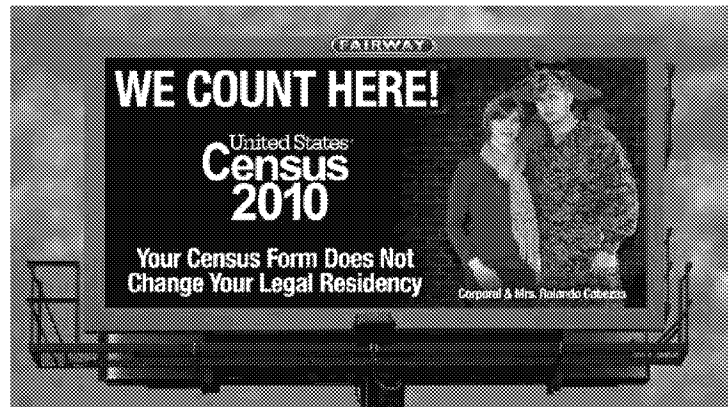
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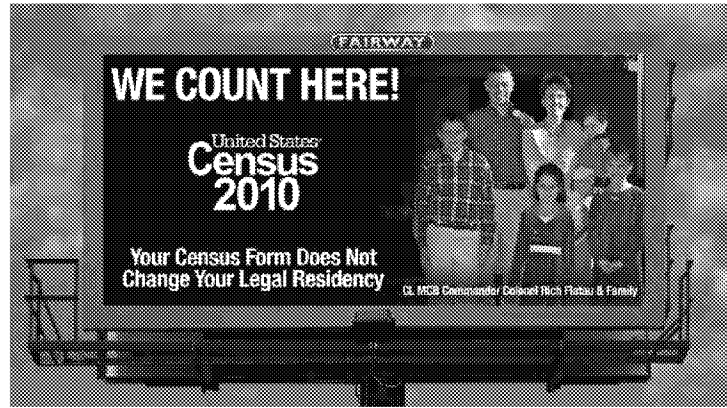
Military Enumeration Campaign



Military Enumeration Campaign



Military Enumeration Campaign



July 20, 2015

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

Transmitted electronically only: POP.2020.Residence.Rule@census.gov

Dear Ms. Humes:

We are submitting these comments on behalf of the American Civil Liberties Union of Wisconsin (ACLU-WI), the Benedict Center, the Justice Initiatives Institute (JII), the NAACP – Milwaukee Branch, and WISDOM, in response to the Census Bureau’s request for comment on its proposed “2020 Decennial Census Residence Rule and Residence Situations,” 80 Fed.Reg. 28950 (May 20, 2015).

We urge you to count incarcerated people at their home addresses, rather than at the addresses of particular facilities at which they happen to be located on Census day.

Our Wisconsin-based organizations are all concerned about ensuring fair representation for persons and communities of color, about protecting the rights of incarcerated persons, and about reforming the criminal justice system to achieve more equity and justice.

- The **American Civil Liberties Union of Wisconsin** is the Wisconsin affiliate of the national ACLU¹ and is a non-profit, non-partisan, private organization. The ACLU-WI uses advocacy, education, and litigation to preserve and extend constitutionally guaranteed rights to people who have historically been denied their rights on the basis of race, to protect and expand Americans’ freedom to vote, and to end mass incarceration by reducing the use of the criminal justice system to address social issues and by substantially reducing the number of people behind bars.
- The **Benedict Center** is an interfaith, nonprofit criminal justice agency in Milwaukee, working with victims, offenders and the community to achieve a system of justice that is fair and treats everyone with dignity and respect. It provides community-based treatment alternatives to incarceration for women so they can live safer and healthier lives for themselves, their children and the community, and advocates for changes in the criminal justice system, with an emphasis on restorative community alternatives to imprisonment, to ensure fair and equitable justice for all.
- The **Justice Initiatives Institute** is a Milwaukee-based private, non-profit agency, the first of its kind in Wisconsin, dedicated to promoting criminal justice reform based on

¹ The American Civil Liberties Union submitted separate comments to the Census Bureau, reflecting the work of ACLU nationwide to ensure population counts that accurately represent our communities.

evidence-informed planning, organized to provide knowledge and technical assistance for criminal justice stakeholders in communities throughout the State of Wisconsin. JII seeks policy reforms, based on practices and research that are cost effective and promote public safety. JII's mission is based on a keen understanding of the intersection of criminal justice issues with the particular needs of the most impoverished, marginalized populations in Wisconsin. When districts with prisons receive enhanced representation, every other district in the state without a prison sees its votes diluted. And this vote dilution is even larger in the districts with the highest incarceration rates. Thus, the communities that bear the most direct costs of crime are therefore the communities that are the biggest victims of prison-based gerrymandering.

- The **NAACP- Milwaukee Branch** works on criminal justice issues in many ways, including seeking to eliminate harsh and unfair sentencing practices that are responsible for mass incarceration and racial disparities in the prison system, seeking to increase trust and public safety by advancing effective law enforcement practices, fighting for the restoration of the voting rights of formerly incarcerated people and the removal of barriers to employment, and resolving to end the war on drugs for its disproportionate collateral consequences that harm communities of color.
- **WISDOM** is a Wisconsin statewide network of interfaith organizations which includes 160 congregations, of 19 different faith traditions. It has strong concerns about the criminal justice system and over-incarceration, and which has built a strong group of formerly-incarcerated people who work collectively to increase the chances for successful re-entry. WISDOM strongly objects to having imprisoned people counted as members of communities where they have no voice and no connections. Since a disproportionate number of incarcerated people come from poor communities, the effect of the current system is to further weaken the neighborhoods that are already the most stressed, taking away resources and political power from those who have already been marginalized.

The need for change in the “usual residence” rule as it relates to incarcerated persons has been growing in recent decades, raising significant issues of census accuracy. As recently as the 1980s, the incarcerated population in the United States totaled fewer than one-half million persons. Since then, the number of incarcerated people has more than quadrupled, resulting in more than two million people behind bars. An even greater increase is found in Wisconsin, where a prison population of fewer than 5000 persons in 1978 was, by 2014, more than 22,000 persons.² Further, Wisconsin has, by far, the highest rate of incarceration for African-American

²“State Prison Population in Wisconsin,” prepared by Peter Wagner, Prison Policy Initiatives, based on Bureau of Justice Statistics, Corrections Statistics Analysis Tool (May 2014) (viewed 7/14/15 at: <http://www.prisonpolicy.org/graphs/incsize/WI.html>); “Adult Correctional Facility Populations - Male Population and Inflationary Costs, and Prison Contract Bed Funding,” Wisc. Legislative Fiscal Bureau Paper #235 (May 19, 2015) (viewed 7/14/15 at: <http://legis.wisconsin.gov/lfb/publications/budget/2015-17%20Budget/Documents/Budget%20Papers/235.pdf>)

men in the United States, with about 1 in 8 working-age African-American men behind bars.³ Wisconsin similarly leads the nation in incarceration of Native American men, with about 1 in 13 working age Native American men behind bars.⁴

By designating a prison cell as a residence in the 2010 Census, the Census Bureau set up a methodology that concentrated a population that is disproportionately male, urban, and African-American or Latino into just 5,393 Census blocks located far from the actual homes of incarcerated people. This methodology gives additional representation to communities in which incarcerated persons are housed – while at the same time these inmates generally cannot and do not vote and their interests are seldom represented in the communities in which they are counted for census purposes. Meanwhile, the communities from which these prisoners come, to which they are likely to return and with whose other residents they share policy interests are deprived of political representation. The disparity is so stark that, for example, the regional planning commission in the Milwaukee metropolitan area has to make special note of the fact that minority population concentrations outside the central city are due to incarceration.⁵

Four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and more than 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. Rather than continuing an unworkable ad hoc approach, the Census definition should be changed to ensure that all state and local governments are counting prisoners where they live, not where they are incarcerated.

We thank you for this opportunity to comment on the Residence Rule. Because we believe in a population count that accurately represents communities, we again urge you to count incarcerated people as residents of their home addresses.

³ “Wisconsin’s Mass Incarceration of African American Males: Workforce Challenges for 2013,” John Pawasarat & Lois M. Quinn (Employment and Training Institute - University of Wisconsin-Milwaukee, 2013) (viewed 7/14/15 at: <http://www4.uwm.edu/eti/2013/BlackImprisonment.pdf>)

⁴ *Id.*

⁵ “A Regional Housing Plan for Southeastern Wisconsin: 2035,” Southeastern Wisconsin Regional Planning Commission (March 2013) at p. 125 (attached).

Attachment for FN 5

PLANNING REPORT
NUMBER 54

A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN: 2035

Prepared by the

Southeastern Wisconsin Regional Planning Commission
W239 N1812 Rockwood Drive
P.O. Box 1607
Waukesha, WI 53187-1607
www.sewrpc.org

The preparation of this publication was financed in part through planning grants from the Federal Highway and Federal Transit Administrations, the U.S. Department of Transportation, and the Wisconsin Department of Transportation. The contents of this report do not necessarily reflect the official view or policy of the above agencies.

March 2013

Inside Region \$30.00
Outside Region \$45.00

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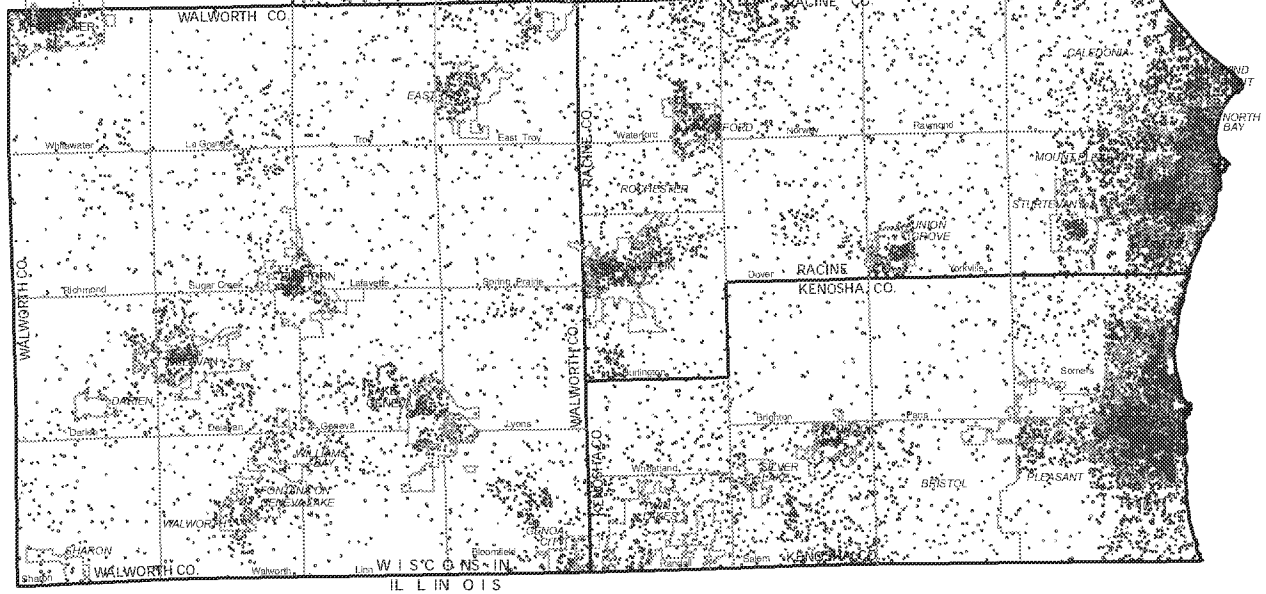
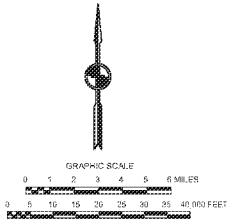
Map 26

POPULATION BY RACE AND ETHNICITY IN THE SOUTHEASTERN WISCONSIN REGION: 2000

1 DOT REPRESENTS 25 PEOPLE

- WHITE ALONE, NOT HISPANIC
- BLACK ALONE, NOT HISPANIC
- ASIAN ALONE, NOT HISPANIC
- SOME OTHER RACE ALONE, OR TWO OR MORE RACES NOT HISPANIC
- HISPANIC

NOTE: MINORITY CONCENTRATIONS IN THE CITY OF FRANKLIN IN MILWAUKEE COUNTY, THE VILLAGE OF STURTEVANT IN RACINE COUNTY, AND THE CITY OF DELAFIELD IN WAUKESHA COUNTY ARE ATTRIBUTABLE TO CORRECTIONAL INSTITUTIONS IN THOSE LOCATIONS.



Source: U.S. Bureau of the Census and SEWRPC.

PRISON POLICY INITIATIVE

PETER WAGNER

Executive Director
main: (413) 527-0845
direct: (413) 961-0002
pwagner@prisonpolicy.org
PO Box 127
Northampton MA 01027
www.prisonpolicy.org
www.prisonersofthecensus.org

July 20, 2015

By email

Karen Humes
Chief, Population Division
U.S. Census Bureau, Room 5H174 Washington, D.C. 20233
pop.2020.residence.rule@census.gov

Dear Ms. Humes,

The Prison Policy Initiative submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Based on our research after the 2000 and 2010 censuses, we urge you to count incarcerated people at home in 2020.

The non-profit, non-partisan Prison Policy Initiative produces cutting edge research to expose the broader harm of mass criminalization, and then sparks advocacy campaigns to create a more just society. And over the last 14 years, our work has focused on the sweeping effects of the Census Bureau's prisoner miscount.

We have found that 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.

This comment will urge you to accept the argument made by former Census Bureau director Kenneth Prewitt in 2004 that "[c]urrent census residency rules ignore the reality of prison life."¹

This comment presents evidence that the usual residence rule is outdated and produces inaccurate data because of two relatively recent changes: the prison boom and the apportionment revolution that requires decennial redistricting at all levels of government on the basis of population. This comment reviews the harm of prison gerrymandering for our democracy in state legislative, county and municipal districting, and then presents evidence of a national consensus for ending prison gerrymandering. Finally, this comment presents evidence that despite its considerable impact on redistricting and some assumptions to the contrary, measurable effects of the rule's interpretation do not extend to other areas.

We thank you for your attention to this issue, including this call for comments. We take this opportunity to share with you our 14 years of research into the effects of the

¹ Dr. Kenneth Prewitt, Foreword to *Accuracy Counts*, Brennan Center for Justice at NYU School of Law. Available at <https://www.brennancenter.org/publication/accuracy-counts>

Bureau's current interpretation of the residence rule, and urge you to count incarcerated people at home.

The usual residence rule for incarcerated people is outdated and produces inaccurate data.

The Census Bureau's method of counting incarcerated people as residents of the correctional facilities is outdated and inaccurate because both our society and our need for accurate data have changed since the residence rules were first articulated for incarcerated people.

The prison boom has changed the demographic landscape

In the history of this country and the Census, the fact that we lock up such a large portion of our society is relatively new:

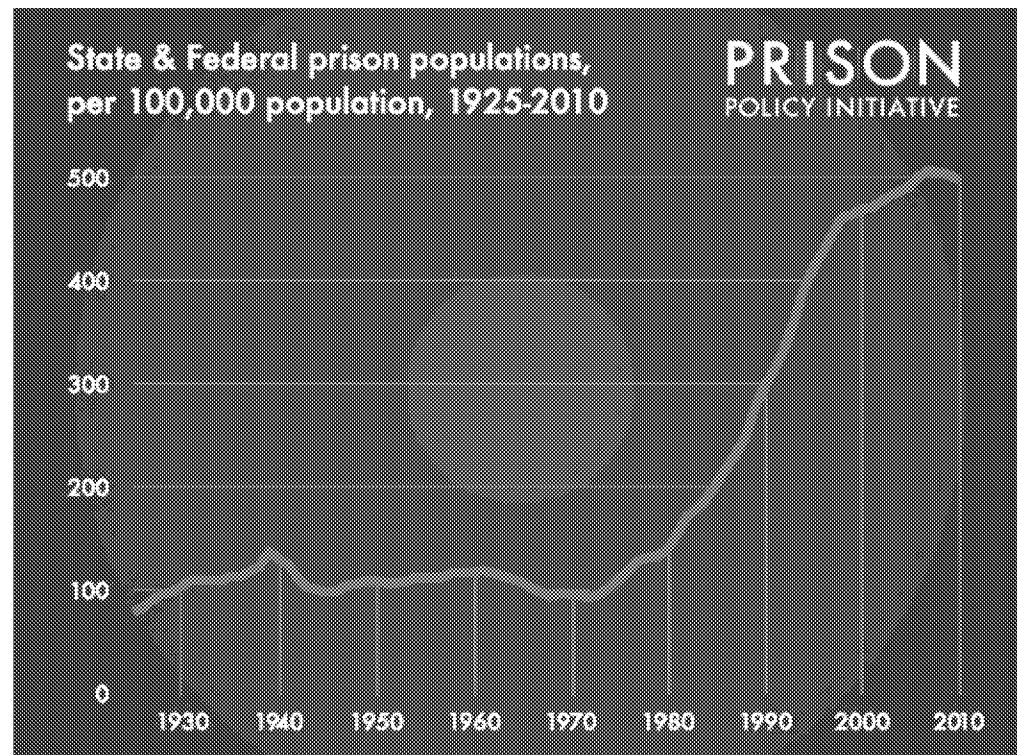


Figure 1. The 1990 Census was the first to register the beginning of mass incarceration. As a result of the Census Bureau's now outdated usual residence rule for incarcerated people, the 2010 Census counted a record portion of our population in the wrong location.

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 see it as necessary to mention incarcerated household members on the census form until the 1990 Census. But by 2000, the incarceration rate was more than four times higher than just two decades earlier. So the Bureau's data did not result in a significant harm to our democracy until after the 2000 and 2010 Censuses.

At the last Census, the Bureau counted over 2 million incarcerated people in the wrong place. That in itself is problematic for an agency that prides itself on providing

accurate data, but the significance and disparate impact of that miscount is even greater than it might first appear.

First, while the popular perception may be that most people in prisons and jails are serving long sentences, the opposite is actually true. The typical state prison sentence is only two or three years, and the incarcerated people are frequently shuffled between facilities at the discretion of administrators. For example, statistics in New York State show that the median time an incarcerated person has been at his or her current facility is just over 7 months.² (And the jail population turns over even faster than that in the prisons. At Rikers Island, New York City's jail, the average stay is 57 days.³)

Further, a stark and significant racial disparity in who goes to prison compounds the impact of a growing prison population. Our analysis of 2010 Census data shows that Blacks are incarcerated at 5 times the rate of non-Hispanic Whites, and Latinos are incarcerated at a rate almost two times higher than non-Hispanic Whites.⁴ Within those disparities are greater disparities by age and gender. For example, the incarceration rate for Black men aged 25-29 peaked in 2001 when a shocking 13% of Black men of those ages were incarcerated in federal and state prisons or local jails. By contrast, that same year, only 0.04% of white women aged 45-55 were incarcerated.⁵

For the Census, however, another factor compounds the racial distortions: the enduring and troubling trend to build the prisons in communities that are very different demographically than the people they confine. As discussed in the attached report released last week, *The Racial Geography of Mass Incarceration*, we reviewed the magnitude of the gulf between the incarcerated population and the surrounding counties; finding 161 counties where incarcerated Blacks outnumber free Blacks, and 20 counties where incarcerated Latinos outnumber free Latinos. In many counties, the disparity is particularly stark. We found 208 counties where the portion of the county that was Black was at least 10 times smaller than the portion of the prison that was Black. For Latinos, we found 41 counties where the portion of the county that was Latino was at least 10 times smaller than the portion of the prison that was Latino. These counties are spread throughout a majority of the states:

² New York State Department of Correctional Services, HUB SYSTEM: Profile of Inmate Population Under Custody on January 1, 2008, at ii, available at

http://www.doocs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf

³ Dana Goldstein , Simone Weichselbaum , Christie Thompson , Eli Hager , Beth Schwartzapfel , Maurice Chamamah , Alysia Santo and Nick Tabor, New York Magazine: Daily Intelligencer, *Inside Rikers Island, Through the Eyes of the People Who Live and Work There*, available at <http://nymag.com/daily/intelligencer/2015/06/inside-rikers-island-interviews.html>

⁴ Leah Sakala, Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity, Prison Policy Initiative, May 28, 2014 available at <http://www.prisonpolicy.org/reports/rates.html>

⁵ U.S. Department of Justice, Bureau of Justice Statistics, Prison and Jail Inmates at Midyear, 2001, NCJ 191702 (Washington, DC: U.S. Department of Justice, 2002), Table 15.

Maps showing the number and locations of counties where the portion of the county's Black or Latino population was at least 10 times smaller than the portion of the county's incarcerated population that was Black or Latino

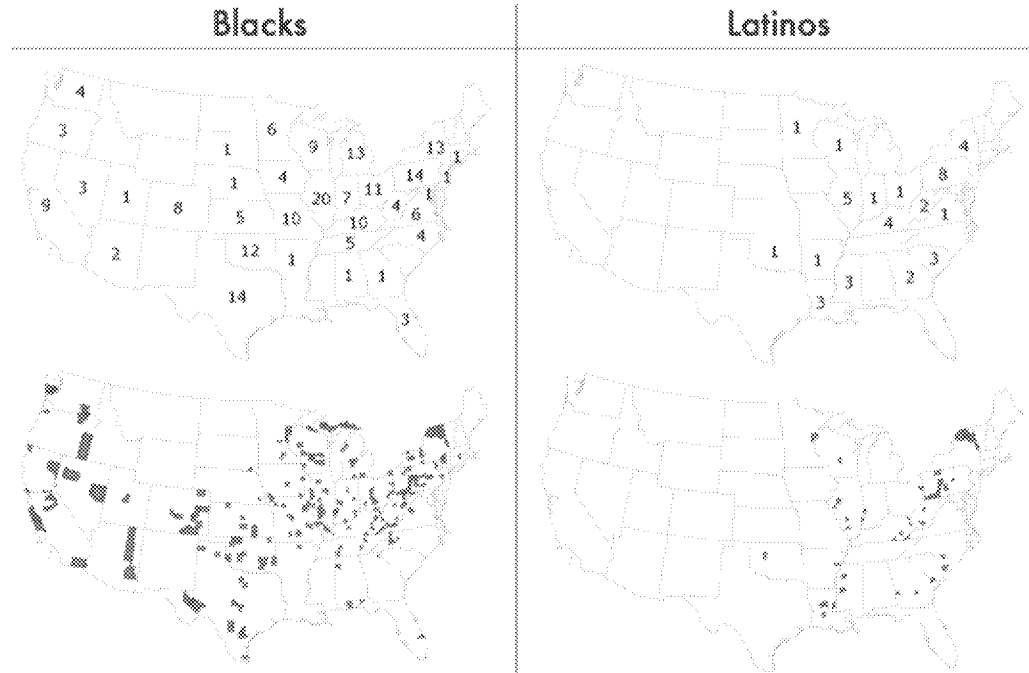


Figure 2. These maps shows where Blacks or Latinos are over-represented by at least 10 times in the prison population compared to the surrounding county. Many of the states without any counties marked on this map are states where counties are less relevant as a unit of analysis (ie. Massachusetts and Rhode Island) or where the Black or Latino population is very small and therefore excluded from our analysis (i.e. Montana). For Latinos, the over-representation is significant in most states but is less dramatic than for Blacks.

Modern requirements of equal representation have created new data users and a need for more accurate data.

The Census Bureau's practice of tabulating incarcerated people as residents of the prison location not only predates the prison boom; it also predates the modern era of redistricting. The early Censuses were primarily concerned with the relative population of each state for the purposes of apportionment. In the 1960s, however, the Supreme Court's "one person one vote" cases, which require regular population-based redistricting at the state and local level, changed that. And the Census Bureau quickly became *the* data source for redistricting because it had the ability to provide accurate data down to the block level.

But it is precisely this need — accurate block level data — that is most dramatically undermined by the Bureau's current interpretation of the usual residence rule. The Census is using a method that tabulates 1% of our entire adult population — and 6.4% of our Black adult male population — in the wrong location.⁶

And to be clear, the statement that it is the "wrong" location is not a moral judgment subject to the eye of the beholder. The common law rule is that a prison cell is not a

⁶ This calculation uses Census 2010 data for the 18+ population for both the incarcerated and total populations.

residence, and the majority of states have explicit constitutional clauses or election law statutes that declare that a prison cell is not a residence.⁷

This “prison miscount” creates serious challenges for democracy at most levels of government

Prison gerrymandering is a problem for all levels of government that contain both a sizable correctional facility and a district form of government. As we will explain below, the problem is most significant in rural districts where a single prison can easily become the majority of a district; but it also creates a consistent misallocation of populations among state legislative districts, and a negative influence on the state-wide public policy decisions that result.

When state legislative district populations are skewed by Census data, for example:

- Seven New York state senate districts drawn after the 2000 Census met minimum population requirements only because they used prison populations as padding.⁸
- In Maryland, one state house district in western Maryland drawn after the 2000 Census drew 18% of its population from a large prison complex.⁹ As a result, every four voting residents in this district were granted as much political influence as five residents elsewhere.¹⁰

The policy and racial justice implications are severe as well, for example:

- Virtually all — 98% — of New York state’s prison cells were located in state senate districts that were disproportionately White, diluting the votes of African-American and Latino voters.¹¹ Similarly, in Connecticut, 75% of the state’s prison cells were in state house districts that were disproportionately White.¹²

⁷ British common law and virtually all states define residence as the place a person chooses to be without a current intention to go elsewhere. In most states, constitutions and statutes go even further, explicitly declaring that incarceration does not change a residence. *See, e.g.*, Ariz. Const. art. VII, § 3; Colo. Const. art. VII, § 4; Minn. Const. art. VII, § 2; Mo. Const. art. VIII, § 6; Nev. Const. art. II, § 2; N.Y. Const. art. II, § 4; Or. Const. art. II, § 4; Wash. Const. art. VI, § 4; Alaska Stat. § 15.05.020(1) (2011); Cal. Elec. Code § 2025 (2011); Conn. Gen. Stat. § 9-14 (2011); D.C. Code § 1-1001.02(2)(D) (2011); Haw. Rev. Stat. § 11-13(5) (2011); Idaho Code Ann. § 34-405 (2011); Me. Rev. Stat. tit. 21-A, § 112(7) (2011); Mich. Comp. Laws § 168.11 (2011); Miss. Code Ann. § 47-1-63 (2011); Mont. Code Ann. § 13-1-112(2) (2011); N.H. Rev. Stat. Ann. § 654:2-a (2011); N.M. Stat. Ann. § 1-1-7(D) (2011); Pa. Cons. Stat. § 1302(a)(3) (2011); R.I. Gen. Laws § 17-1-3.1 (2011); Tenn. Code Ann. § 2-2-122(7) (2011); Tex. Elec. Code Ann. § 1.015(e) (2011); Utah Code Ann. § 20A-2-101(2)(a), -105(4)(c)(iii) (2011); Vt. Stat. Ann. tit. 17, § 2122 (2011).

⁸ Peter Wagner, *Importing Constituents: Prisoners and Political Clout in New York*, Prison Policy Initiative (May 20, 2002), <http://www.prisonpolicy.org/importing/importing.html>.

⁹ *Ending Prison-Based Gerrymandering Would Aid the African-American Vote in Maryland*, (Jan. 22, 2010), <http://www.prisonersofthecensus.org/factsheets/md/africanamericans.pdf>.

¹⁰ *See id.*

¹¹ Peter Wagner, *98% of New York’s Prison Cells Are in Disproportionately White Senate Districts*, (Jan. 17, 2005), <http://www.prisonersofthecensus.org/news/2005/01/17/white-senate-districts/>.

¹² *Ending Prison-Based Gerrymandering Would Aid the African-American and Latino Vote in Connecticut*, (Nov. 17, 2010),

http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf.

- Of the seven New York senate districts discussed above, four of the senators sat on the powerful Codes Committee where they opposed reforming the state's draconian Rockefeller drug laws that boosted the state's prison population.¹³ The inflated populations of these senators' districts gave them little incentive to consider or pursue policies that might reduce the number of people sent to prison or the length of time they spend there. One of them, New York state Senator Dale Volker, boasted that he was glad that the almost 9,000 people confined in his district cannot vote because "they would never vote for me."¹⁴

The impact of prison-based gerrymandering on state legislative districting gets the most attention from state policymakers, but the problem is even more significant in rural counties and cities that contain prisons. Their county board districts and city council districts are smaller than state legislative districts, so a single prison can have a massive effect. The most well-known example is in Anamosa, Iowa, where the state's largest prison constituted 96% of the city's second ward.¹⁵ In 2005, there were no second ward candidates for city election, and the winner won with two write-in votes, one cast by his wife and another by a neighbor.¹⁶ Citizen outcry about the unfairness of granting some residents twenty-five times as much political influence as other voters led Anamosa to change its form of city government.¹⁷

The extreme example of Anamosa is far from unique. Other examples include:

- Lake County Tennessee drew a district after the 2000 Census "where 88% of the population in County Commissioner District 1 was not local residents, but incarcerated people in the Northwest Correctional Complex."¹⁸ This gave every group of three residents in District 1 as much say in county affairs as twenty-five residents in other districts.¹⁹
- Half of one city ward in Rome, New York, drawn after the 2000 Census, was incarcerated,²⁰ and the majority of the clout given to the Chair of the Livingston County, New York Board of Supervisors came from claiming incarcerated people as residents of his town.²¹

¹³ Peter Wagner, *Locked Up, But Still Counted: How Prison Populations Distort Democracy*, (Sept. 5, 2008), <http://www.prisonersofthecensus.org/news/2008/09/05/stillcounted/>.

¹⁴ *Id.* (quoting Jonathan Tilove, *Minority Prison Inmates Skew Local Populations as States Redistrict*, Newhouse News Service, Mar. 12, 2002, <http://www.prisonpolicy.org/news/newhousenews031202.html>).

¹⁵ *Enumerating People Living in Group Quarters: Hearing Before the Subcomm. on Info. Pol'y, Census, and Nat'l Archives of the H. Comm. on Oversight and Gov't Reform*, 111th Cong. (2011) (statement of Peter Wagner, Executive Director, Prison Policy Initiative), available at <http://www.prisonersofthecensus.org/news/2010/02/25/fieldhearing/>.

¹⁶ Sam Roberts, *Census Bureau's Counting of Prisoner Benefits Some Rural Voting Districts*, N.Y. Times, Oct. 23, 2008, <http://www.nytimes.com/2008/10/24/us/politics/24census.html>.

¹⁷ *See id.*

¹⁸ Peter Wagner & Aleks Kajstura, *Prison-Based Gerrymandering in Tennessee Counties*, (Sept. 26, 2011), <http://www.prisonersofthecensus.org/news/2011/09/26/tn-memo/>.

¹⁹ *See id.* for more on Lake County and the nine other counties in Tennessee with dramatic instances of prison-based gerrymandering.

²⁰ Editorial, *Our View: Don't Count Prisoners with Voters*, Utica Observer-Dispatch, Feb. 25, 2010, <http://www.uticaod.com/opinion/x1694766272/Our-view-Don-t-count-prisoners-with-voters>.

²¹ *Prison-Based Gerrymandering in Livingston County*, (June 16, 2010), <http://www.prisonersofthecensus.org/factsheets/ny/livingston.pdf>.

- Wisconsin has a number of county and municipal districts where prisons constitute the majority of individual districts. The Waupun City Council drew a district after the 2000 Census that was 79% incarcerated,²² and Juneau County drew a district after the 2010 Census that was 80% incarcerated.²³
- The most troubling example may be from Somerset County Maryland where prison-based gerrymandering made it impossible to elect an African-American.

Somerset County, which until 2010 had never elected an African-American to county government, settled a voting rights act lawsuit in the 1980s by agreeing to create one district where African-Americans could elect the candidate of their choice. Unfortunately, a prison was built and the 1990 Census was taken shortly after the first election, leaving a small African-American vote-eligible population in the district. This made it difficult for residents of the district to field strong candidates and for voters to elect an African-American Commissioner. An effective African-American district could have been drawn if the prison population had not been included in the population count.²⁴

Ending prison gerrymandering would benefit most of the country

Because prison gerrymandering is an issue unlike most Census controversies that operate like a zero-sum game with clear winners and losers, many of the people who benefit in one way from prison gerrymandering lose in another. For example, someone who lives in the state house district with the largest prison might have their votes diluted in their state senate or county commission district because they do not also live in the respective state senate or county commission district with the largest prison.

We've calculated that of the 19 million people in New York state, only 15,300 people simultaneously benefit from prison gerrymandering in their state senate district, in their state assembly district, and in their county legislative district.²⁵ That's less than 0.08% of the state's residents, and of course all 19 million people in New York State benefit when the democratic process improves. And New York isn't alone. We found

²² *Prison-Based Gerrymandering in the City of Waupun, WI*, (Mar. 16, 2011), http://www.prisonersofthecensus.org/factsheets/wi/City_of_Waupun_WI.pdf; see also John Hejduk & Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Wisconsin*, (Mar. 2008), <http://www.prisonersofthecensus.org/wisconsin/local.html>.

²³ See Peter Wagner, *Wisconsin Sees Dramatic Prison-Based Gerrymandering in New State, County, City Districts*, (July 18, 2011), <http://www.prisonersofthecensus.org/news/2011/07/18/wi-districts/>, for a general treatment of county redistricting in Wisconsin after the 2010 Census. Our findings in Juneau have not been published yet at the time of this writing.

²⁴ Brief of the Howard University School of Law Civil Rights Clinic et al. as Amici Curiae Supporting Respondents at 8–9, *Fletcher v. Lamone*, No. RWT-11cv3220 (D. Md. Dec. 23, 2011) (citing “*Maryland Bill*” Podcast Episode #2, (May 27, 2010), <http://www.prisonersofthecensus.org/news/2010/05/27/podcast2/>; *Our View: Fairer Election Districts Ahead*, Daily Times, Apr. 5, 2010, http://www.prisonpolicy.org/news/Delmarva_Daily_Times_MD_4_5_10.pdf; ACLU of Maryland & Somerset County NAACP, *Semper Eadem: “Always the Same”?* (2009), available at <http://www.aclu-md.org/aPress/Press2009/FinalReportwApp.pdf>), available at http://www.prisonersofthecensus.org/fletcher/Final_Fletcher_amicus_with_affidavit_and_service.pdf.

²⁵ Letter from Peter Wagner, Executive Director, Prison Policy Initiative to John Thompson, Director, U.S. Census Bureau, November 6, 2013, on file with the Prison Policy Initiative.

the same thing when we analyzed to Rhode Island's districts. Out of the entire state, only 112 people (0.01% of the state) simultaneously live in the state senate district and the state house district with the largest prison population.²⁶ Everyone else in the state has their vote diluted in one or both chambers as a result of prison gerrymandering.

For these reasons, it should be no surprise that ending prison gerrymandering is popular. Currently, at least 1 in 5 Americans live in a state or local government that has ended prison gerrymandering. New York, Maryland, Delaware and California have passed legislation to end prison gerrymandering statewide. The statutes of Colorado²⁷, Michigan²⁸, and New Jersey²⁹ command some or all their local governments to avoid prison gerrymandering. In Mississippi, the Attorney General instructs counties to avoid prison gerrymandering, while also declaring that the Census Bureau is wrong and that the Bureau should have counted incarcerated people at home:

Inmates under the jurisdiction of the Mississippi Department of Corrections ... are not deemed "residents" of that county or locality, as incarceration cannot be viewed as a voluntary abandonment of residency in one locale in favor of residency in the facility or jail. **For purposes of the Census, these individuals should have been counted in their actual place of residence.** Such inmates should not be used in determining the population of county supervisor districts for redistricting purposes by virtue of their temporary presence in a detention facility or jail in the county, unless their actual place of residence is also in the county.³⁰

Many counties and other local governments that choose to avoid prison gerrymandering on their own must jump through considerable hoops to do so. To be sure, your decision to publish the Advance Group Quarters Summary File as part of the 2010 Census was a tremendous benefit to these jurisdictions, and the fact that you were able to add this product to the design of the 2010 Census *and* publish this file several weeks earlier than the Bureau had told people to expect it were all improvements that cannot be understated. Further, the Director's announcement that in 2020 the Group Quarters Summary File will be included within the PL94-171 Redistricting data will be a great aid in terms of visibility, timeliness and ease of use.

The Census Bureau cannot leave fixing the prison miscount to the states.

However, all of this interest and activity in ending prison gerrymandering does not mean that the Census Bureau can leave this decision to the data users. As you know, the Massachusetts legislature concluded that that state's constitution prohibits it from

²⁶ These 112 people also live in the city council ward with the largest prison population, Cranston Ward 6. For more on these Rhode Island calculations and some maps, see Peter Wagner, How many people benefit from ending prison gerrymandering?, Prison Policy Initiative, August 21, 2014, available at: <http://www.prisonersofthecensus.org/news/2014/08/21/how-many/>

²⁷ Colorado Revised Statutes §30-10-306.7(5)(a) applying to counties.

²⁸ Mich. Comp. Laws § 117.27a (5) applying to cities and Mich. Comp. Laws § 46.404(g) applying to counties.

²⁹ N.J. Stat. Ann. § 18A:13-8; Board v. New Jersey, 372 N.J. Super. 341, 858 A.2d 576 (2004) applying to school boards of nine or more members.

³⁰ Opinion No. 2002-0060; 2002 WL 321998 (Miss. A.G.) Emphasis added.

passing legislation ending prison gerrymandering. For that reason, the legislature sent you an earnest bipartisan resolution calling on you to count incarcerated people at home in the next census.³¹

These ad hoc solutions are even more out of reach for local governments. Many of the most dramatic instances of prison gerrymandering are concentrated in just a handful of states like Minnesota, Tennessee, and Wisconsin, where state constitutions or state law appear to prohibit the cities and counties from adjusting the Bureau's data when drawing their districts without regard to the absurd and undemocratic results. For example, the Minnesota statutes declare "When used in reference to population, 'population' and 'inhabitants' mean that shown by the last preceding federal decennial census"³² This results in cities like Waseca drawing city council districts that are 34.5% incarcerated, giving every 2 residents who live near the prison the political influence on city council of 3 residents in other parts of the city.

To address all of these problems experienced by redistricting data users in state and local governments, the only viable solution is for the Census Bureau to update its interpretation of the residence rule for incarcerated people and count this growing part of our population in the right place — at home.

There is national consensus for ending prison gerrymandering

Over the last fourteen years, a strong national consensus has evolved in opposition to prison gerrymandering. Beyond the actions of state officials covered elsewhere in this letter, the civil rights and good governments groups are speaking with one voice on this issue and the relevant scientific bodies have shown their support.

In 2013, more than 200 civil rights, voting rights, and criminal justice organizations sent the Bureau a letter³³ asking you to seize a timely opportunity to research alternative ways to count incarcerated people in the decennial Census. In 2014, ending prison gerrymandering was principle #3 in the 10 Redistricting Principles for a More Perfect Union endorsed by 16 civil rights and democracy organizations.³⁴

The National Black Caucus of State Legislators declared in 2010 that:

“... THEREFORE BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) believes that the Census Bureau should count incarcerated individuals at their addresses of residence, rather than the address of the prison during the 2020 and all future decennial Censuses;

“BE IT FURTHER RESOLVED, that until the Census Bureau counts incarcerated individuals at their actual residential addresses, the NBCSL

³¹ A copy of the resolution is at <http://www.prisonersofthecensus.org/resolutions/MA-resolution-081414.pdf>

³² Minn. Stat. Ann. § 645.44(8)

³³ Available at <http://www.prisonersofthecensus.org/letters/feb2013.html>

³⁴ Available at <http://www.commoncause.org/issues/voting-and-elections/redistricting/redistricting-principles.html>

encourages states to enact legislation modeled after the Delaware, Maryland, and New York laws...”³⁵

The NAACP has had convention resolutions calling for an end to prison gerrymandering for four consecutive years from 2008 to 2010; and the 2010 resolution concluded:

“THEREFORE, BE IT RESOLVED, that the NAACP reaffirms the 2009 resolution on ending prison-based gerrymandering; and

“BE IT FURTHER RESOLVED, the NAACP will continue to advocate to the United States Congress, the United States Department of Commerce and to the public that the Census count incarcerated people as residents of their last home address; and [...]

“BE IT FURTHER RESOLVED, that the NAACP concludes that until the Census Bureau counts incarcerated people as residents of their homes, the fundamental principle of one person one vote” would be best satisfied if redistricting committees refused to use prison counts to mask population shortfalls in districts that contain prisons; and

“BE IT FINALLY RESOLVED, that the NAACP advocate that the prison population census count not be used in any legislative district at the local, state and federal level.”³⁶

Finally, the Census Bureau’s own advisors on the National Research Council of the National Academies concluded in 2006 that “[t]he evidence of political inequities in redistricting that can arise due to the counting of prisoners at the prison location is compelling”³⁷ and called for you to take immediate steps to develop a solution. Your own appointed Advisory Committees repeatedly urged you to take steps to end prison gerrymandering with recommendations in 2003, 2009, 2010, and 2011.³⁸

Our research shows that (contrary to common assumptions) the prison miscount does not affect three key uses of Census data

After spending many pages on the impact seen from the Census Bureau’s outdated usual residence rule for incarcerated people, we wanted to share three places where some might expect to see an impact but where our research suggests there was none:

1. Apportionment is unlikely to be impacted. In general, apportionment is very unlikely to be affected by the current rule — and by extension — any change in it because most incarcerated people do not cross state lines. Only a few state prison systems send incarcerated people to other states and those arrangements tend to be relatively temporary and difficult to predict, so there is no long-term expected impact from these cross-state transfers. While we

³⁵ Available at <http://www.nbcsl.org/public-policy/resolutions/item/75-law-justice-and-ethics-resolution-lje-11-03.html>

³⁶ Available at http://www.prisonersofthecensus.org/resolutions/NAACP_2010.html

³⁷ Available at <http://www.nap.edu/catalog/11727/once-only-once-and-in-the-right-place-residence-rules>

³⁸ Excerpts and copies of the resolution text available at <http://www.prisonersofthecensus.org/resolutions/>

assume that most people in the federal prison system come from other states, the fact that federal prisons exist in about 37 states means that the net effect is going to be quite small. While it is indeed possible that a change to the usual residence rule for incarcerated people — or any group for that matter — could change apportionment, it is extremely unlikely that the rule for incarcerated people would change apportionment. (And our analysis of the 2000 and 2010 apportionment suggests that it has not in the past.)

2. Congressional redistricting is not affected. Congressional districts are too large (at about 700,000 people) to be significantly impacted by a large prison or even the typical cluster³⁹ of large prisons. As illustrated above, the impact of prison gerrymandering is inversely proportional to the ideal population size of the district. So while a cluster of large prisons typically has a negligible effect on a Congressional district of 700,000 people, the impact of a single 1,000-person prison can be massive in a county commission district of only 1,200 people.
3. Funding formulas are not affected. While Census data is important to many funding formulas, prison populations have very little impact. First, most federal funding formulas are block grants to states for things like Medicaid reimbursement and highways and because most incarcerated people do not cross state lines, there is no impact. Most other federal and state funding formulas are more complex than straight headcount distributions, instead using a sophisticated mix of data. For example, school aid often uses for the population *portion* of the formula not the total population but factors like the number of school age children or the number of pupils enrolled. Similarly, formulas for programs focused on poverty typically use household statistics (which do not include the incarcerated people) or poverty statistics (which are based on household income). The only notable exceptions we've seen are in very small funds destined for rural areas, like programs for impoverished Appalachian communities distributed by the Appalachian Regional Commission, whose formula allows prison hosting communities to get a very tiny additional share of money that probably should have gone to similarly situated rural Appalachian communities without prisons. But in no case were urban communities shortchanged by this small flaw in the way money intended for rural Appalachia was distributed to rural Appalachia. In short, the current rule has not caused a substantial unjustified formula-fund enrichment of rural prison-hosting areas nor has it caused an unjustified reduction in formula funding for urban areas.

Conclusion

We understand that conducting the Census is an important, complicated, and difficult task which underpins the very core of our democracy, and we applaud the Bureau's continual efforts to improve the quality and utility of Census data.

³⁹ The only notable exception is California, where the unique cluster of prisons in the central valley in 2010 created a Congressional district that was 5.7% incarcerated.

We believe that the next step forward for the Census Bureau is to update the usual residence rule for incarcerated people. We hope the Bureau concludes that the 2010 Census should be the last Census in our history to count more than 2 million people in the wrong location. When evaluating the 2010 Census and thinking about what changes should be made for 2020, we urge the Bureau to count incarcerated people at their home addresses.

If my organization can answer any questions or be of any assistance to you in your work, please do not hesitate to contact us.

Enclosure:

The Racial Geography of Mass Incarceration

The Racial Geography of Mass Incarceration

by [Peter Wagner](#) and [Daniel Kopf](#)

July, 2015

Key findings

- Entirely separate from the more commonly discussed problem of racial disparities in who goes to prison, this data addresses a distressing racial and ethnic disparity in where prisons have been built.
- Stark racial and ethnic disparities exist between incarcerated people and the people in the county outside the prison's walls.
- The transfer of Black and Latino incarcerated people to communities very different than their own is a national problem not confined to select states.
- Hundreds of counties have a 10-to-1 “ratio of over-representation” between incarcerated Blacks and Blacks in the surrounding county — meaning that the portion of the prison that is Black is at least 10 times larger than the portion of the surrounding county that is Black.

Introduction

The [racial disparities](#) underlying the United States’ [record growth](#) in imprisonment are well documented, as is the fact that the prison construction boom was disproportionately a rural prison construction boom. While these two characteristics have been studied separately, there has been, until now, no national effort to analyze each state’s decision to engage in mass incarceration through a racial geography lens.

This report fills a critical gap in understanding the mass incarceration phenomenon: it offers a way to quantify the degree to which in each state mass incarceration is about sending Blacks and Latinos to communities with very different racial/ethnic make-ups than their own. We use data from the 2010 Census to compare the race and ethnicity of incarcerated people to that of the people in the surrounding county, finding that, for many counties, the racial and ethnic make-up of these populations is very different.

This analysis addresses the degree to which each state’s use of the prison is about transferring people of color to communities that are very different from the communities that people in prison come from. This data does not address the bias in policing or sentencing found in individual counties; instead it reflects each state’s political decision to build prisons in particular locations.

We anticipate this analysis will be most useful to answer two questions:

1. Why do some states struggle to hire sufficient Black and Latino correctional staff?
2. To what degree does prison gerrymandering — the practice of using U.S. Census counts of incarcerated people as residents of the prison location for legislative districting purposes — have a disproportionate racial impact in particular states?

In addition, definitively showing that the people incarcerated in some states and counties are very different demographically from the surrounding community is powerful evidence that the people incarcerated there are from somewhere else.¹ This has immediate and profound implications for a number of issues from prison gerrymandering to the need for programs that make it easier for families to visit incarcerated loved ones.

The racial geography of mass incarceration for Blacks

Blacks are incarcerated at a rate about 5 times higher than whites, but prisons are disproportionately located in majority-white areas. This combination has tremendous implications for the prison system's ability to hire appropriate numbers of Black staff, and it gives the problem of prison gerrymandering a distinct veneer of racial discrimination.²

Policymakers have been aware of the problem of racial disparities between staff and incarcerated people at least since the infamous Attica prison rebellion in 1971. Incarcerated people seized the prison, held it for four days, and invited the media in to document their grievances before the state police assaulted the prison, killing 43, all filmed on national television. The striking racial imbalance between the incarcerated people and the guards garnered national attention: the people incarcerated were 63% Black or Latino but at that time there were no Blacks and only one Latino serving as guards. Increasing staff diversity was widely considered important, but progress was very slow because Attica and the hundreds of new prisons built in the subsequent decades were built in rural, disproportionately White, areas of states.

Our national analysis of counties finds that Wyoming County — where Attica and another large New York state prison are located — is not alone. We find that in 2010 there were 161 counties spread across 31 states where the incarcerated Black population outnumbers the number of free Blacks.³

We find a substantial number of counties where the incarcerated populations are largely Black but where Blacks are only a tiny portion of the county's non-

largely Black but where Blacks are only a tiny portion of the county's non-incarcerated population:

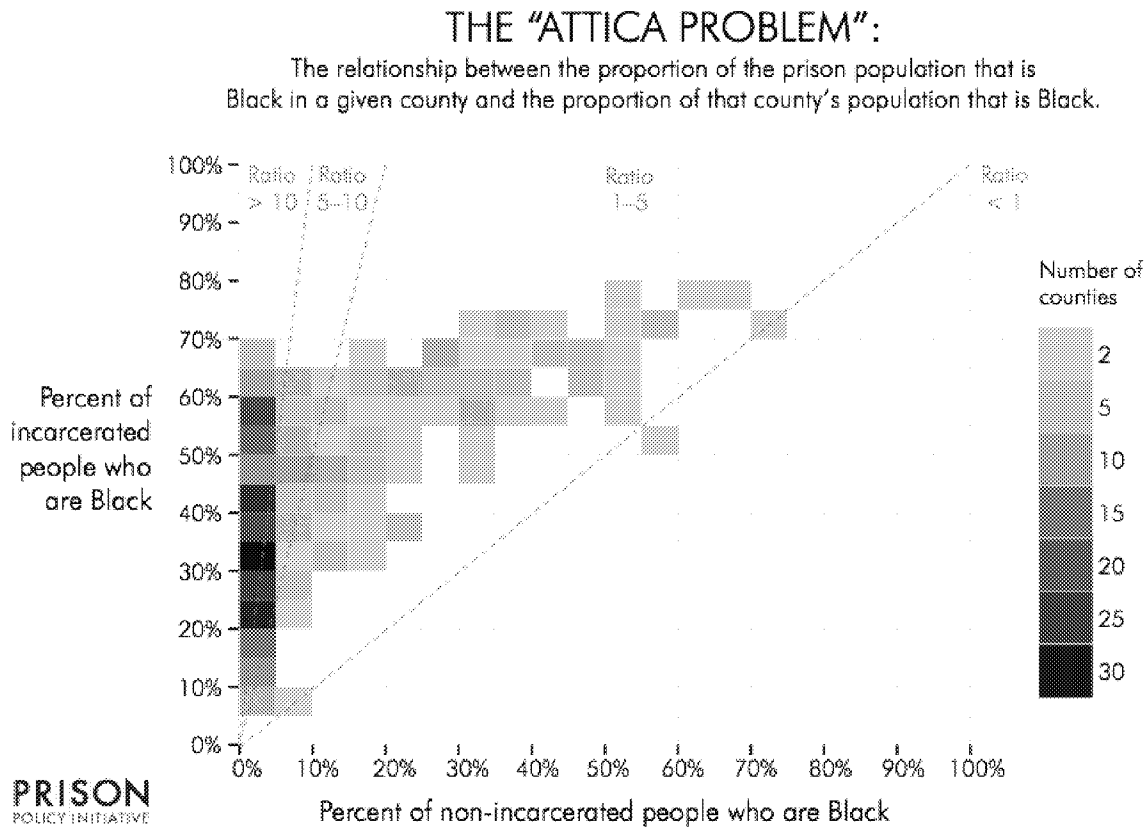


Figure 1. This chart shows that in many counties Black people in prison are overrepresented compared to the portion of Black people in the free population. Notably, many of these counties are concentrated in the far left of the graph; where Blacks make up 20% to 60% of the prison populations yet less than 5% of the free population.

Analysis of the graph reveals two conclusions:

1. The vast majority of counties are in the top left half of the graph, all reflecting that the prisons have proportionately larger Black populations than the surrounding county does.
2. There is a huge concentration of counties with prisons along the left edge of the graph, reflecting that many counties have only very small Black populations while their prisons have much larger Black populations.

To further quantify this distribution, we calculated the degree of racial difference between the incarcerated and non-incarcerated populations in each county. We calculated the ratio of the percentage of each county's incarcerated population that is Black to the percentage of each county's non-incarcerated population that is Black. Higher numbers mean a much larger difference between the two populations. In the 15 counties where the ratio is less than 1, the county's non-incarcerated Black population is proportionately larger than the incarcerated Black population in the county. But the table below quantifies what is seen in the above chart: most counties have a ratio over 1 and 208 counties have ratios of over 10. A ratio of at least 10

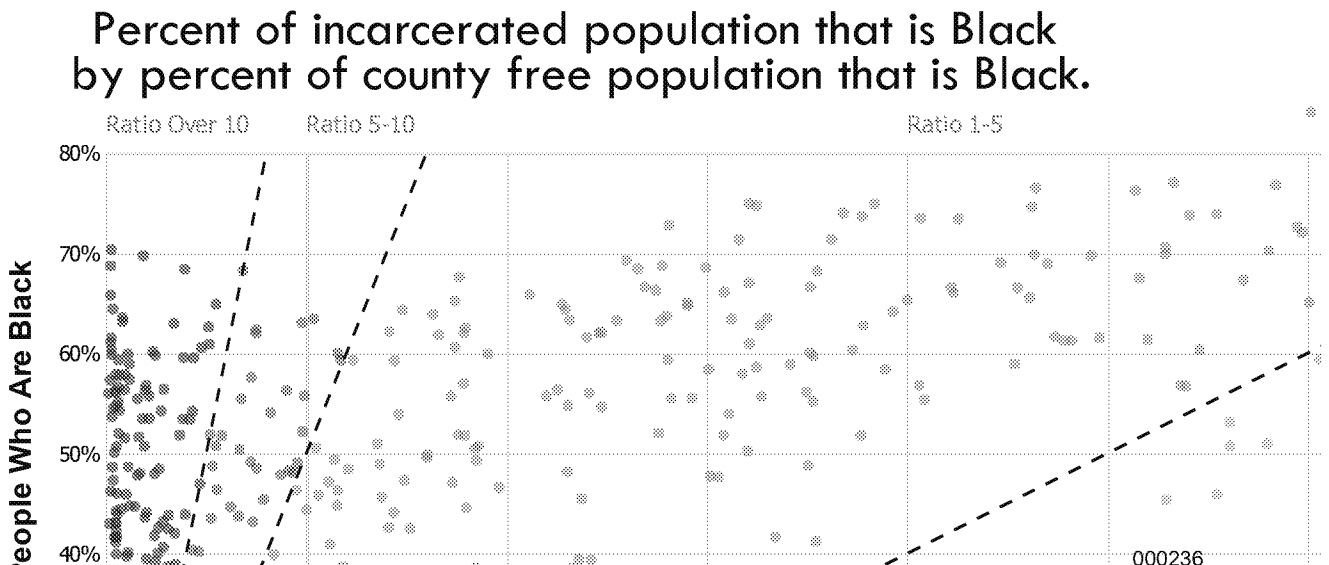
ratio of 10 or more means that the portion of the prison that is Black is at least 10 times larger than the portion of the surrounding county that is Black. For example, Martin County, Kentucky has a ratio of 529, because the 884 incarcerated Blacks make up 56% of the incarcerated population but the 12 Blacks freely living in the county make up only about 0.1% of the county's free population.

Figure 2. Number of counties by ratio of Black over-representation. The 34 states containing counties with ratios over 10 are: Alabama (1), Arizona (2), Arkansas (1), California (9), Colorado (8), Connecticut (1), Florida (3), Georgia (1), Illinois (20), Indiana (7), Iowa (4), Kansas (5), Kentucky (10), Maryland (1), Michigan (13), Minnesota (6), Missouri (10), Nebraska (1), Nevada (3), New Jersey (1), New York (13), North Carolina (4), Ohio (11), Oklahoma (12), Oregon (3), Pennsylvania (14), South Dakota (1), Tennessee (5), Texas (14), Utah (1), Virginia (6), Washington (4), West Virginia (4), and Wisconsin (9).

Ratio Category	Number of counties	Number of states containing those counties
0-1	15	8
1.01-5	194	26
5.01-10	55	23
More than 10	208	34

It is these high-ratio counties — and clusters of high-ratio counties — that make prison gerrymandering such a significant problem for racial justice. This large scale census inaccuracy labels these counties as diverse when they are anything but. When state legislatures use that flawed data to draw legislative districts, they transfer Black political clout to districts where Blacks have little to no voice.

To allow readers and other researchers to explore the details of individual counties, we created this interactive version that allows for looking up individual counties and their respective incarcerated and non-incarcerated Black populations:



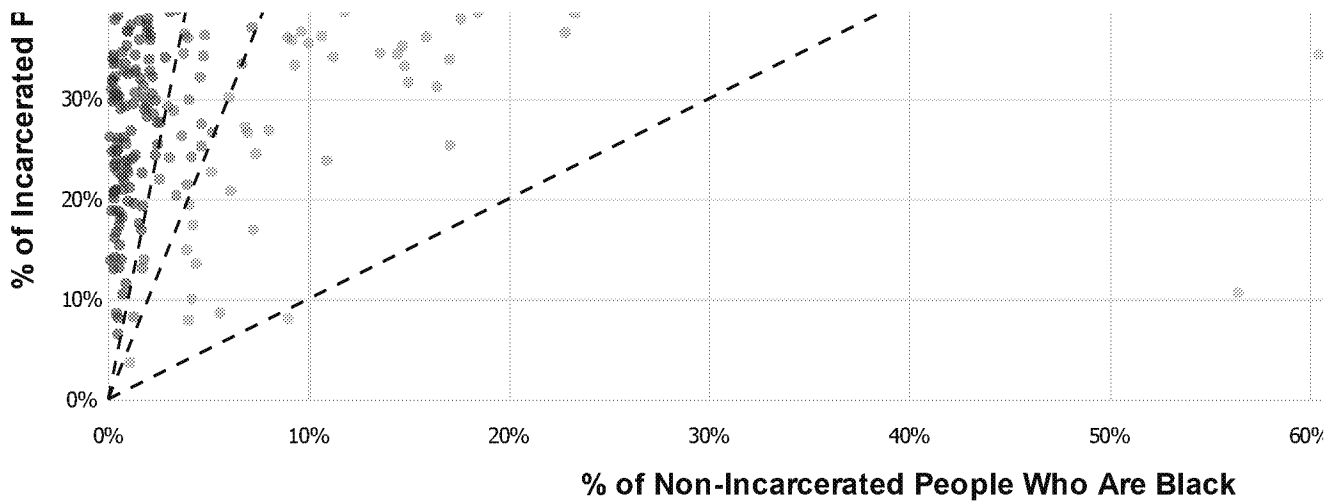


Figure 3. This interactive chart shows the percentage of each county’s incarcerated and free populations that are Black. Click on a dot for the name of the county and the total numbers.

To explore whether the counties with the most dramatic racial disparities between the prison and free populations are concentrated in particular states, we calculated the median ratio of all our analyzed counties by state. We found that Blacks are more likely to be locked up in communities very different than their homes in states such as Michigan or Wisconsin, and least likely in states such as Mississippi:

Blacks are more likely to be locked up in communities very different than their homes in states such as Michigan or Wisconsin

Figure 4. Ranking of states by greatest median disparity between incarcerated Blacks and non-incarcerated Blacks, showing only states that had at least 10 analyzed counties. (For the complete calculations for all states, as well as data on the average and 5th, 25th, 75th and 95th percentiles, see Appendix B: Percentiles of County Ratios by State for Blacks.) And for an alternative way to approach this idea of ranking states, see Appendix D: Portion of each state’s incarcerated population that is incarcerated in disproportionately White counties. For the raw data behind this analysis, see methodology and Appendix A: Counties.

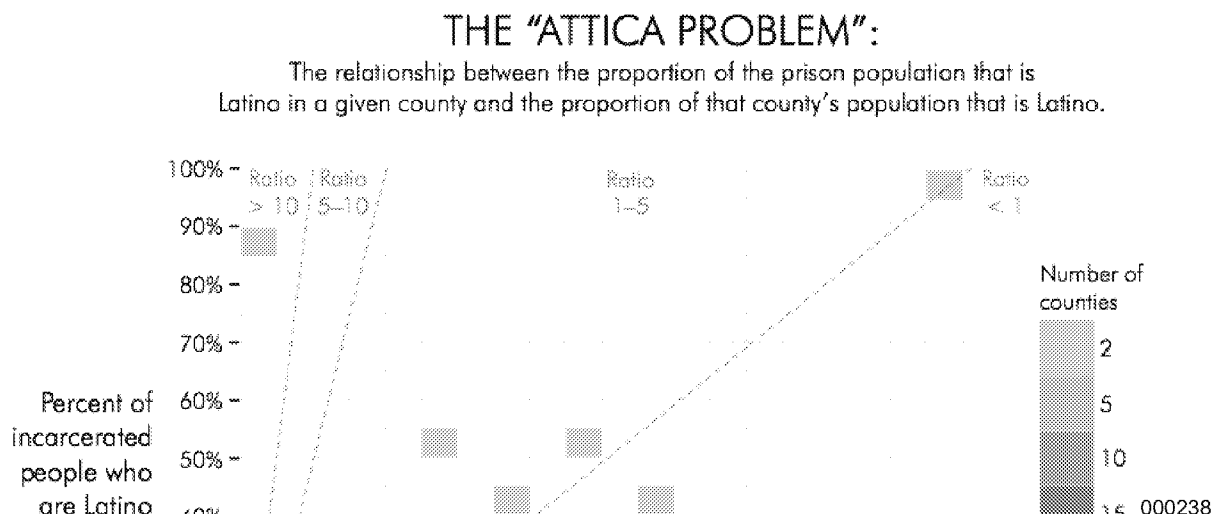
State (Number of Counties Analyzed)	Median Ratio of the percentage of each county’s incarcerated population that is Black to the percentage of each county’s free population that is Black.
Michigan (16)	120.0
Wisconsin (10)	78.5
Pennsylvania (15)	38.7
New York (16)	32.0
Illinois (23)	31.5
Ohio (13)	24.8

Kentucky (15)	24.2
Indiana (11)	23.2
California (12)	19.8
Missouri (16)	14.2
Oklahoma (17)	13.4
Texas (50)	4.5
Florida (30)	4.4
Virginia (24)	3.0
Alabama (10)	2.6
Louisiana (24)	2.2
North Carolina (22)	2.0
Georgia (41)	2.0
South Carolina (11)	1.4
Mississippi (17)	1.4

The racial geography of mass incarceration for Latinos

Latinos are incarcerated at a rate about 2 times higher than non-Latino whites, but prisons are disproportionately located in non-Latino areas. This combination has tremendous implications for the prison system’s ability to hire appropriate numbers of Latino staff, and it gives the problem of prison gerrymandering a distinct veneer of ethnic discrimination.⁴

We find that in 2010 there were 20 counties spread across 10 states where the Latino population that is incarcerated outnumbered those who are free.¹⁰ We also found a substantial number of counties where the incarcerated populations are largely Latino but where Latinos are only a very small portion of the county’s non-incarcerated population:



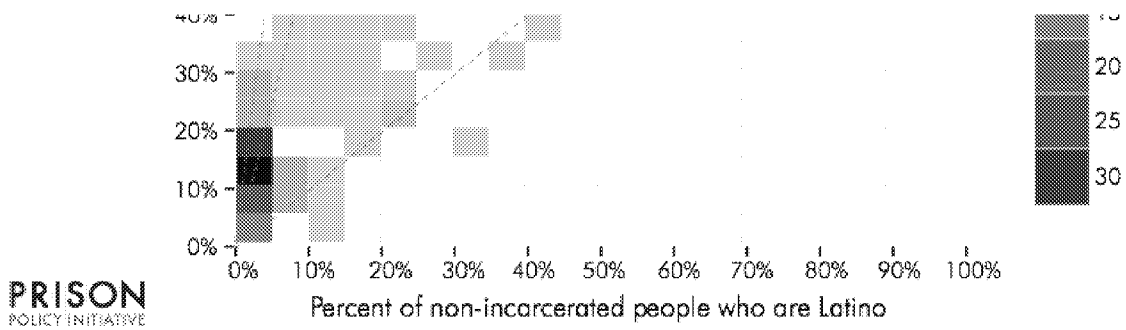


Figure 5. This chart shows that in many counties Latino people in prison are overrepresented compared to the portion of Latino people in the free population. (The outliers on the top right are a Municipality (county) in Puerto Rico and two in Texas, and the outlier counties on the top left are Stewart County, Georgia and Adams County, Mississippi, both of which host large federal immigration detention facilities.

Analysis of the graph reveals two conclusions:

1. The vast majority of counties are in the top left half of the graph, reflecting that the prisons have proportionately larger Latino populations than the surrounding county does.
2. There is a huge concentration of counties with prisons along the left edge of the graph, reflecting that many counties have only very small Latino populations while their prisons have much larger Latino populations.

To further quantify this distribution, we calculated the degree of ethnic difference between the incarcerated and non-incarcerated populations in each county. We calculated the ratio of the percentage of each county’s incarcerated population that is Latino to the percentage of each county’s non-incarcerated population that is Latino. Higher numbers mean a much larger difference between the two populations. In the 50 counties where the ratio is less than 1, the county’s non-incarcerated Latino population is proportionately larger than the incarcerated Latino population in the county. But the table below quantifies what is seen in the above chart: most counties in this study have a ratio over 1, and there are many counties such as Georgia's Stewart County, Illinois' Brown County, or West Virginia's Gilmer County where virtually the entire Latino population is incarcerated.

Figure 6. Number of counties by ratio of Latino over-representation. The 16 states containing counties with ratios over 10 are: Arkansas (1), Georgia (2), Illinois (5), Indiana (1), Kentucky (4), Louisiana (3), Minnesota (1), Mississippi (3), New York (4), Ohio (1), Oklahoma (1), Pennsylvania (8), South Carolina (3), Virginia (1), West Virginia (2), and Wisconsin (1).

Ratio Category	Number of counties	Number of states containing those counties
0-1	50	17
1.01-5	141	31

5.01-10	39	16
Over 10	41	16

It is these high-ratio counties — and clusters of high-ratio counties — that make prison gerrymandering such a significant problem for ethnic justice. This large scale census inaccuracy labels these counties as diverse when they are anything but. When state legislatures use that flawed data to draw legislative districts, they transfer Latino political clout to districts where Latinos have little to no voice.

To allow readers and other researchers to explore the details of individual counties, we created this interactive version that allows for looking up individual counties and their respective incarcerated and non-incarcerated Latino populations.

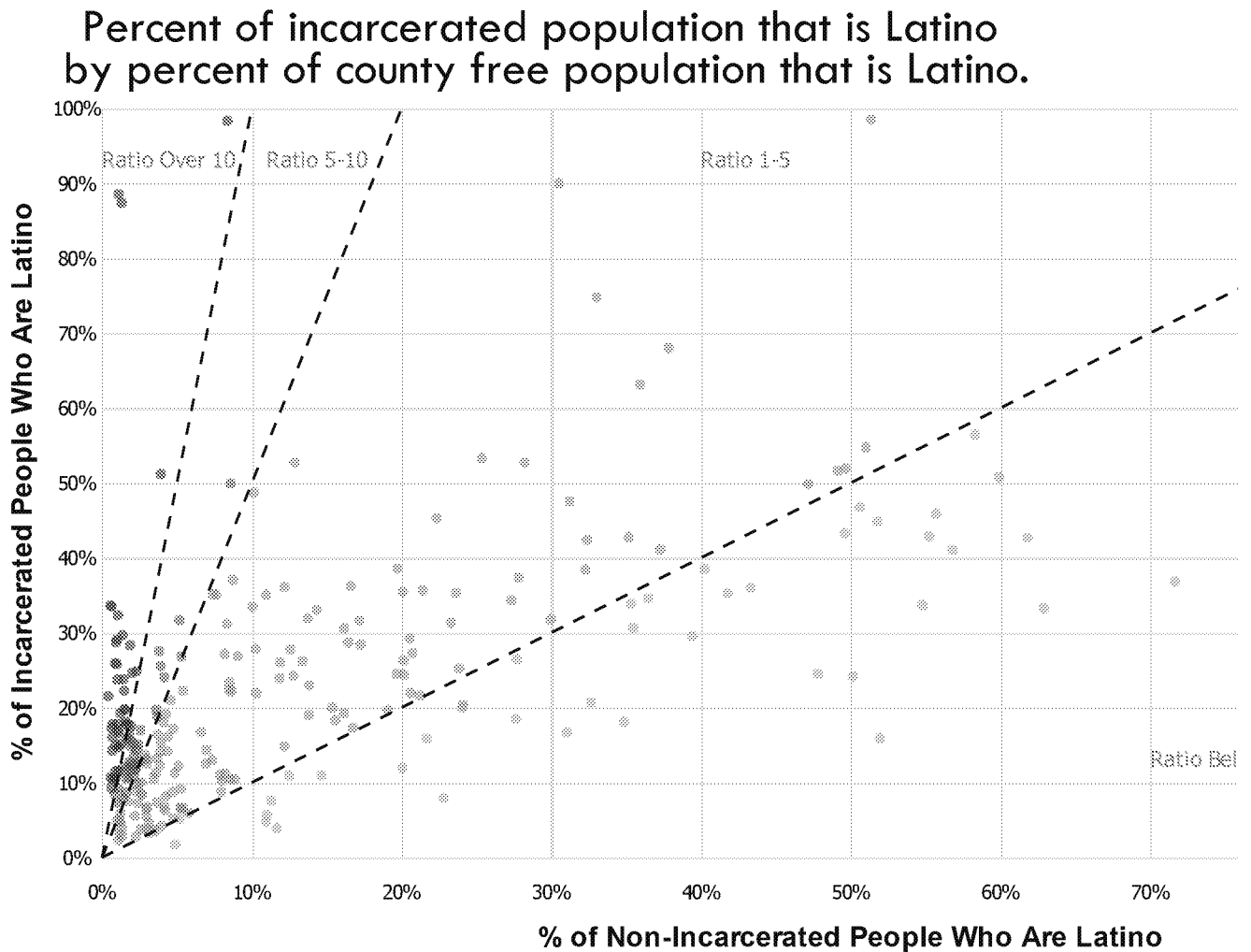


Figure 7. This interactive chart shows the percentage of each county’s incarcerated and free populations that are Latino. Click on a dot for the name of the county and the total numbers.

To explore whether the counties with the most dramatic ethnic disparities between the prison and free populations are concentrated in particular states, we calculated the

median ratio of all our analyzed counties by state. We found that Latinos are more likely to be locked up in communities different than their homes in states such as Pennsylvania or New York, and least likely in states such as California:

Figure 8. Ranking of states by greatest median disparity between incarcerated Latinos and non-incarcerated Latinos. This table only includes states that had at least 10 analyzed counties. (For the complete calculations for all states, as well as data on the average and 5th, 25th, 75th and 95th percentiles, see the Latino Percentiles appendix table.) And for an alternative way to approach this idea of ranking states, see the incarcerated in disproportionately white counties appendix table. For the raw data behind this analysis, see methodology and Appendix A: Counties.

State (Number of Counties Meeting Filters)	Median Ratio of Counties
Pennsylvania (14)	12.5
New York (16)	7.6
Illinois (20)	7.0
Georgia (10)	3.4
Florida (26)	2.2
Texas (59)	1.2
California (12)	1.2

Conclusion

One of the defining characteristics of mass incarceration in the United States is the racial disparity in who goes to prison. Less discussed but just as important is the shocking racial disparity in where those prisons are built.

Sadly, as Rachel Gandy recently reviewed in her analysis of the racial and ethnic disparities between incarcerated people and the people who staff the prisons, the fact that building prisons in rural areas makes it difficult to recruit appropriate numbers of Black and Latino staff has been well known — and entirely ignored — since long before the prison boom began.

This report reviews the magnitude of the gulf between the incarcerated population and the surrounding counties; finding 161 counties where incarcerated Blacks outnumber free Blacks, and 20 counties where incarcerated Latinos outnumber free Latinos. In many counties, the disparity is particularly stark. We found 208 counties where the portion of the county that was Black was at least 10 times smaller than the portion of the prison that was Black. For Latinos, we found 41 counties where the portion of the county that was Latino was at least 10 times smaller than the portion of the prison that was Latino. These counties are spread throughout a majority of the states:

Maps showing the number and locations of counties where the portion of the county's 000241

Black or Latino population was at least 10 times smaller than the portion of the county's incarcerated population that was Black or Latino

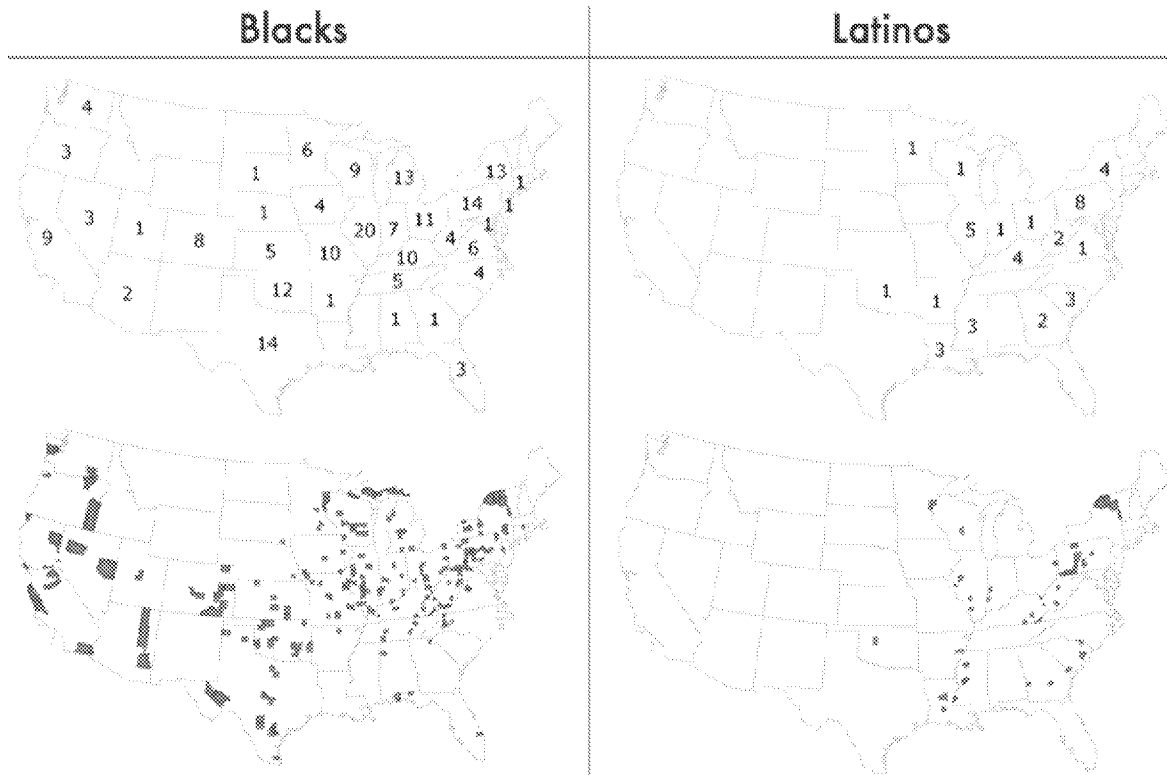


Figure 9. These maps shows where Blacks or Latinos are over-represented at least 10 times in the prison population compared to the surrounding county. Many of the states without any counties marked on this map are states where counties are less relevant as a unit of analysis (ie. Massachusetts and Rhode Island) or where the Black or Latino population is very small and therefore excluded from our analysis (ie. Montana). For Latinos, the over-representation is significant in most states but is less dramatic than for Blacks.

In short, one of the reasons many states struggle to hire sufficient numbers of Black and Latino staff is because the prisons themselves were built in places that Blacks and Latinos do not live.

But this large-scale transfer of Black and Latino people to areas demographically very different than their homes has even larger effects thanks to a unique quirk in the federal Census that counts incarcerated people as if they were willing residents of the county that contains the correctional facility for redistricting purposes.

The racial inequities that result from the practice of prison gerrymandering have been well documented in states like New York and Wisconsin, but as this report makes clear, they are not alone. The transfer of Black and Latino incarcerated people to communities very different than their own is a national problem with implications for prison gerrymandering as well as family visitation policies and reentry.

V. About the Prison Policy Initiative and the authors

The non-profit, non-partisan Prison Policy Initiative produces cutting edge research to expose the broader harm of mass criminalization, and then sparks advocacy campaigns to create a more just society. In 2002, the organization launched the national movement against prison gerrymandering with the publication of Importing Constituents: Prisoners and Political Clout in New York addressing how using Census Bureau counts of incarcerated people as residents of the prison location diluted the votes of state residents who did not live next to prisons in violation of the state constitutional definition of residence.

Peter Wagner is an attorney and Executive Director of the Prison Policy Initiative.

Daniel Kopf is a data scientist in California who volunteers with the Prison Policy Initiative through our Young Professionals Network. He has a Masters in Economics from the London School of Economics.

VI. Methodology

This goal of this report was to quantify the magnitude of the difference of the racial and ethnic makeup between the people incarcerated in a given county and the actual residents of that county.

For this data, we took advantage of a unique quirk in Census Bureau methodology that counts incarcerated people as residents of the county that contains the correctional facilities.

Filters:

While we make all of our data available in an appendix, we applied two filters to the county graphs and tables above to remove from the data what we considered noise:

- Counties where the percentage of the total population that was incarcerated was less than 1.5%. The Prison Policy Initiative discovered for our 2004 report, Too big to ignore: How counting people in prisons distorted Census 2000 that this was an effective filter to remove counties that contained very large jails but no significant state or federal prisons. We wanted to separate out jails because jails tend to confine people for short periods very close to home so these facilities will have much smaller and much less relevant disparities between the facility and the surrounding county. This initial filtering process reduced the number of analyzed counties to 539. (Note the unit of analysis in this analysis was counties, not facilities. We estimate that these counties contained 1,037 prisons.⁵)
- Our analyses of Black disparities remove any county where there were less

than 100 incarcerated Blacks, and we used a similar filter in the Latino disparities section. In both cases, we wanted to avoid highlighting counties with small populations of non-incarcerated people of color and only slightly larger numbers of incarcerated people of color. While this analysis removes many counties from our analysis — and in particular removes many counties in western states where the Black population is relatively small — it allows us to clearly show that there is a very large number of counties where substantial numbers of people of color are being moved by the prison system to communities very different from their homes.

Additionally, in order to make the distribution pattern in [figures 1](#) and [5](#) clear, we chose not to show the handful of counties where there was only 1 county in that particular “bin”. These handful of outliers were generally the product of unique facilities, such as a private federal immigration prison that was [92% Latino](#) in majority-Black Adams County, Mississippi.

On race and ethnicity definitions

For this project we used the Census Bureau’s conception of race and ethnicity that has two main characteristics:

- Hispanic/Latino origin is an ethnicity separate from race; so people may or may not be Hispanic/Latino in addition to being Black, White, Asian, etc.
- People may be of more than one race, of an “other” race, or of a combination of an “other” race with one or more other races.

The resulting number of possible combinations is quite high⁶, but as the Census Bureau publishes very few data tables that allow one to easily access the race and ethnicity of the incarcerated population, the choices available for use were actually quite limited. We used data that provided for 9 combinations, of which we used only 3 (marked in bold):

- White alone
- **Black alone**⁷
- American Indian or Alaska Native alone
- Asian alone
- Native Hawaiian or other Pacific Islander alone
- Some other race alone
- Two or more races
- **Hispanic or Latinos**⁸
- **White alone not Hispanic or Latino**⁹

Limited in this way by the types of data available for the incarcerated population, we chose to use Census tables that reflected the non-incarcerated population in exactly⁰⁰⁰²⁴⁴

the same way.

Data sources

We used the following data tables from the U.S. Census in our analysis:

- Population: 2010 Census, Summary File 1, Table P1.
- White population (White alone non-Hispanic population): 2010 Census, Summary File 1, Table P5.
- Black population (Black alone population): 2010 Census, Summary File 1, Table P3.
- Hispanic/Latino population: 2010 Census, Summary File 1, Table P4.
- Incarcerated population: 2010 Census, Summary File 1, Table P42.
- Incarcerated White population (White alone, not-Hispanic): 2010 Census, Summary File 1, Table PCT20I.
- Incarcerated Black population (Black alone): 2010 Census, Summary File 1, Table PCT20B.
- Incarcerated Hispanic/Latino population: 2010 Census, Summary File 1, Table PCT20H.

For the non-incarcerated populations, we simply subtracted the incarcerated populations from the total populations of the same race/ethnicity groupings.

For the ratios, we simply found the portion of the incarcerated population that was of a given race or ethnicity and divided this by the portion of a county that was of a given race or ethnicity. For example, if Black people made up of 20% of the incarcerated population, and 40% of the non-incarcerated population. The ratio of over-representation of Black people in prison would be 0.5. By contrast, if Black people made up of 80% of the incarcerated population, and 20% of the non-incarcerated population, the ratio of over-representation of Black people in prison would be 4. Recognizing that other researchers may have alternative ideas on the best way to rank and filter counties and states, we've made [all of this county-level data available](#) so that others may use this data in new ways.

Recommended readings

This report is far from the first or last word on the topic of the political, racial and economic geography of mass incarceration. Some of our favorite articles on these topics are:

- William Nagel, *The New Red Barn: A Critical Look at the Modern American Prison* (New York: The American Foundation, Inc., 1973).
- Calvin Beale, "Prisons, Population, and Jobs in Nonmetro America," *Rural Development Perspectives* 8, no. 4 (1993): 16-19.
- Calvin Beale, "Rural Prisons: An Update," *Rural Development Perspectives* 000245

11, no. 2 (1996): 25-27.

- Tracy Huling, “Building a Prison Economy in Rural America” in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, ed. Marc Maurer and Meda Chesney-Lind (New York: The New Press, 2002).
- Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*, (Berkeley: University of California Press, 2007).
- Gregory Hooks, Clayton Mosher, Shaun Genter, Thomas Rotolo, and Linda Lobao, “Revisiting the Impact of Prison Building on Job Growth: Education, Incarceration, and County-Level Employment, 1976-2004,” *Social Science Quarterly* 91, no. 1 (2010): 228-244.

Footnotes

1. The inverse, however, is not true. Zoe Gottlieb, a law student at the New York University School of Law, showed that the pattern of shifting prisoners from Black urban cities to rural White towns does not hold in some southern states. The movement of the incarcerated in North Carolina and Georgia does not involve a clear cross-race transfer. Black populations can be found in both rural and urban areas in these states, making the racial geography problem in these states less important than it is elsewhere in the United States. ↵
2. For example, in New York, 98% of prison cells are located in state Senate districts that are disproportionately white. Counting incarcerated people as residents of correctional facilities thus increases the influence of nearby, largely white, residents. ↵
3. Without the filters described in the methodology that removed some counties with smaller facilities and smaller incarcerated Black populations from the analysis, we would have reported 184 counties where incarcerated Blacks outnumber non-incarcerated Blacks. The 161 counties are in these 31 states: Arizona, Arkansas, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. ↵
4. Earlier Prison Policy Initiative research shows that 7 State House districts in Connecticut were granted significantly more representation in the state legislature because the majority of Connecticut’s prison cells (which disproportionately held Latino and Black residents) were located in these areas. The incarcerated people counted here, however, were from other parts of Connecticut. For example, in State House District 59, 60% of the Latinos counted as constituents were actually incarcerated residents of other parts of the state. ↵
5. To estimate prisons, we counted the number of Census blocks within these

counties that contain a correctional facility of at least 100 people. This methodology excluded 360 census blocks that are likely either jails or small parts of the facilities already included in our estimate. ↵

6. Without the filters described in the methodology that removed some counties with smaller facilities and smaller incarcerated Latino populations from the analysis, we would have reported 33 counties where incarcerated Latinos outnumber non-incarcerated Latinos. The 20 counties are in these 10 states: California, Colorado, Florida, Illinois, Kentucky, Missouri, New York, Pennsylvania, Virginia, and West Virginia. ↵
7. There are 126 possible combinations of race and ethnicity. ↵
8. This category would include Latinos who said they were of just one race, “Black”. ↵
9. This category includes Latinos of any race or races. ↵
10. This category includes people who said they were of just one race, “white” but who said they were not of the ethnicity Latino. ↵



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

July 20, 2015

Comment: Residence Rule and Residence Situations , 80 FR 28950 (May 20, 2015)

Dear Ms. Humes:

Demos appreciates the opportunity to submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015).

Demos is a national public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Demos has been working with state and national groups, redistricting experts, and other stakeholders for nearly a decade to support reform of the Bureau's "usual residence" rule as it applies to incarcerated persons. Demos also has served as counsel or co-counsel in many of the legal actions described in this comment.

The Bureau's existing residence rule, as it applies to incarcerated persons, results in serious distortions in how our nation's population is reflected and tabulated for redistricting purposes, and fails to reflect accurately the demographics of numerous communities throughout our country. Because of this outdated rule, some 2 million incarcerated people are being counted in the wrong place for purposes of redistricting, undermining the equal representation principle of the 14th Amendment to the U.S. Constitution. In particular, using this flawed data to draw local and state districts grants the people who happen to live near large prisons extra representation in government, at the expense of voters everywhere else in the jurisdiction.

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To end these distortions and inaccuracies – commonly referred to as “prison gerrymandering” – Dēmos urges the Bureau to revise its Residence Rule to tabulate incarcerated people at their home address, rather than at the particular facility where they happen to be present on Census day.

Dēmos has reviewed and fully endorses the factual background on this issue that is explained in the comment filed by the Prison Policy Initiative, with which we work closely on the issue of prison gerrymandering. To avoid duplication, we will not repeat that background here. Dēmos instead will use this comment letter primarily to discuss some of the insights revealed by past and recent litigation over the issue of prison gerrymandering, and how such litigation reinforces the wisdom of a change in the Census Bureau’s approach to tabulating incarcerated persons.

As background for this discussion, it is useful to refer to the U.S. Supreme Court’s 1992 decision in *Franklin v. Massachusetts*, 505 U.S. 788 (1992). In *Franklin*, the Supreme Court upheld the Census Bureau’s authority and decision to change its method of determining the residence of overseas military personnel. In that case, the Census Bureau advocated for a flexible interpretation of the usual residence rule, arguing that: “[i]t is far too late in the Nation’s history to suggest that enumeration of the population of the States must be based on a rigid rule of physical presence on the census date.”¹

In its *Franklin* ruling, the Supreme Court upheld the Census Bureau’s change in the residence rule so as to count military personnel at their “home of record”. The Court distinguished “usual residence” from mere physical presence, noting that the former “has been used broadly enough to include some element of allegiance or enduring tie to a place.” 505 U.S. at 804. *Franklin* supports the Census Bureau’s authority to change the manner in which it applies its residence rule to particular populations in response to changes in social and demographic factors affecting the rule’s application. In recent years, the Bureau’s current rules on tabulation of incarcerated persons have also proven to be outdated and to require change.

¹ Brief for the Appellants at 17, *Franklin v. Massachusetts*, 505 U.S. 788 (1992) (No. 91-1502), cited in Kirsten D. Livingston & Christopher Muller, Brennan Center for Justice at NYU School of Law, “Home” in 2010: A Report on the Feasibility of Enumerating People in Prison at Their Home Addresses in the Next Census 9 (Feb. 15, 2006), <https://www.brennancenter.org/publication/home-2010>.

Reform laws in New York and Maryland

The inadequacies of the Bureau's current counting rules with respect to incarcerated persons are reflected in the decision of four states, thus far, to reject the Bureau's population data on incarcerated persons, and to require instead that incarcerated persons be tabulated as residents of their pre-prison home addresses. New York, Maryland, California, and Delaware have all enacted legislation requiring this change.² New York and Maryland implemented this change with respect to their states' redistricting after the 2010 Census, while California and Delaware will implement this new approach in response to the 2020 Census. The experiences of Maryland and New York in implementing their reform laws for the 2010 round of have been reviewed and analyzed in a report prepared for Demos by Erika L. Wood, Professor of Law at New York Law School.³

In both New York and Maryland, the reform laws withstood legal challenges. New York's reform law was challenged on state constitutional grounds and was upheld in 2011.⁴ Demos served as co-counsel for individuals and organizations who intervened in the lawsuit to defend the reform. In Maryland, the reform law that counted incarcerated people at their home address in the post-2010 redistricting process came under a federal constitutional challenge. Dēmos, along with the ACLU of Maryland, the Maryland and Somerset County NAACP, the Howard University Civil Rights Clinic, and the NAACP Legal Defense Fund, joined in filing an amicus brief to defend the constitutionality of Maryland's reform law. The three-judge district court agreed that Maryland's law requiring reallocation of incarcerated persons to their home address was fully consistent with the U.S. Constitution. On appeal of that ruling, the U.S. Supreme Court affirmed.⁵

Grappling with prison population in court-ordered plan in Kansas

A three-judge federal district court in Kansas also had to grapple with the distortions caused by application of the usual residence rule to incarcerated persons in 2012, when the Kansas legislature failed to agree on a state legislative redistricting plan. The unique concentration of state, federal and private prisons in the Leavenworth area in Kansas posed a problem for map-

² Cal. Elec. Code § 21003; 29 Del. Code § 804A; Md. Code Ann., Election Law § 8-704; Md. Code Ann., State Gov't, § 2-2A-01; N.Y. Legis. Law § 83-m(13)(b).

³ Erika L. Wood, *Implementing Reform: How Maryland and New York Ended Prison Gerrymandering*, August 15, 2014. The report is submitted as an attachment to this Comment, and is available at <http://www.demos.org/sites/default/files/publications/implementingreform.pdf>.

⁴ *Little v. LATFOR*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011).

⁵ *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011) (three-judge court), *aff'd*, 133 S.Ct. 29 (2012).

drawers, because combining that population in one district would have meant that a substantial portion of that district would be made up of phantom constituents -- people who are from other parts of the state (or country) and who are not allowed to vote or interact with the community in any other way. The plan proposed by the Kansas House would have done precisely that, resulting in a district with 5,622 incarcerated persons and a population deviation of over 20%. This would have given every four residents of that district the political influence of 5 residents in any other district.⁶

The plan ultimately adopted by the federal district court ameliorated this problem by splitting the Leavenworth facilities among three different House districts instead of concentrating them into one.⁷ Nonetheless, this was still only a partial solution to the problem, because the federal court had no data on the actual home addresses of the persons incarcerated at the Leavenworth facilities, and thus could not assign them to their true residences.

Prison gerrymandering in Cranston, Rhode Island – a constitutional challenge

In 2014, a group of residents of Cranston, Rhode Island, along with the Rhode Island ACLU, filed a federal court challenge to an extreme instance of prison gerrymandering of the City Council and School Committee districts in Cranston, Rhode Island.⁸ Dēmos, the ACLU, and the Prison Policy Initiative are representing the plaintiffs in this case.

Following the 2010 Census, the City of Cranston redrew the districts used to elect City Council and School Committee members. Cranston houses Rhode Island’s only state prison complex, the Adult Correctional Institutions (“ACI”). The ACI contains an incarcerated population of 3,433.⁹

During the public discussions leading up to Cranston’s 2012 redistricting, the members of the City Council were confronted with the question of how and whether to count the incarcerated population of the ACI. At a public hearing on the proposed districting plan, the Council heard

⁶ Peter Wagner and Brenda Wright, “One Last Chance to Avoid Prison Gerrymandering in Kansas,” May 28, 2012, http://www.prisonersofthecensus.org/kansas/one_last_chance.pdf.

⁷ *Essex v. Kobach*, 874 F. Supp. 2d 1069 (D. Kansas 2012) (three-judge court); see also Peter Wagner, “Federal Judges save Kansas from ‘worst prison gerrymander’ award,” June 8, 2012, <http://www.prisonersofthecensus.org/news/2012/06/08/ks-court-maps/>

⁸ See *Davidson v. City of Cranston*, 42 F.Supp.3d 325 (D. R.I. 2014).

⁹ Declaration of William Cooper, *Davidson v. City of Cranston*, Civil Action No. 1:14-cv-00091-L-LDA, April 30, 2015, ¶ 23.

testimony as to the severe distortions that would be created by counting all of the inmates of the ACI in a single ward.¹⁰ In spite of this, the Cranston City Council approved a districting plan that includes the prison population in its base population count and counts the entire population of the only state correctional facility in Rhode Island in a single ward—Ward 6.

Without the incarcerated population, Ward 6 includes only 10,227 residents, compared with 13,000-14,000 persons making up each of the other five city wards. Thus, persons involuntarily incarcerated in the ACI—who are in no sense true “residents” of Ward 6—constitute almost a quarter of the population counted toward Ward 6’s population total. This results in an actual maximum population deviation among all Cranston wards of approximately 28%.¹¹

Put differently, because Ward 6 has significantly fewer actual residents than any of the other five wards, three Ward 6 constituents enjoy more representation and political power in City government than four similar people across the district line.

In response to the filing of plaintiffs’ one person, one vote challenge to the City of Cranston’s districting plan, the City filed a motion to dismiss the complaint, arguing that because the City relied upon U.S. Census Data, the inclusion of the incarcerated population is not subject to constitutional challenge. The District Court disagreed, and explained its reasoning as follows:

[T]he case now before this Court presents an alleged set of circumstances that appears to be justified by neither the principle of electoral equality nor of representational equality. Clearly, the inclusion of the ACI prison population is not advancing the principle of electoral equality because the majority of prisoners, pursuant to the State’s Constitution, cannot vote, and those who can vote are required by State law to vote by absentee ballot from their pre-incarceration address. Consequently, according to Plaintiffs, a full 25% of the population of Ward Six cannot vote in the Ward. . . .

Furthermore, if Plaintiffs’ allegations are true, the prisoners’ inclusion in Ward Six does nothing to advance the principle of representational equality. Nonvoting residents generally have a right to petition elected officials, even if they were not able to vote for them; and they may generally be presumed to have a great interest in the management

¹⁰ Deposition of Steven Brown, Davidson v. City of Cranston, Civil Action No. 1:14-cv-00091-L-LDA, February 25, 2015, 8:4-8:20.

¹¹ Supplemental Declaration of William Cooper, Davidson v. City of Cranston, Civil Action No. 1:14-cv-00091-L-LDA, June 15, 2015, Exh. A-1, Figure 5.

of their municipalities. This is true of minors, noncitizens, college students, and military and naval personnel. . . .

Based on Plaintiffs' allegations, it appears to the Court that the ACI population does not participate in any aspect of the City's civic life. According to Plaintiffs, they cannot send their children to school in Cranston; they cannot visit the City's parks; they do not pay taxes to the City; they do not drive on the City's roads. It is not clear from the information available to the Court at this juncture of the litigation that the prisoners at the ACI's inclusion in Ward Six furthers the Constitutional goals of either representational or electoral equality.¹²

The Court therefore denied the City's motion to dismiss and allowed the plaintiffs to proceed with discovery to flesh out the facts concerning the ACI population and its interaction, or lack thereof, with the community and City officials.

Subsequent discovery in *Davidson v. City of Cranston* has confirmed that the ACI population does not partake in the civic life of the community and is not represented by elected officials in Cranston in any meaningful sense. The overwhelming majority of persons incarcerated in the ACI are not domiciled residents in Ward 6, but remain residents of the communities where they lived prior to their incarceration.¹³ The median length of stay for individuals at the ACI is only 99 days.¹⁴ Incarcerated persons at the ACI did not choose where they would be incarcerated.¹⁵ They cannot voluntarily visit or patronize public or private establishments and cannot participate in the life of the Ward 6 community. Their children are not even permitted to attend Cranston public schools by claiming residence of the parent at the ACI.¹⁶ A significant proportion of ACI inmates are not eligible to vote in City or School Committee elections because they have been convicted of a felony.¹⁷ Those who can still vote typically cannot claim the ACI

¹² *Davidson v. City of Cranston*, 42 F.Supp.3d 325, 331-332(D. R.I. 2014).

¹³ Declaration of William Cooper, *Davidson v. City of Cranston*, Civil Action No. 1:14-cv-00091-L-LDA, April 30, 2015, ¶ 27; R.I. Gen. Laws § 17-1-3.1(a).

¹⁴ *Id.* ¶ 26.

¹⁵ Affidavit of Joseph A. Dinitto, *Davidson v. City of Cranston*, Civil Action No. 1:14-cv-00091-L-LDA, ¶ 4.

¹⁶ See Defendant's Response to Plaintiffs' First Set of Interrogatories, *Davidson v. City of Cranston*, Civil Action No. 1:14-cv-00091-L-LDA, Inter. No. 3.

¹⁷ Affidavit of Caitlin O'Connor, *Davidson v. City of Cranston*, Civil Action No. 1:14-cv-00091-L-LDA, ¶ 4.

as their domicile for voting purposes, but must instead vote by absentee ballot from their pre-incarceration domicile.¹⁸

Discovery in the case has now concluded, and no evidence has been produced that any elected official in Cranston has made campaign visits to the ACI to seek the electoral support of persons incarcerated there or to identify their needs and views about city governance. The City Councilor who represents Ward 6 acknowledged in his deposition that he is unable to identify any group of persons in Ward 6 that is more isolated from the rest of the community than the ACI population.¹⁹ The only correspondence prior to the lawsuit from anyone incarcerated at the ACI that the City could identify was a single letter in 2012, to which no one in city government apparently ever responded.²⁰

Cranston officials are by no means unique in this regard. One researcher conducted a survey of all of the members of the lower house of the Indiana state legislature, asking the following question:

Which inmate would you feel was more truly a part of your constituency?

- a) An inmate who is currently incarcerated in a prison located in your district, but has no other ties to your district.
- b) An inmate who is currently incarcerated in a prison in another district, but who lived in your district before being convicted and/or whose family still lives in your district.²¹

The results were uniform. “Every single one of the forty respondents who answered the question – regardless of their political party or the presence or absence of a prison in their district – chose answer (b).”²² *Id.* A similar survey of Maryland legislators also shows decisively

¹⁸ Deposition of Kimball Brace, Davidson v. City of Cranston, Civil Action No. 1:14-cv-00091-L-LDA, June 22, 2015, 87-90; R.I. Gen. Laws § 17-1-3.1(a).

¹⁹ Deposition of Michael Favicchio, Davidson v. City of Cranston, Civil Action No. 1:14-cv-00091-L-LDA, February 25, 2015, 41:16-41:20.

²⁰ Deposition of Allan Fung, Davidson v. City of Cranston, Civil Action No. 1:14-cv-00091-L-LDA, February 24, 2015, 51-52.

²¹ Taren Stinebrickner-Kauffman, Counting Matters: Prison Inmates, Population Bases, and “One Person, One Vote,” 11 Va. J. Soc. Pol’y & L. 229, 303 (2004).

²² *Id.*

that legislators view incarcerated persons as their constituents based on their home addresses, not based on the location of the prisons where they are incarcerated. The survey asked legislators who they would be more likely to consider a constituent: someone from their district who is incarcerated elsewhere, or someone who is from elsewhere but is incarcerated in their district. Again, virtually all legislators (92%) said they would be more likely to consider persons from their district who are incarcerated elsewhere to be their constituents.²³

As noted at the outset, the facts and legal rulings discussed in this Comment make up only a small part of the vast record of evidence that the Census Bureau's current residence rule, as applied to incarcerated persons, is outdated and no longer accurately reflects the population that it seeks to count. Dēmos urges the Census Bureau, in the 2020 Census, to tabulate incarcerated persons at their pre-prison home addresses.

Thank you very much for the opportunity to submit this Comment.

²³ Representative-Inmate Survey, Senate Education, Health, and Environmental Affairs Committee, Bill File: 2010 Md. S.B. 400 at 22-28. The Maryland researchers found similar results regardless of whether the legislator had a prison in his or her district. The survey also found that legislators are far more likely to receive communications from incarcerated persons whose home community is in their district than from persons who are incarcerated in a prison in the legislator's district.

Dēmos

IMPLEMENTING REFORM

*How Maryland & New York
Ended Prison Gerrymandering*

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Demos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.

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EXECUTIVE SUMMARY

In 2010 and 2011, Maryland and New York took bold steps to correct the problem known as prison gerrymandering, a problem resulting from the United States Census Bureau's practice of counting incarcerated individuals as residents of their prison cells rather than their home communities. When legislative districts are drawn based on the census numbers, incarcerated individuals become "ghost constituents" of districts that contain prisons. Although in forty-eight states incarcerated individuals cannot vote, have no ties to the local community, are often hundreds of miles from home, and spend an average of just three years in prison, they are allocated to legislative districts in a way that artificially inflates the political power of the districts where the prisons are located, while their home communities—often predominantly poor and minority—suffer the inverse effects of losing representation and voting strength for a decade.

Although the Census Bureau did not change its practice of counting incarcerated individuals in prison on a national level for the 2010 census, Maryland and New York took responsibility for correcting this injustice in their states. In doing so, these two states not only conducted an important experiment in policy innovation, but also demonstrated how various state and local agencies can work together to successfully implement new and important policy reforms to alleviate the problem of prison gerrymandering.

The efforts and coordination by state policymakers, corrections officials, data experts, technicians, planning personnel and lawyers was exemplary and should serve as an inspiration to those across the country who want to take a stand to end this injustice. As a result of their efforts and for the first time in history, the legislative and local districts in Maryland and New York are no longer distorted by prison gerrymandering.

This report provides detailed information about the specific steps Maryland and New York took to implement these new laws based on the 2010 census in conjunction with their redistricting schedules. It details the challenges each state faced as the first in the country to implement this reform—including legal disputes and data deficiencies—and the steps taken to meet and overcome those challenges. It also provides concrete recommendations, based on the experience and expertise of the actors in each state, to assist other jurisdictions in permanently ending prison gerrymandering.

INTRODUCTION

The Problem

Once every ten years, the United States conducts the decennial census to determine the country's population. The U.S. Constitution requires this enumeration in order to determine the apportionment for the U.S. House of Representatives, but today census data are used for wide ranging calculations, research and study, including determining apportionment for state legislative and congressional districts and local political races on the county, city and town level.

Planners of the first U.S. census in 1790 established the concept of "usual residency" to determine where people would be counted on "Census Day"—April 1 of the decennial year. Usual residence was defined as the place where the person lives and sleeps most of the time.¹ As a consequence of the usual residency rule, people who are incarcerated on Census Day are counted as residents of the correctional facility because the census has determined that is where they "live and sleep most of the time."

Once the census is complete, states and localities use the data to draw legislative districts for Congress, the state legislature and local government. As local populations shift and move, congressional, state, county and municipal legislative districts must be redrawn to assure that each district has roughly equal population. This in turn protects the principle of "one person, one vote," assuring that every voter has equal representation in our government.²

Because the census data count people in prison as residents of the prison, incarcerated individuals are grouped together with non-incarcerated individuals living in the surrounding community to form legislative districts. However, the vast majority of incarcerated individuals cannot vote while in prison and they have no ties to the local community beyond being sent there by the Department of Corrections.³ 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. This phenomenon is called "prison gerrymandering."

Over the last four decades incarceration rates in our country have skyrocketed, increasing by 400% since 1970.⁴ From 1925 to 1970, the incarceration rate remained remarkably stable, hovering around

110 per 100,000 of the population.⁵ But beginning in the 1970s and increasing dramatically through the next few decades, the nation enacted stiffer sentencing and “tough-on-crime” laws. The result is that today there are approximately 1.6 million people in state and federal prison in the United States, eight times as many as there were in 1970.⁶ The census applying the “usual residency” rule throughout this period results in more than a million incarcerated individuals in our country being deemed residents of their prison cells rather than their home communities to which most will return in less than three years.⁷

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. Every person counted in prison on Census Day is one fewer resident counted in the home community, which is often disproportionately urban, poor and minority. 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 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.

Prison gerrymandering has other troubling implications. A legislator whose district depends on the people incarcerated in a correctional facility to meet its population requirement has every incentive to keep that prison not just open, but filled to capacity. This incentive may influence the legislator’s positions on criminal justice policies and sentencing laws. For example, two of the most vocal opponents to reforming New York’s stiff drug sentencing laws were Republican senators whose districts held more than 17% of the state’s incarcerated population;⁸ nearly a third of the individuals in one of these districts were incarcerated on drug related offenses.⁹

Two States Illustrating the Problem: Maryland and New York

Maryland

The average number of people incarcerated in Maryland state correctional facilities is approximately 22,000.¹⁰ Sixty-eight percent of incarcerated individuals come from Baltimore City, but approximately 85% of Maryland’s 28 correctional facilities are located in rural or suburban communities outside of Baltimore.¹¹ The average

distance of each facility from Baltimore is 60 miles, and five facilities are more than 100 miles away;¹² this in a state that is only 12,000 square miles. More than 98% of people incarcerated in Maryland will be released, and most after just a few years.¹³ The average length of time served in Maryland state prisons is only 2.5 years.¹⁴

This prison geography creates a significant political imbalance. For example, in Somerset County, a large prison was 64% of the county's First Commission District, giving each resident in that district 2.7 times as much influence as residents in other county districts.¹⁵ Similarly, 18% of state delegate District 2B in Washington County was incarcerated, giving every group of four state District 2B residents as much political influence as five residents elsewhere in the state.¹⁶ Of the 5,268 African-Americans in state District 2B, 90% are incarcerated.¹⁷

New York

For decades, the distortion created by prison gerrymandering was particularly severe in New York. Approximately three-quarters of New York's prisons are located more than 100 miles from New York City; in fact, more than 60% are located over 200 miles from the City, and over a third are located more than 300 miles from the City.¹⁸ The Prison Policy Initiative's analysis of the 2000 redistricting cycle found that 66% of New York State's prisoners were from New York City,¹⁹ but 91% were incarcerated upstate.²⁰ While the state's prison population was 77% African-American or Latino, 98% of the state's prison cells were located in disproportionately white state Senate districts.²¹ Moreover, although the prisons themselves look permanent, the people confined there are quite temporary. According to New York corrections data, "the median time that an incarcerated person has been at his or her current facility is just over [seven] months."²²

The policy of basing legislative districts on prison populations creates an imbalance not just between upstate and downstate communities, but also between upstate communities with prisons and upstate communities without prisons. A district that includes a prison has inflated voting strength compared to any other district without a prison, including one right next door.

For example, in the districts drawn after the 2000 census, New York Senate District 45 gained extra influence by using almost 13,000 incarcerated people to inflate its population, giving residents of the district more influence than residents of other districts, including neighboring rural District 43 which contained no state

prisons.²³ The small upstate city of Rome had a city council ward that was 50% incarcerated, giving the residents of that ward twice the influence over city affairs as residents in other parts of the city.²⁴

During the 2000 redistricting cycle in New York, the New York Senate interpreted the redistricting formula provided by the New York State Constitution to require 62 senate districts, each of which should have held approximately 306,000 people.²⁵ According to the Supreme Court's one-person-one-vote principle, each district should have equal population so that each resident will have the same electoral power as any other resident elsewhere in the state. A 10% total deviation from absolute population equality (plus or minus 5% for any individual district) is generally permissible for state legislative districts. But drawing the new senate districts based on Census Bureau data that allocate people in prison as "residents" of the prison location meant that several districts in New York were padded with individuals who were not considered legal residents for any other purpose, and who could not vote locally.²⁶ Indeed, while nominally within the permitted 10% deviation, seven New York state senate districts drawn after the 2000 census met minimum population requirements only by including incarcerated people who were residents of other communities.²⁷

New York Under-Populated Senate Districts after 2000 Redistricting²⁵

Senate District	Senator	Type	Reported Population	Prisoners to remove	Corrected Population	Corrected Deviation
45	Ronald Stafford	Rural	299,603	12,989	286,614	-6.36%
47	Raymond Meier	Rural	291,303	3,563	287,740	-5.99%
48	James Wright	Rural	290,925	5,291	285,634	-6.68%
49	Nancy L. Hoffman	Rural	291,303	2,881	288,422	-5.77%
51	James Seward	Rural	291,482	3,108	288,374	-5.78%
54	Michael Nozzolio	Rural	291,303	3,551	287,752	-5.99%
59	Dale Volker	Rural	294,256	8,951	285,305	-6.79%

The Solutions

Solutions at the National Level

The most obvious solution to the inequity and imbalance caused by prison gerrymandering is for the Census Bureau to count people who are in prison as residents of their home communities, rather than where they are incarcerated. By allocating people in prison to their home communities, the Census Bureau would provide accurate population data that states and localities could use to design fair, accountable districts. Recently, more than 200 organizations signed a letter urging the Census Bureau to conduct the research necessary to ensure that the 2020 census counts incarcerated people at their home addresses.²⁹ In addition, the Census Bureau's Center for Survey Measurement released an ethnographic study of the 2010 count of the jail and prison group quarters population, which includes a recommendation that the Census Bureau create a self-enumeration pilot study to determine the utility of prison inmates completing their own census forms.³⁰

In 2011, for the first time, the Census Bureau released the Advanced Group Quarters data to the states earlier in the redistricting cycle. Traditionally, the first counts of people in "group quarters"—which include prisons—were not available until the summer of the year after the census, too late to be useful for redistricting in most states. In 2000, even states that were aware of the problems caused by prison gerrymandering were unable to correct the data because they did not have access to the group quarters data at the time they were apportioning their residents for districts.

In response to requests by advocates and the Congressional Subcommittee on Information Policy, census and National Archives, the Census Bureau released its group quarters data in April 2011, significantly earlier than it had in previous decades. While this data did not include home address information, its earlier release allowed states and localities that were interested in adjusting the incarcerated population to have access to crucial data necessary to do so. The Census Bureau explained, "This decade we are releasing early counts of prisoners...so that states can leave the prisoners counted where the prisons are, delete them from the redistricting formulas, or assign them to some other locale."³¹

State Solutions

The early release of the Group Quarters data made it easier for more states and localities to avoid prison gerrymandering when redistricting. Legislation to end prison gerrymandering has been introduced in 17 states since the start of 2010,³² and over 200 counties and municipalities now avoid padding local government districts with incarcerated populations.³³

In the last few years, California, Delaware, Maryland and New York passed laws to reallocate people in prison back to their home communities.³⁴ California and Delaware will implement their new laws after the 2020 census, but Maryland and New York were able to implement their new laws in time for the 2010 redistricting cycle. Accordingly, the experience of Maryland and New York in implementing their reform laws after the 2010 census is examined in depth below.

Summary Comparison of New York and Maryland Reform Laws³⁵

	New York	Maryland
Applies to state legislative districts?	YES	YES
Applies to congressional districts?	NO	YES
Applies to local districts?	YES	YES
Applies to state prisons?	YES	YES
Applies to federal prisons?	YES for subtraction NO for reallocation	YES
Specifies implementing agency?	YES	NO
Directs correctional system to provide specific data?	YES	NO
Out-of-state and unknown addresses allocated?	NO—excluded from dataset	YES—allocated to correctional facility

I. MARYLAND'S SOLUTION: THE NO REPRESENTATION WITHOUT POPULATION ACT

In April 2010, Maryland's governor signed into law the No Representation without Population Act, H.B. 496.³⁶ The No Representation without Population Act required that the population count used to create legislative districts for the General Assembly, counties and municipalities, as well as for the U.S. House of Representatives, not include individuals incarcerated in state or federal correctional facilities or those individuals who were not residents of the state before their incarceration.³⁷ The Act further required that incarcerated individuals be allocated to their last known residence before incarceration if the individuals were residents of the state. Maryland's law was broader than New York's law, in that it applied to both state and federal prisons and applied to congressional as well as state and local legislative districts.

1. Implementation of Maryland's Reform Law

a. State Redistricting Law

Under the Maryland Constitution, the governor must prepare a plan for state legislative districts and present it to the President of the Senate and the Speaker of the House of Delegates.³⁸ The president and the speaker must introduce the governor's plan as a joint resolution no later than the first day of the regular legislative session in the second year following the census.³⁹ If a redistricting plan is adopted by the 45th day after the opening of the legislative session, that plan becomes law.⁴⁰ If no plan is adopted by the 45th day, then the governor's plan becomes law.⁴¹ Maryland law provides no specific guidance on the procedure for enacting a plan for congressional districts; the plan for congressional districts is introduced as a regular bill that must be passed by both houses and signed by the governor, subject to veto power.⁴²

The Governor's Redistricting Advisory Committee (GRAC) reviews redistricting plans submitted by outside groups and makes district plan recommendations to the governor.⁴³ The Maryland Department of Planning (MDP) provides staff support to the governor's office and GRAC, preparing maps and data, producing statistical data reports, and providing communications and outreach needed to develop redistricting plans.⁴⁴

b. Agency in Charge

The first step in implementing Maryland's No Representation without Population Act was to determine who would be responsible for the implementation since the legislation did not specify the agency that would be in charge of reallocating individuals to their home address. Because MDP had provided support for previous re-districting cycles and already employed a technical team of data and geocoding experts, it was determined that MDP, with the assistance of the Department of Legislative Services (DLS) and the Department of Public Safety and Correctional Services (DPSCS), would conduct the geocoding. There was also legal authority for MDP to act as the implementing agency: (1) the State Finance and Procurement Article of Maryland's code designates MDP as the staff agency of the governor for planning matters;⁴⁵ and (2) MDP has a Memorandum of Understanding with the U.S. Census Bureau designating it as Maryland's census agency.⁴⁶

c. Regulations

MDP proposed draft regulations that would provide additional guidance and details on how to implement the new law. For example, the law did not define "last known residence" or provide guidance on the steps necessary to geocode the data. "Geocoding" is the process of locating geographic coordinates from data such as a street address. Geocoding takes an address, matches it to a street and specific segment (usually a "block"), and then inserts the position of the address within that segment.⁴⁷ Once the geographic coordinates are located, the address can be mapped and entered into a Geographic Information System (GIS) to allow technical staff and policymakers to draw legislative districts.

The redistricting timeline did not allow MDP the approximately six months it usually takes to adopt regulations in Maryland, so it adopted regulations on an expedited basis to allow it to adjust the data in time for the state's redistricting deadline. Although the regulations were adopted through an expedited schedule, MDP thoroughly vetted the regulations, seeking input from DLS, the Attorney General's office, DPSCS, and MDP technical staff.

The regulations adopted by MDP filled in some additional detail to help the technical staff determine how to allocate incarcerated individuals. For example, the regulations clarified that "incarcerated individuals" included only those detained in state and federal correctional facilities, and not local (i.e., county or city) facilities, or those whose last known address was out of state.⁴⁸ They also

provided some additional guidance on how to geocode the last known residence of incarcerated individuals, requiring the department to make “reasonable efforts” to correct any last known address that was “ungeocodable”, including: verifying and correcting the zip code against the U.S. Postal Service zip code locator; correcting misspellings of city and street names; correcting or adding street suffixes against the postal service zip code locator, correcting street direction using the US postal service zip code locator, removing extra information from the address field, removing the apartment number and removing any decimal points in the address.⁴⁹

The regulations further provided that if, after these reasonable efforts, MDP was still unable to geocode the last known address for an incarcerated individual by February 11, 2011, then the last known address “shall be the state or federal correctional facility where the individual is incarcerated.”⁵⁰ This created another difference between the Maryland and New York laws: in New York, a person with an unknown address was simply not allocated to any legislative district, while in Maryland the person would be allocated back to the district that contains the prison.

Finally, the regulations provide examples of “ungeocodable” addresses, including: no address or an address of “homeless,” address of a correctional facility, rural route address, post office box, address with no house number, addresses with multiple errors or no street suffix, and addresses that are incorrect or not included in the census bureau’s TIGER street centerline file used to geocode addresses.⁵¹

d. Federal Prison Data

Implementation of the statutory provision to reallocate people in federal correctional facilities met with some resistance from the Federal Bureau of Prisons (BOP). In July 2010, MDP requested from the BOP an electronic database containing a unique prisoner identifying number and the address of the last known residence before incarceration for every inmate housed in the one federal prison located in Maryland on April 1, 2010.⁵² The BOP would not release the information, citing the Privacy Act of 1974,⁵³ and explaining that “the release of the requested information could constitute an unwarranted invasion of the individuals’ personal privacy.”⁵⁴ Despite two appeals, the BOP refused to release the information.

MDP determined the number of people in the federal prison by examining the 2010 census block level data for the facility and concluded that 1,514 federal prisoners were in these census blocks.⁵⁵ MDP also examined the weekly population report from the Federal

Bureau of Prisons available on the BOP's website.⁵⁶ In accordance with the regulations, the federal inmates remained allocated to the census blocks where the correctional facility was located.⁵⁷

e. State Prison Data

MDP and DLS reached out to the Maryland Department of Public Safety and Correctional Services (DPSCS) to request inmate address information after passage of the Act. DPSCS formed a team consisting of case managers at each facility as well as database technicians to work on collecting and organizing the necessary data.

To gather the data required by the No Representation without Population Act, DPSCS first consulted its own database—the Offender Based State Corrections Information System (OBSCIS)—that maintains demographic and other information concerning inmates confined in Maryland correctional facilities.⁵⁸ The OBSCIS system was used to determine which inmates were confined in Maryland correctional facilities on Census Day, April 1, 2010. The list of inmates was then separated into two additional lists: one for those listed as Maryland residents and one for those listed as out-of-state residents.⁵⁹ These lists were forwarded to the correctional facilities where the inmates were incarcerated so the data could be reviewed for accuracy and so that missing address fields could be completed and inaccurate fields could be corrected.⁶⁰ Each correctional facility then completed and corrected the missing and inaccurate address fields, relying on three sources: (1) an interview with the inmate and sometimes his or her family; (2) the pre-sentence investigation document; or (3) the correctional facility intake form.⁶¹ The corrected information was then entered into one database that was provided to MDP.

On February 4, 2011, MDP received a computer database from DPSCS containing address records for 22,064 inmates who were under the supervision of the Division of Corrections on April 1, 2010, Census Day.⁶² There were some inconsistencies in the way DPSCS categorized and recorded data regarding inmates' race, and the categories used by the U.S. census. DPSCS collected only five categories of race: White, Black, American Indian, Asian and "unknown."⁶³ Notably, the DPSCS data did not have a category for Hispanic or Latino, "two or more" races, Native Hawaiian/Pacific Islander, or the "other race category" as used in the census. Because of the inconsistency in the demographic categories, MDP analyzed the proposed districts with unadjusted numbers for Hispanics and certain racial groups. MDP concluded that because of the small

number of people involved, the inconsistency in data was not statistically significant.⁶⁴

f. Geocoding and Reallocation

Once the address data were received, the implementation task was handed over to the MDP data experts for geocoding. The first task was to examine the data to assure that only addresses approved by the statute were used in the reallocation process. MDP examined the data and removed addresses for pretrial detainees, people in juvenile facilities and those serving home detention, none of which were “correctional facilities” under the statute. During this process, MDP also removed 1,321 out-of-state addresses that were clearly excluded by the statute, and missing or invalid addresses such as “homeless” or post office boxes. MDP staff labeled these entries “discarded addresses”—3,358 in total—and removed them from the database.⁶⁵

Once the “discarded addresses” were removed, the geocoders were left with 18,706 “assumed geocodable” records.⁶⁶ MDP then conducted a second review of this remaining data to identify incomplete or incorrect address fields.⁶⁷ Staff first focused on easily correctable items, such as misspelled or abbreviated city names or incorrect abbreviations for extensions. They then turned to making other corrections, such as missing or incorrect zip codes and incorrect street names, which took a bit more research. To correct these fields, MDP consulted maps of municipal boundaries and zip codes, census TIGER files and MDiMap, an online mapping site maintained by the state of Maryland. In the end, only 12% (2,337) of the records required some type of correction.⁶⁸

After making these corrections, MDP geocoded the remaining data using ESRI GIS software and the U.S. Census Bureau’s 2010 TIGER/line street file for Maryland as the basis for the address locator. The database produced 17,140 addresses geocoded to the person’s last known residence, representing 77.7% of the original 22,064 in the database of prisoners received from DPSCS.⁶⁹ A total of 6.0% of the original prisoners had been identified as out-of-state residents and successfully removed from the redistricting dataset under the statute, bringing the successful reallocation to 83.7%.⁷⁰

g. Adjustment

In late February 2011, once MDP had completed its geocoding, it transferred the data to DLS. DLS had contracted with the Caliper Corporation, developer of Maptitude (a software program widely used to create legislative districts) to assign the geocoded incarcerat-

ed individuals to the appropriate census blocks. Using its Maptitude software, Caliper first removed the incarcerated individuals from the census blocks where the correctional facilities were located.⁷³ Caliper then assigned each geocoded address to its appropriate census block. Caliper generated tracts and blocks and determined the increase and decrease in population.⁷² This process also served as an independent review of MDP's geocoding.

MDP's and DLS's timeframe for adjusting the census data was informed in large part by the City of Baltimore's early redistricting deadline. Under the City Charter, the Mayor must present a redistricting plan to the City Council not later than the first day of February of the first municipal election year following the census.⁷³ The Baltimore City Council then has sixty days to adopt or amend the plan.⁷⁴ Because Baltimore neighborhoods were so heavily impacted by prison gerrymandering, it was important for the adjusted data to be available for the city's redistricting. MDP released its final adjusted data on March 22, 2011, in time for Baltimore to redraw its City Council districts.

h. Public Education

Once the geocoding was complete and MDP had generated the adjusted data, MDP took affirmative steps to ensure that counties and municipalities used the adjusted data, not just the census PL 94-171 redistricting data they had used in the past. In order to get the word out across the state concerning the adjusted data, the Attorney General's Office participated in a Bar Association training for local and county attorneys, and MDP informed county and municipal planners. The MDP geocoding staff also did outreach to the local GIS community. MDP issued a press release when the adjusted data was certified and the adjusted data was posted to MDP's website for download.

2. A Legal Challenge: *Fletcher v. Lamone*

On November 10, 2011, a lawsuit financed by the Legacy Foundation,⁷⁵ a conservative Iowa-based advocacy group, was filed in U.S. District Court for Maryland.⁷⁶ Among other redistricting claims, the plaintiffs argued that Maryland's congressional districts violated the one-person-one-vote principle because they were based on the adjusted population data and not the numbers as they were reported by the U.S. census.⁷⁷ Plaintiffs also argued that the districts discriminated against racial minorities because the number of inmates who were identified as having a last known address outside the state of

Maryland, and thus were not reallocated to their home districts, were disproportionately African-American.⁷⁸ Specifically, plaintiffs argued that “omitting certain persons residing in state prisons whose last known addresses are from outside the State of Maryland and who are disproportionately minority” amounted to intentional racial discrimination in violation of the Fourteenth and Fifteenth Amendments.⁷⁹

The state was represented by the Attorney General’s redistricting team which consisted of attorneys representing the General Assembly, MDP and the Civil Litigation Unit. In addition, a number of civil rights and voting rights groups appeared as *amici curiae* to defend the constitutionality of the new law, including Howard University Law School’s Civil Rights Clinic, the Maryland NAACP, the NAACP Legal Defense and Educational Fund, the Maryland ACLU, Demos and the Prison Policy Initiative.⁸⁰ *Amici* argued that the Maryland legislature determined that the new law was necessary to “correct the striking inequity that existed previously due to the crediting of incarcerated people to electoral districts where they cannot vote, where they have no community ties, and where they are not considered residents for any other purpose other than the census.”⁸¹

On December 23, 2011, a three-judge panel granted the state’s motion for summary judgment, finding the No Population without Representation law to be constitutional and MDP’s implementation of the law to be proper and nondiscriminatory.⁸² In a lengthy opinion, the court carefully weighed all of plaintiffs’ arguments, examined MDP’s implementation of the law, and found that a state may choose to adjust census data, as long as the adjustment is thoroughly documented and “applied in a nonarbitrary fashion.”⁸³ The court also noted that Maryland’s adjustment of census data during redistricting did not conflict with the practices of the Census Bureau, explaining that according to the Bureau, “prisoners are counted where they are incarcerated for pragmatic and administrative reasons, not legal ones.”⁸⁴

The court concluded that Maryland’s adjustment to the census data was made in the systematic manner demanded by the United States Supreme Court. Citing the regulations, the court noted that MDP “undertook and documented a multistep process” to identify the last known address of all individuals in Maryland’s prisons.⁸⁵ Finally, the court found no evidence to support plaintiffs’ claim that the adjustment resulted from intentional racial discrimination. The court was careful to explain: “Our review of the record reveals

no evidence that intentional racial classifications were the moving force behind the passage of this Act. In fact, the evidence before us points to precisely the opposite conclusion.”⁸⁶ Relying on the amicus briefs filed by civil and voting rights organizations, the court acknowledged that the act was “the product of years of work by groups dedicated to advancing the interests of minorities.”⁸⁷ The United States Supreme Court affirmed the judgment on June 25, 2012.⁸⁸ Consequently, Maryland’s law and the 2011 adjustment were upheld.

Maryland Timeline

April 13, 2010	No Representation without Population Act signed into law
February 9, 2011	Census 2010 redistricting population counts (P.L. 94-171) received from U.S. Census Bureau
March 22, 2011	MDP releases adjusted population per No Representation without Population Act
May 2, 2011	Precinct population counts adjusted per No Representation without Population Act released
October 4, 2011	GRAC submits recommended congressional redistricting plan to governor
October 17, 2011	Special legislative session called to adopt congressional redistricting plan
October 20, 2011	Maryland 2011 congressional districts adopted
December 16, 2011	GRAC submits recommended state legislative redistricting plan to governor
December 23, 2011	<i>Fletcher v. Lamone</i> dismissed; No Representation without Population Act upheld by U.S. District Court
January 11, 2012	Governor submits state legislative redistricting plan to Senate President and Speaker of the House of Delegates
February 24, 2012	New state legislative district plan becomes law
November 6, 2012	Congressional district plan approved by ballot referendum

II. NEW YORK'S SOLUTION: PART XX

On August 11, 2010, Part XX of Chapter 57 of the Laws of 2010 (Part XX) was signed into law to fix the skew created by allocating New York's prison populations to the districts where they are incarcerated. Part XX directed the New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR) to reallocate people in correctional facilities back to their home communities for purposes of drawing state and local districts.⁸⁹

Part XX directed the New York State Department of Corrections and Community Supervision (DOCCS) to deliver to LATFOR by September 1 of the census year, the following information for each person in its custody on Census Day: (1) a unique identifier, not including the name; (2) the address of the correctional facility in which the person was incarcerated; (3) the residential address of the person prior to incarceration; and (4) any additional information specified by LATFOR.⁹⁰ Part XX also required LATFOR, upon receipt of this information from DOCCS, to determine the census block corresponding to the street address of each incarcerated person's residential address prior to incarceration and the census block corresponding to the address of the correctional facility.⁹¹ The new law then directs LATFOR to create a database in which "all incarcerated persons shall be . . . allocated for redistricting purposes, such that each geographic unit reflects incarcerated populations at their respective residential addresses prior to incarceration rather than at the addresses of [the] correctional facilities."⁹² Part XX requires LATFOR to maintain the amended population dataset and use the dataset to draw state assembly and senate districts.⁹³

Part XX addressed the appropriate population base for local (county, city, town and village) redistricting by amending the Municipal Home Rule Law to clarify that for purposes of establishing the population base requirements for local redistricting plans, "no person shall be deemed to have gained or lost a residence, or to have become a resident of a local government . . . by reason of being subject to the jurisdiction of the department of corrections."⁹⁴ The new law also required LATFOR to make the adjusted dataset available to local governments.⁹⁵

Under Part XX, all individuals with out-of-state or unknown pre-incarceration addresses, and all individuals incarcerated in federal correctional facilities are "counted at an address unknown" and not included in the redistricting dataset.⁹⁶ Effectively this means that these individuals would be "subtracted" from the prison district,

but not reallocated to a home district. The choice to not reallocate those in federal prisons reflected concerns about the privacy laws that govern federal facilities and the lack of state authority over those in federal custody. The Privacy Act of 1974 regulates what personal information the federal government can collect about private individuals and how that information can be used.⁹⁷ While there is concern that federal prisons may be restricted from disclosing personal records, even if the records do not include personally identifiable information, it is also clear that at least one state—Kansas—has a long history of successful cooperation between federal and state agencies. Kansas reallocates people living on military bases for redistricting, and the U.S. military has worked with the state to collect and share home residence data for people living on military bases in the state.⁹⁸

1. A Legal Challenge: *Little v. LATFOR*

On April 4, 2011, a group of upstate Republican New York State senators—all of whom represented districts that included at least one New York state prison—and a handful of voters who lived in those districts, filed a lawsuit against LATFOR and DOCCS arguing that Part XX was unconstitutional and asking the court to enjoin LATFOR and DOCCS from implementing the new law.⁹⁹ Plaintiffs argued that the new law violated Article III, section 4 of the New York State Constitution which provides that the federal census “shall be controlling as to the number of inhabitants in the state or any part thereof for the purpose of apportionment of members of the assembly and adjustment or alteration of senate and assembly Districts.”¹⁰⁰ The Complaint alleged that Part XX “creat[ed] a structural change by an artificial realignment of political power in the State” in violation of Article III, section 4, which, plaintiffs claimed, required the census to be “controlling” for apportionment purposes.¹⁰¹

Numerous voting rights and civil rights groups that had advocated for the reforms in Part XX intervened on behalf of the state defendants, representing voters from both upstate and downstate communities. The voters who intervened represented different interests, including: (1) those who lived in districts with high numbers of incarcerated individuals; (2) those who lived in both upstate and downstate counties that did not contain a prison; and (3) those who lived in a county where a prison was located but whose vote would nevertheless be diluted if the lawsuit prevailed because their local

county legislative districts did not contain a prison.¹⁰²

On December 1, 2011, on cross motions for summary judgment, the New York State Supreme Court in Albany County upheld Part XX.¹⁰³ Relying in part on the new census policy of releasing the Group Quarters data early, the court found that plaintiffs had not demonstrated that Part XX “rendered the data provided by the Census Bureau to be anything less than ‘controlling’ in the redistricting process.”¹⁰⁴ The court further explained that there was nothing in the record indicating that people in prison “have any actual permanency in these locations or have an intent to remain. . . . [P]laintiffs have not proffered evidence that inmates have substantial ties to the communities in which they are involuntarily and temporarily located.”¹⁰⁵

Plaintiffs’ attempt to appeal directly to the New York Court of Appeals was denied, and they chose not to appeal the Supreme Court’s decision to the mid-level appellate court. As a result, New York’s law was upheld and successfully implemented in time for districts to be drawn before the 2012 state-wide elections, as required by the New York Constitution.

2. Implementation of New York’s Reform Law

a. State Redistricting Law

The New York legislature has primary responsibility for drawing the state’s congressional and state legislative district lines.¹⁰⁶ The New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR), a six-member advisory commission comprised of members appointed by the Senate and Assembly majority and minority leaders, provides technical assistance to the legislature.¹⁰⁷ While LATFOR recommends congressional and state legislative plans to the legislature, the legislature is free to amend or even ignore its proposals.¹⁰⁸ New York law does not impose a deadline for drawing district lines, but in practice districts must be final prior to the filing deadlines for the next primary election.

b. State Prison Data

On August 26, 2010, the LATFOR co-chairs sent a letter to the New York Department of Corrections and Community Supervision (DOCCS) requesting the following information for each incarcerated person subject to DOCCS jurisdiction on April 1, 2010:

1. A unique identifier, not including the name, for each incarcerated person;
2. The street address of the correctional facility in which such persons were incarcerated at the time of the census;
3. The residential address of such persons prior to incarceration;
4. The race, Hispanic origin, age and gender of such persons; and
5. Any additional information as the task force may specify pursuant to law.¹⁰⁹

DOCCS provided the data in September 2010. The data included a list of addresses for the people held in DOCCS custody on April 1, 2010. The spreadsheet included 58,237 rows, one per inmate, with each inmate denoted by a unique identification number.¹¹⁰ Each column of the spreadsheet was devoted to a different category of personal information associated with each inmate, including the county of conviction and the correctional facility where the inmate was incarcerated on April 1, 2010.¹¹¹ The data included residential addresses prior to incarceration for each inmate including the legal residence address, address at the time of arrest, and addresses of parents, spouses and nearest relative.¹¹² The legal residence address was presented in four address fields: street, city, county and state.¹¹³

c. Voting Rights Act Preclearance

Because Part XX constituted a change to voting laws and procedures, New York had to submit the law to the United States Department of Justice (DOJ) for “preclearance” under Section 5 of the Voting Rights Act. Because of past discrimination against language minorities, Bronx, Kings and New York counties were “covered jurisdictions” under Section 5 required to seek DOJ approval before implementing any changes to their voting laws or procedures.¹¹⁴

The New York Attorney General submitted the law for preclearance on March 8, 2011. The preclearance submission explained that Part XX would “directly benefit” minority voters protected by Section 5 because those incarcerated in New York state prisons “originate predominantly from urban districts . . . subject to § 5, and are incarcerated in non-covered jurisdictions.”¹¹⁵ The submission

concluded that Part XX would “appropriately adjust the weight of the vote of members of protected classes in New York’s three § 5 counties” The DOJ granted preclearance on May 9, 2011, finding that the state had carried its burden of establishing that the reform law was free of any discriminatory effect or intent, and allowing New York to move forward with implementing the new law in time for the 2011 redistricting cycle.¹¹⁶

d. Geocoding and Reallocation

Part XX specifically directed LATFOR to reallocate incarcerated individuals back to their prior residential addresses for redistricting purposes; so unlike in Maryland, there was no question about which agency was in charge of implementing the new law. Nevertheless, because of the political nature of LATFOR and its composition consisting of members of the legislature, legislative staff and agency staff representing both political parties, there was some delay in coordinating implementation. New York State Assembly staff took the initial steps to analyze the data and implement the new law.

The first step in the adjustment process was to “subtract” the prison population from the districts where the prisons were located. There were 68 DOCCS facilities in operation on April 1, 2010 in addition to two federal correctional facilities.¹¹⁷ The Census Bureau had assigned state and federal prisons to a total of 75 blocks in New York State.¹¹⁸ LATFOR staff used the addresses of DOCCS facilities and the two federal facilities to identify the correctional facilities on the 75 blocks identified by the Census Bureau.¹¹⁹ Staff then used the DOCCS dataset, which enumerated 58,237 inmates and the name of the facility in which each inmate was incarcerated, to calculate the total number of people incarcerated in each correctional facility on each census block.¹²⁰ The Task Force identified 2,471 inmates incarcerated in federal prisons located in New York on April 1, 2010, bringing the total prison population to 60,708.¹²¹ The total inmate population was then deducted from the total group quarters adult correction population to arrive at the adjusted population totals for these census blocks.¹²²

Next LATFOR staff sorted the DOCCS data to separate records with unambiguously identifiable legal residence addresses (32,276 records), those with out-of-state residences (2,433 records) and those with no usable address (1,276 records).¹²³ Records in these last categories, out-of-state and unusable addresses, were deleted from the dataset, leaving a balance of 22,252 records that required some correction or clarification.¹²⁴ Within this balance of 22,252 records,

staff identified 14,154 records that were easily corrected by fixing obvious spelling and spacing errors and replacing abbreviations with complete proper names.¹²⁵

The remaining 8,098 legal residence addresses were incomplete or absent, prompting staff to supplement the legal residence address with information from the additional five addresses provided by DOCCS.¹²⁶ Staff developed strict protocols for clarifying the addresses provided.

FIRST PROTOCOL: Record all edits.¹²⁷ LATFOR staff preserved the original dataset in the form it was received from DOCCS. Staff created a copy of the dataset and all modifications were made in the copy, not in the original. This allowed for a clear comparison between the original data and the data that included changes.

SECOND PROTOCOL: Create numeric codes to capture the nature of each change.¹²⁸ The DOCCS data included a number of abbreviations, but the geocoding software required the full and correct spelling of all streets, directional prefixes, cities and states. Numeric codes were created to capture the complete and exact dimensions of these changes. For example, code (1) indicated a change to abbreviation and spelling and code (2) indicated a change in spacing.¹²⁹ A total of ten codes were developed to represent the different types of alterations made to any of the fields comprising the legal residence address.

THIRD PROTOCOL: Create a set of alphabetical codes to identify sources of supplemental information.¹³⁰ When the information included in the Legal Residence Address field was incomplete, LATFOR staff examined information provided in the other five addresses to determine if there was information that could be used to complete the Legal Residence Address. If the supplemental information was used to construct a “final” legal residence address, a code was assigned to indicate from which field the supplemental information was used. For example, code A indicated that information came from the “address at arrest” field; code B indicated that the information came from the “father’s address” field.¹³¹

Once LATFOR staff completed its work correcting and clarifying the inmate address records, each record was assigned latitude and longitude coordinates by the geocoding software MapMarker.¹³² On the first pass, 30,932 addresses were matched.¹³³ For the records that were not matched, the geocoding software produced an explanation describing the error.

Next, LATFOR staff initiated the second phase, using Google Maps to enhance and clarify the ungeocoded addresses in order to provide additional information to allow geocoding with a higher level of certainty.¹³⁴ Examples of errors that were fixed in this phase include a misspelled city or street name, incorrect identification of the street type (“avenue” instead of “street”), or an incorrect or absent directional prefix. Following its previous model, staff created a new set of protocols and codes, ensuring that all edits were carefully noted and the source clearly identified.

Once these corrections were made, the data were once again passed through the geocoding software. The software was able to assign geographic coordinates for the addresses of 46,003 incarcerated individuals who could then be properly allocated back to their home communities.¹³⁵ The remainder of the addresses were for people who resided in other states (whom the statute required to be removed from the redistricting data), or individuals for whom the information on file wasn't sufficiently detailed to allow them to be reallocated. New York State's reallocation, while imperfect, was a marked step forward compared to the previous decade when all incarcerated people were allocated to the correctional facility where they were incarcerated on April 1 of the census year.

e. Adjustment

To adjust the census data, LATFOR staff created three statewide block-level files, which included the necessary demographic categories to accommodate the adjusted data and to make the DOCCS data compatible with the PL 94-171 census redistricting data. The first file included all of the geocoded prisoner home address and racial/ethnic information from DOCCS.¹³⁶ The second file included the block-level prison population and aggregated racial and ethnic information.¹³⁷ The third file included federal prisons using the census Advanced Group Quarters data.¹³⁸

Using these files, the adjusted redistricting data were created by taking the total census redistricting data for the state, adding the geocoded home addresses for people in prison, then subtracting the total state and federal prison populations.¹³⁹ As required by the statute, any incarcerated individual whose home address was not geocodable, or was unknown, was not included in the redistricting data.¹⁴⁰

The final adjusted population files, along with a detailed memorandum explaining the adjustment process, were made available to the public and local redistricting bodies through LATFOR's website. There was no additional outreach or public education.

New York Timeline

August 11, 2010	Part XX signed into law
December 1, 2011	<i>Little v. LATFOR</i> dismissed; New York Supreme Court upholds Part XX
March 23, 2011	Census 2010 Redistricting population counts (P.L. 94-171) received from U.S. Census Bureau
May 9, 2011	Part XX precleared by U.S. Department of Justice
January 4, 2012	LATFOR released final prison population files adjusted per Part XX
January 26, 2012	LATFOR released proposed Senate and Assembly districts
March 11, 2012	LATFOR introduced bill including final Senate and Assembly districts
March 15, 2012	State legislature passed new state legislative districts; signed into law by governor
March 19, 2012	Final congressional districts ordered by United States District Court
April 27, 2012	Senate districts precleared by U.S. Department of Justice
May 18, 2012	Assembly districts precleared by U.S. Department of Justice

III. RECOMMENDATIONS

Passing and implementing Maryland's No Population without Representation Act and New York's Part XX 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. The combined experiences of these various actors in implementing this reform revealed some common recommendations for implementing reforms.

1. Change the Census

The most effective way to correct the inequity caused by prison gerrymandering laws is for the census to count people in prison as residents of their home communities rather than their prison cells. There is widespread support for this change among advocates, scholars, redistricting experts, members of congress, editorial boards, state legislators and the administrative agencies tasked with drawing legislative districts.¹⁴¹ Those involved with implementing the new laws in Maryland and New York agreed that the prisoner reallocation would be streamlined if the Census Bureau tabulated incarcerated persons at their home addresses.¹⁴²

Specifically, the Census Bureau should:

- 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.
- 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—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.¹⁴³
 - 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.¹⁴⁴
 - Conduct experiments using existing state corrections data to evaluate how these administrative records, in their current form, would impact Census Bureau workflow and quality standards, as well as to develop protocols for addresses that cannot be successfully geocoded.
 - 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.
 - 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.¹⁴⁵

2. Change State Laws

The effects of prison gerrymandering can also be addressed at the state level, as it was in Maryland and New York. As with any legislative change, these reforms require careful research and planning, and building a broad coalition of support. But in addition to general legislative strategy, there are some specific recommendations based on the experiences of successful reform in New York and Maryland.

a. Bill Drafting

Drafting legislation to address prison gerrymandering can be complicated, because the legislation often has to include changes to the election law, the corrections law and sometimes the executive law. Because of these inherent complexities, it can be tempting to draft legislation that is short and simple as a way to make it easy to understand. But it is important not to omit key details and processes. For example, the Maryland legislation did not name the implementing agency. Maryland solved this problem smoothly because the same state agency had both census and redistricting experience and a data staff that could perform the required geocoding, but in other states it may be important for the legislation to identify the implementing entity.

In both New York and Maryland, staff members who implemented the reform laws identified places where the law could have provided more information to properly inform the decisions and judgments they had to make. For example, Both MDP and DPSCS identified the phrase “last known residence” to be too vague and provide insufficient guidance on which address should be used. There was also some ambiguity about who was intended to be included in the category “prisoner”—whether it included pretrial detainees, residents of half-way houses and/or juvenile facilities. Similarly, in New York, LATFOR staff explained that the phrase “residential address prior to incarceration” did not provide enough guidance to decide between the various address fields provided by the DOCCS data. Including a definitions section and providing more specific wording would eliminate some of the guess work and allow for a smoother implementation.

It is also important to remember that prison gerrymandering reforms often have the greatest impact at the local government level in municipal and county districts. To assure that the new law has the most comprehensive effect, the legislation should require localities to use the adjusted data when drawing their local districts.

The Prison Policy Initiative has a model bill with sample language that provides helpful guidance to bill drafters on all of these issues.¹⁴⁶

b. Stakeholders

Early consultation with the technical staff that will be charged with implementing the reform law can help avoid gaps, inconsistencies and unrealistic expectations in the final law. Bill drafters should speak with the technical staff to get a good understanding of what the implementing agency will need to know, and ensure that those who understand the geocoding and adjustment process can share information that will create a thorough and legally sound bill. As part of this early outreach, bill drafters should also contact the correctional agency to discuss its data collection practices and the content and structure of its database. Legislation could require the corrections agency to collect additional data, or maintain its data in a particular format in order to ease implementation later on.

c. Corrections Data

Correctional facilities should strive to collect data that would be useful to the Census Bureau and redistricting officials. This data should include home residence information down to the street level (and, wherever possible, avoiding non-geographic addresses like post office boxes and rural route addresses). Standardized street dictionaries or master address files can be used to make sure street names, city names, and zip codes are all valid. Similarly, correctional facilities should collect race and ethnicity data on their population in a way that is consistent with the Office of Management and Budget's "Standards for the Classification of Federal Data on Race and Ethnicity" and therefore also consistent with the Census Bureau's redistricting data.¹⁴⁷ In all cases, correctional facilities should strive to have accurate, current, and complete data.

3. Plan for Implementation

Implementation of these reforms involves various administrative agencies, and many states impose strict deadlines for finalizing legislative districts. Consequently, agencies and policymakers should allow plenty of time to plan and execute the implementation stages. Identifying redistricting deadlines far in advance and planning accordingly can help assure a smooth implementation.

a. Timing

Creating, obtaining, adjusting and checking data can take significant amounts of time that must be expended in a specific order. Officials in both Maryland and New York advised others to start as early as possible.¹⁴⁸ Planning should begin long before Census

Day (at least two years in advance), and adjusting the corrections data should begin as soon as the census is taken, allowing nine to twelve months to understand and prepare the corrections data, and several additional months between the Census Bureau's publication of the redistricting data and an individual state's formal start of line drawing.

Implementing agencies should be aware that localities often have redistricting deadlines that are earlier than the state deadline. Consultation with local redistricting bodies and elected officials will help ensure that the adjusted data is available in time to be helpful to as many localities as possible. For example, Maryland accelerated the release of its adjusted data so that it could be used in Baltimore City's municipal redistricting. On the other hand, the New York legislation did not give a specific deadline for LATFOR to produce the adjusted dataset, which had the unintentional effect of some localities proceeding to redistrict before the adjusted data was available.

b. Transparency

As with any democratic reform, creating a transparent implementation process will allow greater public participation and engagement. This is particularly important in redistricting; legislative lines can have a dramatic impact on local communities, so public participation is especially critical to creating fair and accurate districts.

There are various ways to assure transparency when implementing prison gerrymandering reforms. For example, drafting regulations allows an opportunity for public comment and provides a clear process for how the new laws will be implemented. MDP found it very helpful to draft regulations to implement the Maryland law. The regulations provided consistent guidance throughout the various stages of implementation, particularly in providing specific definitions of terms in the law, and the steps the department must take to correct any missing or incorrect address data. The regulations proved to have additional utility when the implementation was challenged in court. In upholding the law, the court cited the regulations as evidence that MDP followed a careful and consistent process in adjusting the census data. Maryland also published reports on how the new law was implemented. Sharing this information allowed the public, as well as policymakers and legislatures, to understand the impact of the new law and its effect on local districts. Both New York and Maryland published the adjusted data on their websites, so that local redistricting bodies as well as policymakers, researchers, and members of the public could access and examine it.¹⁴⁹

c. Inter-Agency Collaboration

Reforming prison gerrymandering requires agencies that do not usually work together to collaborate and communicate. The agencies may not be familiar with each other's policies, or share a common vocabulary. One of the biggest challenges identified in both Maryland and New York was the implementing agency's lack of familiarity with the structure of the corrections system, the different types of facilities, why those differences were significant, or how the facilities created and maintained data. To alleviate this confusion, the redistricting and corrections agencies should form an integrated team at the earliest stage of implementation to share information and educate each other about relevant policies and procedures as well as data standards, and to create a common understanding and language. Legal counsel should be included in these conversations to assist with statutory and regulatory interpretation.

CONCLUSION

Officials in Maryland and New York were the first in the country to take on the challenge of correcting the distortions of democracy caused by prison gerrymandering. Their combined experiences demonstrate how diverse state and local agencies can work together to successfully implement new and important policy reforms, and provide a valuable resource for policymakers and advocates across the country seeking to implement similar reforms. Today there is renewed attention to addressing the injustice created by prison gerrymandering. The Census Bureau, in keeping with its goal of producing the most accurate census count possible, should continue re-evaluating its policy of how it enumerates the prison population, and ultimately issue new guidance for tabulating incarcerated persons at their home addresses. Meanwhile, states across the country should implement their own solutions for reallocating individuals back to their home communities, in order to create more equitable and representative districts. These reforms, together, will realize the principle of one person-one vote, and ensure that prison gerrymandering no longer distorts our democracy. ■

ENDNOTES

1. *Residence Rule and Residence Situations for the 2010 census*, U.S. Census Bureau, http://www.census.gov/population/www/cen2010/resid_rules/resid_rules.html (last visited June 26, 2014).
2. See *Reynolds v. Sims*, 377 U.S. 533, 565-66 (1964). For congressional districts, states must make a good-faith effort to have mathematical equality for each district. See *Wesberry v. Sanders*, 376 U.S. 1, 7-8, (1964). For state legislative districts, there is more flexibility; they have to reflect "substantial equality of population." *Reynolds*, 377 U.S. 533, 559 (1964). Generally, the population difference between the largest and smallest state legislative districts can be up to 10% of the average district population. *Id.* Disparities in Congressional district populations are governed by the Apportionment Clause, U.S. Const. art. I, § 2, while state legislative district population disparities are governed by the Equal Protection Clause, U.S. Const. amend. XIV, § 1. For a thorough and practical explanation of redistricting principles, see Justin Levitt, Brennan Center for Justice, *A Citizen's Guide to Redistricting* (July 1, 2008), available at <http://www.brennancenter.org/publication/citizens-guide-redistricting>.
3. 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 VI. Stat. Ann. tit. 17, § 2122(a); Me. Rev. Stat. Ann. tit. 21-A, § 112(1-4).
4. Compare Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Prisoners 1925-81*, at 2 tbl.1 (Dec. 1982), available at <http://www.bjs.gov/content/pub/pdf/p2581.pdf> (listing the number of state and federal prisoners per 100,000 residential population at 96 in 1970), with E. Ann Carson & Daniela Golinelli, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, at 25 tbl.18 (Dec. 2013), available at <http://www.bjs.gov/content/pub/pdf/p12ar9112.pdf> (listing the number of state and federal prisoners per 100,000 residential population at 480 in 2012).
5. Marc Mauser, *Race to Incarcerate* 18, 20 (2d ed. 2006).
6. Compare Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Prisoners 1925-81*, at 2 tbl.1 (Dec. 1982), available at <http://www.bjs.gov/content/pub/pdf/p2581.pdf> (listing the number of state and federal prisoners at 196,429 in 1970), with E. Ann Carson & Daniela Golinelli, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, at 25 appx. tbl.6 (Dec. 2013), available at <http://www.bjs.gov/content/pub/pdf/p12ar9112.pdf> (listing the number of state and federal prisoners at 1,570,397 in 2012).
7. Erica Goode, *Average Prison Stay Grew 36 Percent in Two Decades*, N.Y. Times (June 6, 2012), available at <http://www.nytimes.com/2012/06/06/us/average-prison-stay-grew-36-percent-in-two-decades.html>.
8. Gabriel Sayegh, *New York Must Reform its Racist Drug Laws*, AlterNet (May 4, 2007), http://www.alternet.org/story/51475/new_york_must_reform_its_racist_drug_laws.
9. See Peter Wagner, Prison Policy Initiative, *Prison Town Legislators Represent Prisoners' Interests? Not Quite.* (June 14, 2004), <http://www.prisonersofthecensus.org/news/2004/06/14/represent/>.
10. See Md. Dep't of Pub. Safety & Corr. Servs., *Secretary's End of Year Report 22* (2010), available at http://www.dpccs.state.md.us/publicinfo/publications/pdfs/2010_DPSCS_End_of_Year_Report.pdf.
11. Peter Wagner & Olivia Cummings, Prison Policy Initiative, *Importing Constituents: Incarcerated People and Political Clout in Maryland* (Mar. 4, 2010), <http://www.prisonersofthecensus.org/md/report.html>.
12. See Md. Dep't of Pub. Safety & Corr. Servs., *Correctional Facility Locator*, <http://www.dpccs.state.md.us/locations/prisons.shtml> (distances calculated using listed addresses of facilities) (last visited June 26, 2014).
13. Ashley Nellis & Ryan S. King, Sentencing Project, *No Exit: The Expanding Use of Life Sentences in America* 7 (tbl.2) (July 2009), available at http://www.sentencingproject.org/doc/publications/publications/inc_NoExitSept2009.pdf.
14. Guy G. Cherry & Claire E. Rossmark, Office of Policy Analysis, Md. Dep't of Legislative Servs., *Maryland Diminution Credit System* 7 (Dec. 2011), available at <http://dls.state.md.us/data/polanasubare/polanasubare...concrjuscivmat/Diminution-Credits.pdf>.
15. Wagner & Cummings, *supra* note 11.
16. Prison Policy Initiative, *Ending Prison-Based Gerrymandering Would Aid the African-American Vote in Maryland* (Jan. 22, 2010), <http://www.prisonersofthecensus.org/factsheets/md/africanamericans.pdf>.
17. *Id.*
18. See N.Y. State Dep't of Corr. & Cmty. Supervision, *Facility Listing*, <http://www.doccs.ny.gov/facilist.html> (distances calculated using listed addresses of facilities) (last visited June 26, 2014).
19. Peter Wagner, Prison Policy Initiative, *Importing Constituents: Prisoners and Political Clout in New York* n. 3 (Apr. 22, 2002), <http://www.prisonpolicy.org/importing/importing.html> (citing N.Y. State Dep't of Corr. Servs., *Characteristics of New Commitments 1999*, at 74 (2000); N.Y. State Dep't of Corr. Servs., *The Hub System: Profile of Inmates Under Custody on January 1, 2000*, at 8 (2000)).
20. Wagner, *supra* note 19, at fig. 1.
21. Affirmation of Peter Wagner in Support of Intervenor-Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment dated Aug. 17, at ¶ 64, see *Little v. N.Y. State Task Force on Demographic Research & Reapportionment*, No. 2310-2011 (Sup. Ct. N.Y. Dec. 1, 2011), available at http://www.prisonersofthecensus.org/little/Intervenor-Defendants_SJ_motion.pdf (citing U.S. Census Bureau, *American FactFinder*, available at http://factfinder.census.gov/home/saff/main.html?_lang=en (last visited Aug 15, 2011, 6:25pm) (data for New York State); N.Y. State Dep't of Corr. Servs., *The HUB System: Profile of Inmates Under Custody on January 1, 2000*, at 1 (2000), available at http://www.doccs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf).
22. Memorandum in Support of Motion to Intervene dated May 17, 2011 ("Little Intervention Memo") at 4-5, see *Little*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at [http://www.prisonersofthecensus.org/little/Motion_to_Intervene_Package_\(for_service\).pdf](http://www.prisonersofthecensus.org/little/Motion_to_Intervene_Package_(for_service).pdf) (citing N.Y. State Dep't of Corr. Servs., *supra* note 21, at ii).
23. Wagner, *supra* note 19, at fig. 3.
24. Jennifer Pasco, *1/2 of Rome Ward's Residents Are Prisoners*, Utica Observer-Dispatch (updated Feb. 19, 2010, 7:00 PM), available at <http://www.uticaod.com/article/20100219/News/302199903>; Staff Report, *Our View: Don't Count Prisoners With Voters*, Utica Observer-Dispatch (updated Feb. 26, 2010, 11:09 PM), available at <http://www.uticaod.com/x1694766272/Our-view-Don-t-count-prisoners-with-voters>.
25. N.Y. State Legis. Task Force on Demographic Research & Reapportionment, *2000 census Data by Senate District*, <http://www.lafors.state.ny.us/data/2000files/2000sen-prof.pdf> (last visited July 29, 2014); Memorandum from Michael A. Carvin to Sens. Joseph Bruno & Dean Skelos (Mar. 7, 2002), available at <http://www.lafors.state.ny.us/faqs/docs/2012senatusize.pdf>.
26. The New York Constitution provides that "[f]or the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence . . . while confined in any public prison."

- N.Y. Const. art. II, § 4; see also N.Y. Elec. Law § 5-104(1) (McKinney 2010).
27. Prison Policy Institute, *Gerrymandering and Relying on the Miscalculation of Prisoners Combine to Violate the U.S. Constitution in New York* (last visited June 30, 2014), <http://www.prisonersofthecensus.org/nygerrymander.html>.
 28. Wagner, *supra* note 19, at fig. 3.
 29. Letter from A Better Way Foundation et al. to Thomas Mesenbourg, Acting Director, U.S. Census Bureau (Feb. 14, 2013), available at <http://www.prisonersofthecensus.org/letters/lab2013.html>.
 30. Barbara Owen & Anna Chan, Ctr. for Survey Measurement, Research and Methodology Directorate, U.S. Census Bureau, *Ethnographic Study of the Group Quarters Population in the 2010 census: Jails and Prisons 37-38* (Apr. 25, 2013), available at <http://www.census.gov/srd/papers/pdf/sem2013-13.pdf>. The study's authors explain: "Given our knowledge about correctional populations and their potential for self-enumeration, a true self-enumeration pilot in one or more prisons could be conducted to determine the utility of inmate-completed forms." *Id.* The study presents a detailed analysis of how the 2010 census was conducted in two women's state prisons and in one county jail, with additional information from observations of the collection of American Community Survey data in a large male state prison and other facilities. It was not intended to be a review of the feasibility of enumerating incarcerated people at alternative addresses, but its review of existing practices and its suggestions for how those practices could be improved, make it a valuable first step.
 31. Robert Graves, U.S. Census Bureau, *So How Do You Handle Prisons?*, Director's Blog (Mar. 1, 2010), <http://directorsblog.blogs.census.gov/2010/03/01/so-how-do-you-handle-prisons/>.
 32. Bills have been introduced in: Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Texas. Bill information is available at <http://www.prisonersofthecensus.org/legislation.html>.
 33. A list of local governments that avoid prison gerrymandering is available at <http://www.prisonersofthecensus.org/local/>.
 34. See e.g., Assemb. B. 420, 2011-12 Leg., Reg. Sess. (Ca. 2011); H.B. 584, 145th Gen. Assemb., Reg. Sess. (Del. 2010); No Representation Without Population Act, H.B. 496, 2010 Leg., Reg. Sess. (Md. 2010); N.Y. Legis. Law § 83-m (McKinney 2011).
 35. Md. Code Regs. 34.05.01.04 (C) (2010).
 36. Md. Code Ann., State Gov't § 2-2A-01 (West 2010) (affecting legislative districts for the General Assembly); Md. Code Ann., Elec. Law § 8-701 (West 2010) (affecting districts for congressional Representatives); Md. Code Ann., Political Subdivisions—Miscellaneous Provisions art. 24§ 1-111 (West 2010) (affecting legislative districts for county and municipal corporations).
 37. Md. Code Ann., State Gov't § 2-2A-01 (West 2010) (affecting legislative districts for the General Assembly); Md. Code Ann., Elec. Law § 8-701 (West 2010) (affecting districts for congressional Representatives); Md. Code Ann., Political Subdivisions—Miscellaneous Provisions art. 24§ 1-111 (West 2010) (affecting legislative districts for county and municipal corporations).
 38. Md. Const. art. III, § 5.
 39. *Id.* (the deadline for the state legislative redistricting plan was January 11, 2012. See Md. Dep't of Planning, *Redistricting FAQs* (last updated Jan. 20, 2013), <http://planning.maryland.gov/redistricting/faq.shtml>).
 40. *Id.*
 41. *Id.*
 42. Md. Dep't of Planning, *supra* note 39.
 43. *Id.*
 44. *Id.*
 45. Md. Code Ann., State Plin. & Proc. § 5-391 (West 2009).
 46. Interview with Matthew Power, Deputy Sec'y, Md. Dep't of Planning (Dec. 19, 2012).
 47. For a helpful introduction to geocoding, see Daniel W. Goldberg, *A Geocoding Best Practice Guide* (Nov. 2008), available at http://www.naacor.org/LinkClick.aspx?fileticket=ZKekM8k_K0%3D&tabid=239&mid=699
 48. Md. Code Regs. 34.05.01.03 (B)(4)(a)-(b) (2010).
 49. *Id.* at 34.05.01.04 (B).
 50. *Id.* at 34.05.01.04 (C)(1).
 51. *Id.* at 34.05.01.04 (D).
 52. Letter from Richard E. Hall, Secretary, Md. Dep't of Planning & Karl Aro, Director, Md. Dep't of Legislative Servs., to Matthew Mellady, Fed. Bureau of Prisons, U.S. Dep't of Justice (July 22, 2010) (on file with author).
 53. 5 U.S.C. § 552a (1996).
 54. Letter from Alecia S. Sillah, Fed. Bureau of Prisons, U.S. Dep't of Justice, to Richard E. Hall, Md. Dep't of Planning (Oct. 7, 2010) (on file with author).
 55. Declaration of James Cannistra dated Dec. 1, 2011, (No. 8:11-cv-03220-RWT). ("Cannistra Decl.") at § 12, available at http://www.prisonersofthecensus.org/fletcher/AG_exhibit_2.pdf (see also Fletcher v. Lamone, 831 F. Supp.2d 887 (D. Md. 2011)).
 56. Cannistra Decl., *supra* note 55, at § 12.
 57. *Id.*
 58. Affidavit of Kevin Combs dated Dec. 1, 2011 at § 3, see Fletcher, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), available at http://www.prisonersofthecensus.org/fletcher/AG_exhibit_3.pdf
 59. *Id.* at § 4.
 60. *Id.*
 61. *Id.* at § 6; Telephone Interview with Felicia Hinton, Assistant Comm'r, Md. Dep't of Pub. Safety & Corr. Servs. (March 15, 2013).
 62. Cannistra Decl., *supra* note 55, at §§ 2,3.
 63. Caliper Corp., *Maryland 2010 census Prisoner Adjustment Final Report 4* (March 23, 2011), available at http://www.prisonersofthecensus.org/fletcher/AG_exhibit_4.pdf
 64. Defendants' Motion to Dismiss dated Dec. 2, 2011 at exh. 23, see Fletcher, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), available at http://www.prisonersofthecensus.org/fletcher/AG_exhibit_23.pdf.
 65. Cannistra Decl., *supra* note 55, at § 6. The addresses that could not be geocoded broke down as follows:

Segregated Addresses	Number	Percent of Total
Correctional Facility	249	1.13%
Incomplete Address	111	0.50%
No Address or Homeless	1,635	7.41%
Out-of-State	1,326	6.01%

Post Office Box	20	0.09%
Rural Route Box	17	0.08%
Total	3,358	15.22%

66. *Id.* at § 7.
67. *Id.* at § 9.
68. *Id.* at § 10.
69. *Id.* at § 10.
70. After MDP re-categorized some special cases, 16,988 (77%) incarcerated individuals were assigned to their home addresses, 3735 (17%) were assigned to the correctional facilities, and 1321 (6%) were reallocated out of Maryland census data as out-of-state residents. *Id.* at § 17.
71. Caliper Corp., *supra* note 65, at 14.
72. *Id.*
73. Bal. Md., Charter, art. III, § 7(b).
74. *Id.*
75. The Legacy Foundation's stated mission is "to advance individual liberty, free enterprise and limited, accountable government." Legacy Foundation, Mission Statement <http://legacyfoundation.us/why-the-legacy-foundation/> (last visited June 30, 2014). To access the Legacy Foundation's case filings, see Legacy Foundation, *Case Filings*, <http://legacyfoundation.us/case-filings/> (last visited June 30, 2014).
76. Annie Linskey, *Law Group to Fund Suit Against Maryland's Congressional Map*, Bal. Sun (Nov. 10, 2011), available at http://www.baltimore_sun.com/news/maryland/bs-md-redistricting-lawsuit-20111110_0_842688_story.
77. *Fletcher v. Lamone*, 831 F. Supp.2d 887, 894 (D. Md. 2011).
78. Complaint dated Nov. 10, 2011 at §§ 49-54, see *Fletcher*, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), 2011 WL 9467560.
79. *Id.* at § 70.
80. Brief for Howard Univ. Sch. of Law Civil Rights Clinic et al. as Amici Curiae Supporting Defendants dated Dec. 2, 2011, see *Fletcher*, 831 F. Supp.2d 887 (D. Md. 2011) (No. 8:11-cv-03220-RWT), available at http://www.prisonersofthecensus.org/fletcher/Final_Fletcher_amicus_with_affidavit_and_service.pdf.
81. *Id.* at 4-5.
82. *Fletcher*, 831 F. Supp.2d at 897.
83. *Id.* at 894-95 (relying on *Karcher v. Daggett*, 462 U.S. 725, 732 n. 4, 738 (1983)).
84. *Id.* at 895.
85. *Id.* at 896.
86. *Id.* at 897.
87. *Id.*
88. 133 S. Ct. 29 (2012).
89. New York law designates LATFOR as the body responsible for the "preparation and formulation of a reapportionment plan . . . and the utilization of census and other demographic and statistical data for policy analysis, program development and program evaluation purposes for the legislature." N.Y. Legis. Law § 83-m(3) (McKinney 2013). The task force is bipartisan and consists of six members, two of whom are appointed by the state senate president, two of whom are appointed by the speaker of the assembly and one each appointed by the minority leaders of the senate and assembly. *Id.* at § 83-m(2). Four task force members are members of the legislature and two are not. *Id.*
90. N.Y. Correct. Law § 71(8)(a) (McKinney 2011).
91. N.Y. Legis. Law § 83-m(13)(b) (McKinney 2011).
92. *Id.*
93. *Id.*
94. N.Y. Mun. Home Rule Law § 10 (1)(a)(13)(c) (McKinney 2011).
95. N.Y. Legis. Law § 83-m(13)(b) (McKinney 2011).
96. *Id.*
97. 5 U.S.C. § 552a (1996).
98. See Kris W. Kobach, *Adjustment to the 2010 U.S. Decennial census*, (July 26, 2011) available at <https://www.kscow.org/forms/elections/2010censusAdj.pdf>.
99. Complaint dated Apr. 4, 2011 at § 2, see *Little*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at <http://www.prisonersofthecensus.org/little/complaint.pdf>.
100. N.Y. Const. art. III, § 4.
101. Complaint dated Apr. 4, 2011, *supra* note 99, at §§ 86-87.
102. Little intervention Memo, *supra* note 22, at 2-3.
103. *Little*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at http://www.prisonersofthecensus.org/little/Decision_and_Order.pdf.
104. *Id.* at 7.
105. *Id.*
106. N.Y. Const. art. III, § 4; N.Y. Legis. Law § 93 (McKinney 2013).
107. N.Y. Legis. Law § 83-m (McKinney 2011).
108. *Cf. id.* at § 83-m(5) ("The primary function of the task force shall be to compile and analyze data, conduct research for and make reports and recommendations to the legislature, legislative commissions and other legislative task forces").
109. Letter from Sen. Martin Malavé Dilan & Assemb. Carl E. Heastie, Co-Chairs, N.Y. State Legis. Task Force on Demographic Research & Reapportionment, to Hon. Brian Fischer, Commissioner, Dep't of Corr. Servs. (sic.) (Aug. 26, 2010) (on file with author).
110. N.Y. Assemb., *Relocating Prisoners to Home Community Addresses 1* (Sept. 2011) ("N.Y. Assemb., *Relocating Prisoners*").
111. *Id.* (spreadsheet on file with author).
112. *Id.* at 1-2.
113. *Id.* at 2.
114. As a result of the 2013 Supreme Court ruling in *Shelby County v. Holder*, 135 S.Ct. 2612 (2013) striking down the Voting Rights Act's preclearance coverage formula, these counties are no longer required to pre-clear changes to their voting laws.
115. Letter from Joel Graber, Special Litig. Counsel, Office of the N.Y. Atty Gen., to Christian Herren, Jr., Chief, Voting Section, U.S. Dep't of Justice (Mar. 7, 2011), available at <http://www.prisonersofthecensus.org/little/NYS-Sec5-partxx-submission.pdf>.
116. *Cf.* Letter from T. Christian Herren, Jr., Chief, Voting Section, U.S. Dep't of Justice, to Joel Graber, Special Litig.

- Counsel, Office of the N.Y. Att'y Gen. (May 9, 2011) (stating that the U.S. Attorney General raises no objections to the law), available at http://www.prisonersofthecensus.org/little/doj_preclearance_letter.pdf.
117. N.Y. Assemb., *Subtracting Prisoners from the Address of Incarceration 5* (Sept. 2011) ("N.Y. Assemb., *Subtracting Prisoners*").
118. *Id.*
119. *Id.*
120. *Id.* at 5-6.
121. Memorandum from Isaac Fefen, Senior Demographer, Bruce Ruiz, GIS Manager & Marisa Valivé, Senior GIS Analyst, to Debra A. Levine & Lewis M. Hoppe, Co-Executive Directors, N.Y. State Legis. Task Force on Demographic Research & Reapportionment 3 (Jan. 5, 2012) ("LATFOR Adjustment Memo"), available at http://www.latfor.state.ny.us/justice2012/assembly/007/joint%20Exhibit%207%20--%20Prisoner%20Allocation%20Documents/0_ReadMe.pdf.
122. N.Y. Assemb., *Subtracting Prisoners*, *supra* note 117, at 6.
123. N.Y. Assemb., *Relocating Prisoners*, *supra* note 110, at 2. Note that this data included only state prison data, not federal.
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.* at 4.
128. *Id.*
129. *Id.*
130. *Id.* at 5.
131. *Id.*
132. LATFOR Adjustment Memo, *supra* note 121, at 1.
133. N.Y. Assemb., *Relocating Prisoners*, *supra* note 110, at 8.
134. *Id.*
135. LATFOR Adjustment Memo, *supra* note 121, at 1.
136. *Id.* at 2.
137. *Id.*
138. *Id.*
139. *Id.*
140. N.Y. Legis. Law § 83-m(13)(b) (McKinney 2011).
141. Last year, more than 200 organizations signed a letter urging the Census Bureau to conduct the research necessary to ensure that the 2020 census counts incarcerated people at their home addresses. Letter from A Better Way Foundation et al., *supra* note 29.
142. Interview with Matthew Power, *supra* note 46; Telephone Interview with Felicia Hinton, *supra* note 61; Telephone Interview with Debra Levine & Lewis Hoppe, Co-Executive Directors, N.Y. State Legis. Task Force on Demographic Research & Reapportionment (Feb. 6, 2013).
143. 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/sfscmq.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.
144. 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/.
145. Owen & Chan, *supra* note 30, at 37.
146. Prison Policy Initiative, *Example Bill: Ending Prison-Based Gerrymandering in Your State* (last updated Feb. 26, 2014), available at <http://www.prisonersofthecensus.org/models/example.html>.
147. Office of Mgmt. & Budget, *supra* note 144.
148. Interview with Matthew Power, *supra* note 46; Telephone Interview with Debra Levine & Lewis Hoppe, *supra* note 142.
149. Maryland continues to maintain all redistricting related information (legislation, adjusted data, maps, etc.) on MDP's website at <http://planning.maryland.gov/Redistricting/>. New York maintains its data on the LATFOR website at <http://www.latfor.state.ny.us/data/>.

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**Summary of Comments Received in Response to the “2020 Decennial Census Residence Rule and Residence Situations; Notice and Request for Comment,”
80 Federal Register 28950 (May 20, 2015)**

Overview

The U.S. Census Bureau is currently reviewing the 2010 Census residence rule and situations to determine if clarifications, revisions, or changes are needed to the rule or situations for the 2020 Census. On May 20, 2015, the Census Bureau published a notice in the *Federal Register* asking for public comment on the 2010 residence rule and situations, and suggestions for changes to be made for the 2020 Census. The Census Bureau received 252 submission letters containing 262 comments to the notice during the 60-day comment period that ended on July 20, 2015. (Some submission letters included multiple comments.)

Summary of Comments

Of the 262 comments received, 162 pertain to where we count prisoners¹ and 87 pertain to where we count military personnel overseas. We also received two comments on people in group homes for juveniles, two comments on people in residential treatment centers for juveniles, and one comment on students in boarding schools. We also received one comment on the residence rule itself and one comment on each of four other residence situations: visitors on census day, people who live in more than one place, people without a usual residence, and nonrelatives of the householder. Finally, we received three comments that covered broader issues: one pertaining to how the residence rule and situations are communicated, one pertaining to how field staff are trained on the residence rule and situations, and one on how alternative addresses are collected from certain types of group quarters (GQs). Table 1 summarizes all the comments received.

¹ The majority of comments received on this topic used the terms ‘prisoner,’ ‘incarcerated,’ or ‘inmate.’ Although the terminology is not exactly what the Census Bureau uses in the residence rule documentation, the Census Bureau believes the context of the comments suggests the comments apply to people in Federal and State Prisons, local jails and other municipal confinement facilities, and possibly Federal detention centers. References in this document to “prisons” or “prisoners” should be interpreted as referring to all of these Group Quarters types.

Table 1. Comments Received on Residence Rule and Residence Situations		
	Number	Percent of All Comments
Total	262	100%
Prisoners	162	61.8%
Military Deployed Overseas	87	33.2%
Group Homes for Juveniles	2	0.8%
Residential Treatment Centers for Juveniles	2	0.8%
Boarding School Students	1	0.4%
Residence Rule	1	0.4%
Visitors on Census Day	1	0.4%
People Who Live in More Than One Place	1	0.4%
People Without a Usual Residence	1	0.4%
Nonrelatives of the Householder	1	0.4%
Issues other than Residence Rule or Situations	3	1.1%

Summary of Comments on Prisoners

Of the 162 comments pertaining to prisoners, 155 stated that prisoners should be counted at their home or pre-incarceration address (See Table 2). They stated that counting prisoners at the prison inaccurately represents the prisoners' home communities, inflates the political power of the area where the prison is located, and deflates the political power in the prisoners' home communities. These commenters suggested that this distorts the redistricting process. A number of these commenters also specifically commented that counting prisoners away from their home address goes against the principle of equal representation, and some further noted that the current residence rule for prisoners is inconsistent with their state laws regarding residency for elections.

One of these comments focused only on inmates in local jails awaiting trial, noting that as they are presumed innocent, they should be counted at their usual residence.

A number of commenters argued that the “usual residence” concept itself should change as it relates to incarcerated persons, arguing that the tremendous increase in the number of incarcerated people in the last 30 years and the Supreme Court’s support of equal representation warranted a change in the interpretation of the concept of “usual residence.”

Additional arguments cited were that prisoners do not interact or participate in the civic life of the community where they are incarcerated, are there involuntarily, and generally do not plan to remain in that community upon their release.

Six comments were in support of the 2010 practice of counting prisoners at the prison, arguing that adjusting prisoners’ locations would be difficult, expensive, add unneeded complexity, and would be prone to inaccuracy. Of the six comments in support of counting prisoners at the prison, one mentioned a concern that adjusting the prisoners’ locations could disenfranchise minorities in rural areas, and two argued that changing the current practice could open the door to future Census population count adjustments motivated by political gain.

We also received a comment suggesting the Census Bureau establish an exact time on Census Day to record where people are, and use that to determine where to count people who may be in transit to/from/between prison facilities.

	Number	Percent
Total	162	100%
Support changing guidance and counting at some other address	155	96.0%
Support current situational guidance (count at prison)	6	3.4%
Suggest Census Bureau establish exact time on Census Day to record people	1	0.6%

Summary of Comments on the Military Overseas

Of the 87 comments we received pertaining to the military overseas, all argued for counting military service members overseas on short-term deployments at their home base or port (See Table 3). Some of the comments also added that deployed military with spouses should be counted with their families. The commenters also suggested that the Census Bureau work with

military bases to locate more accurate administrative records for counting deployed military and use administrative records to also provide socioeconomic information on the deployed military.

There are two issues referenced in these comments. First of all, the comments generally refer to military personnel *deployed* overseas, making a distinction from military personnel *stationed* overseas. (In censuses prior to 2010 where the military overseas were counted, deployed and stationed personnel were treated the same.) Second, the comments indicate that not only do they want military personnel deployed overseas to be counted at their “usual residence,” “last duty station,” or “home base or port,” (which we are inferring to mean the same thing), they want these personnel counted in the resident population rather than the overseas population (which is used for apportionment purposes only). Some comments explicitly state this, but for many it is implied. For example, many comments referred to the need for counting deployed military in the communities where they usually reside, because doing otherwise “produces flawed data that harms funding and planning in military communities.” Another comment referred to ensuring “communities have the needed resources to support these soldiers and their families.” These and other comments seem to refer to local level planning and funding that is normally determined using the Census resident population data (available down to the tabulation block level) and not the apportionment counts, which are only available at the state level.

One of the 87 comments drew a connection between how the Census Bureau counts deployed military overseas and how we count U.S. military personnel on U.S. military vessels with a U.S. homeport, to support his argument. The *Residence Rule and Residence Situations for the 2010 Census* document states that the latter are “counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel’s homeport.” The commenter argued that this is inconsistent with how we have counted deployed military with a U.S. land base or post, and asked that all branches of service be treated the same and counted at their residence or home base/port.

	Number	Percent
Total	87	100.0%
Support counting in resident population at person's home base or port	87	100.0%

Summary of Comments on Group Homes for Juveniles and Residential Treatment Centers for Juveniles

We received two comments on group homes for juveniles and two comments on residential treatment centers for juveniles. All four of the comments supported counting the juveniles in these situations at their “household residence.” One of the comments on the group homes and

one of the comments on the residential treatment centers further stated that the juveniles should only be counted at their household residence if it is in the same state as the facility. If the residence is not in the same state, they should be counted at the facility. All four comments argued that counting juveniles at the facility inflates the political power of the area where the facility is located and dilutes the representation of the juveniles' home communities.

Summary of the Comment on Boarding Schools

We received one comment pertaining to boarding schools. The commenter suggested applying the current guidance for students attending college to students attending boarding schools. The commenter noted that for foreign students attending boarding school, the school is their usual residence most of the year, and their parents live overseas. Therefore, these students likely were not counted under the 2010 guidance, even though they reside in the United States most of the year, because they do not have a parental home in the United States.

Summary of Comments on the Residence Rule, Visitors on Census Day, People Who Live in More Than One Place, People Without a Usual Residence and Nonrelatives of the Householder

We received a letter from the National Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Task Force that included five comments, one on the residence rule itself and one comment on each of the following four situations: visitors on census day, people who live in more than one place, people without a usual residence, and nonrelatives of the householder. The letter commented on the “unique ways in which lesbian, gay, bisexual, transgender, and queer (LGBTQ) people often experience homelessness” and cited an argument that LGBTQ people are “disproportionately likely to experience homelessness” The writer argued that LGBTQ people experiencing homelessness are more likely to avoid shelters and instead “couch-surf,” “trade sex for shelter,” or “stay with friends or family.” Therefore, the writer argues,

“LGBTQ people may be less likely to be regarded as ‘residents’ by those with whom they are staying. Census respondents might assume that such people have another residence where they spend more time or might otherwise dismiss counting them as part of their residence.”

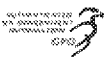
The comment pertaining to the “Visitors on Census Day” situation was to eliminate it as a separate situation and merge it into the “People Away From Their Usual Residence on Census Day” situation. The comments on the residence rule and the other three situations were to add specific wording to provide clearer guidance so that people experiencing homelessness might recognize that these situations apply to them.

Other Comments

We received three comments that were unique in that they did not address the residence rule directly, nor did they address any particular situation. One comment argued for the importance of “an easily-interpreted and logically consistent residence rule for each type of residence situation,” including “how respondents should interpret the often-used Residence Rule phrase ‘most of the time.’” The commenter went on to argue for applying and communicating the rules consistently across the country and cited the need for sound training for 2020 Census field workers, clear communication to 2020 Census partners and the public, and a “designated point-of-contact for residence determination.”

A second comment encouraged the Census Bureau to produce summary file tabulations based on the answers to the “Does Person [X] sometimes live or stay somewhere else?” question, arguing that it would “help facilitate the best interpretation and use of decennial census data at the state and local level.”

Finally, we received one comment asking the Census Bureau to revisit the 2010 Individual Census Report (ICR) questions related to collecting information about where else the respondent might live or stay, and making it more consistent with the household Census questionnaire.



Parker at RulemakingEAs@ee.doe.gov or by telephone at (240) 562-1645. The draft environmental assessment also is available for viewing in the Golden Public Reading Room at:

www.energy.gov/node/1840021.

SUPPLEMENTARY INFORMATION: DOE has published a notice of proposed rulemaking in the *Federal Register* pertaining to energy efficiency for manufactured housing. 81 FR 39756 (June 17, 2016). Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), DOE EERE has prepared a draft environmental assessment (EA) to evaluate the environmental impacts of this proposed action. DOE is seeking public comment on the environmental issues addressed in the EA. In conjunction with issuance of this draft EA for public review and comment, DOE is issuing a request for information that will help it analyze potential impacts on indoor air quality (IAQ) from the proposed energy conservation standards, in particular sealing manufactured homes tighter.

Statutory Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

Issued in Golden, CO, on June 21, 2016.

Robin L. Sweeney,

Director, Environment, Safety and Health Office, Office of Energy Efficiency and Renewable Energy.

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DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Chapter I

[Docket Number 160526465-6465-01]

Proposed 2020 Census Residence Criteria and Residence Situations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Proposed criteria and request for comment.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is providing notification and requesting comment on the proposed "2020 Census Residence Rule and Residence Situations." In addition, this document contains a summary of comments received in response to the May 20, 2015, *Federal Register* document, as well as the Census Bureau's responses to those comments. The residence criteria are used to determine where people are counted during each decennial census. Specific residence situations are

included with the criteria to illustrate how the criteria are applied.

DATES: To ensure consideration, comments must be received by August 1, 2016.

ADDRESSES: Direct all written comments regarding the proposed "2020 Census Residence Rule and Residence Situations" to Karen Humes, Chief, Population Division, U.S. Census Bureau, Room 6H174, Washington, DC 20233; or Email [POP.2020.Residence.Rule@census.gov].

FOR FURTHER INFORMATION CONTACT: Population and Housing Programs Branch, U.S. Census Bureau, 6H185, Washington, DC 20233, telephone (301) 763-2381; or Email [POP.2020.Residence.Rule@census.gov].

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Census Bureau is committed to counting every person in the 2020 Census once, only once, and in the right place. The fundamental reason that the decennial census is conducted is to fulfill the Constitutional requirement (Article I, Section 2) to apportion the seats in the U.S. House of Representatives among the states. Thus, for a fair and equitable apportionment, it is crucial that the Census Bureau counts everyone in the right place during the decennial census.

The residence criteria are used to determine where people are counted during each decennial census. Specific residence situations are included with the criteria to illustrate how the criteria are applied.

1. The Concept of Usual Residence

The Census Act of 1790 established the concept of "usual residence" as the main principle in determining where people were to be counted, and this concept has been followed in all subsequent censuses. "Usual residence" has been defined as the place where a person lives and sleeps most of the time. This place is not necessarily the same as a person's voting residence or legal residence.

Determining usual residence is straightforward for most people. However, given our nation's wide diversity in types of living arrangements, the concept of usual residence has a variety of applications. Some examples include people experiencing homelessness, people with a seasonal/second residence, people in prisons, people in the process of moving, people in hospitals, children in shared custody arrangements, college students, live-in employees, military

personnel, and people who live in workers' dormitories.

Applying the usual residence concept to real living situations means that people will not always be counted at the place where they happen to be staying on Census Day (April 1, 2020) or at the time they complete their census questionnaire. For example, some of the ways that the Census Bureau applies the concept of usual residence include the following:

- People who are away from their usual residence while on vacation or on a business trip on Census Day are counted at their usual residence.
- People who live at more than one residence during the week, month, or year are counted at the place where they live most of the time.
- People without a usual residence are counted where they are staying on Census Day.
- People in certain types of group facilities¹ on Census Day are counted at the group facility.

2. Reviewing the "2020 Census Residence Rule and Residence Situations"

Every decade, the Census Bureau undertakes a review of the "Residence Rule and Residence Situations" to ensure that the concept of usual residence is interpreted and applied as intended in the decennial census, and that these interpretations are consistent with the intent of the Census Act of 1790, which was authored by a Congress that included many of the framers of the U.S. Constitution and directed that people were to be counted at their usual residence. This review also serves as an opportunity to identify new or changing living situations resulting from societal change, and to create or revise the guidance regarding those situations in a way that is consistent with the concept of usual residence.

This decade, as part of the review, the Census Bureau requested public comment on the "2010 Census Residence Rule and Residence Situations" through the *Federal Register* (80 FR 28950) on May 20, 2015, to allow the public to recommend any changes they would like to be considered for the 2020 Census. The Census Bureau received 252 comment submission letters or emails that contained 262 total comments. (Some comment submissions included comments or suggestions on more than

¹ In this document, "group facilities" (referred to also as "group quarters" (GQ)) are defined as places where people live or stay in group living arrangements, which are owned or managed by an entity or organization providing housing and/or services for the residents.

one residence situation.) A summary of these comments and the Census Bureau's responses are included in section B of this document.

In addition to the Census Bureau's responses to comments that are described in section B of this document, section C provides a summary of each of the proposed changes to where people would be counted in the 2020 Census compared to the 2010 Census. These proposed changes are based on the consideration of public comments received, as well as an internal review of the criteria and situations.

The Census Bureau is requesting public comment on the proposed "2020 Census Residence Rule and Residence Situations", as listed in section D of this document. The Census Bureau is requesting public comment on the proposed "2020 Census Residence Rule and Residence Situations," as listed in section D of this document. The Census Bureau anticipates publishing the final "2020 Census Residence Rule and Residence Situations" by the end of 2016. At that time, the Census Bureau will also respond to the comments received regarding the proposed "2020 Census Residence Rule and Residence Situations."

B. Summary of Comments Received in Response to a Review of the "2010 Census Residence Rule and Residence Situations"

On May 20, 2015, the Census Bureau published a document in the Federal Register asking for public comment on the "2010 Census Residence Rule and Residence Situations." Of the 262 comments received, 162 pertained to where prisoners² are counted, and 87 pertained to where military personnel overseas are counted. Two comments pertained to people in group homes for juveniles, two comments to people in residential treatment centers for juveniles, and one comment to students in boarding schools. Also, one comment pertained to the residence criteria, and one comment to each of four other residence situations: Visitors on Census Day, people who live in more than one place, people without a usual residence, and nonrelatives of the householder. Finally, three comments covered

²The majority of comments received on this topic used the terms "prisoner," "incarcerated," or "inmate." Although the terminology is not exactly what is used in the residence rule documentation, the context of the comments suggests that they apply to people in federal and state prisons (GQ type 102 and 103), local jails and other municipal confinement facilities (GQ type 104), and possibly federal detention centers (GQ type 101). References in this document to "prisons," or "prisoners," should be interpreted as referring to all of these GQ types.

broader issues: One pertaining to how the residence criteria and situations are communicated, one pertaining to how field staff is trained on the residence criteria and situations, and one on how alternative addresses are collected from certain types of group facilities.

1. Comments on Prisoners

Of the 162 comments pertaining to prisoners, 156 suggested that prisoners should be counted at their home or pre-incarceration address. The rationales included in these comments were as follows:

- Counting prisoners at the prison inaccurately represents the prisoners' home communities, inflates the political power of the area where the prison is located, and deflates the political power in the prisoners' home communities. This distorts the redistricting process.

- Counting prisoners away from their home address goes against the principle of equal representation.

- The current residence criteria for prisoners is inconsistent with some states' laws regarding residency for elections.

- The "usual residence" concept itself should change, as it relates to incarcerated persons, because the tremendous increase in the number of incarcerated people in the last 30 years, and the Supreme Court's support of equal representation, warrants a change in the interpretation of the concept of "usual residence."

- Prisoners do not interact or participate in the civic life of the community where they are incarcerated, are there involuntarily, and generally do not plan to remain in that community upon their release.

- One comment stated that inmates in local jails who are awaiting trial are presumed innocent, and therefore should not be counted at the jail.

Six comments were in support of the 2010 practice of counting prisoners at the prison, stating that adjusting prisoners' locations would be difficult, expensive, add unneeded complexity, and would be prone to inaccuracy. Of the six comments in support of counting prisoners at the prison, one mentioned a concern that adjusting the prisoners' locations could disenfranchise minorities in rural areas, and four said that changing the current practice could open the door to future census population count adjustments motivated by political gain.

Census Bureau Response: The Census Bureau has determined that the practice of counting prisoners at the correctional facility for the 2020 Census would be consistent with the concept of usual residence, as established by the Census

Act of 1790. As noted in section A.1 of this document, "usual residence" is defined as the place where a person lives and sleeps most of the time, which is not always the same as their legal residence, voting residence, or where they prefer to be counted. Therefore, counting prisoners anywhere other than the facility would violate the concept of usual residence, since the majority of people in prisons live and sleep most of the time at the prison.

States are responsible for legislative redistricting. The Census Bureau works closely with the states and recognizes that some states have decided, or may decide in the future, to 'move' their prisoner population back to the prisoners' pre-incarceration addresses for redistricting and other purposes. Therefore, following the 2020 Census, the Census Bureau plans to offer a product that states can request, in order to assist them in their goals of reallocating their own prisoner population counts. Any state that requests this product will be required to submit a data file (indicating where each prisoner was incarcerated on Census Day, as well as their pre-incarceration address) in a specified format. The Census Bureau will review the submitted file and, if it includes the necessary data, provide a product that contains supplemental information the state can use to construct alternative within-state tabulations for its own purposes. However, the Census Bureau will not use the information in this product to make any changes to the official decennial census counts.

The Census Bureau also plans to provide group quarters data after the 2020 Census sooner than it was provided after the 2010 Census. For the 2010 Census, the Census Bureau released the *Advance Group Quarters Summary File* showing the seven major types of group quarters, including correctional facilities for adults and juvenile facilities. This early³ release of data on the group quarters population was beneficial to many data users, including those in the redistricting community who must consider whether to include or exclude certain populations when redrawing boundaries as a result of state legislation. The Census Bureau is planning to incorporate similar group quarters

³The *Advance Group Quarters Summary File* was released on April 20, 2011, which was earlier than when that GQ data was originally planned to be released in the *Summary File 1* that was released on June 16–August 25, 2011. The earlier release made it easier to use these GQ data in conjunction with the *Redistricting Data (Pub. L. 94-171) Summary File*, which was released on February 3–March 24, 2011.

information in the standard *Redistricting Data (Pub. L. 94-171) Summary File* for 2020.

2. Comments on the Military Overseas

Of the 87 comments received pertaining to the military overseas, all suggested that the Census Bureau treat military personnel who are temporarily deployed overseas on a short-term basis differently than military personnel who are stationed overseas on a more long-term basis. More specifically, these comments suggested that military personnel who are deployed overseas should be counted at their home base or port. The commenters also suggested that the Census Bureau work with military bases to locate more accurate administrative records for counting deployed military and use administrative records to provide socioeconomic information on the deployed military.

In the 2010 Census, the Census Bureau counted all military personnel deployed or stationed overseas in their 'home of record' state for apportionment purposes only. Their home of record was provided by the Department of Defense (DOD),⁴ and those state counts were added to the state population counts that were used to calculate the apportionment of seats for each state in the U.S. House of Representatives.

The commenters not only indicated that they want military personnel deployed overseas to be counted at their "usual residence," "last duty station," or "home base or port," (which are inferred to mean the same thing), but also that they want the Census Bureau to collect all decennial census demographic data on these personnel and include them in the local community-level resident population counts, rather than only using a basic population count of them for determining the state-level apportionment counts. For example, many comments referred to the need for counting deployed military in the communities where they usually reside, because doing otherwise "produces flawed data that harms funding and planning in military communities." Another comment referred to ensuring "communities have the needed resources to support these soldiers and their families." These and other

⁴ Home of record is generally the permanent home of the person at the time of entry or enlistment into the Armed Forces, as included on personnel files. If home of record information was not available for a person, the DOD used the person's "legal residence" (the residence a member declares for state income tax withholding purposes), or thirdly, "last duty station," to assign a home state.

comments may refer to local-level planning and funding that is normally determined using the Census resident population data (available down to the block level) and not the apportionment counts, which are only available at the state level.

To support the argument for counting deployed military overseas at their usual residence in the United States, one of the 87 commenters compared how the Census Bureau counts U.S. military personnel deployed to a land-based location overseas versus U.S. military personnel on U.S. military vessels with a U.S. homeport. The "2010 Census Residence Rule and Residence Situations" stated that the latter are "counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport." The commenter argued that this is inconsistent with how the Census Bureau has counted military personnel who are deployed to a land-based location overseas (while stationed at a location in the United States), and asked that all branches of service be treated the same and counted at their residence or home base/port.

Census Bureau Response: The Census Bureau has determined that there is a distinction between personnel who are deployed overseas and those who are stationed or assigned overseas. Deployments are typically short in duration, and the deployed personnel will be returning to their usual residence where they are stationed or assigned in the United States after their temporary deployment ends. Personnel stationed or assigned overseas generally remain overseas for longer periods of time, and often do not return to the previous stateside location from which they left. Therefore, counting deployed personnel at their usual residence in the United States follows the standard interpretation of the residence criteria to count people at their usual residence if they are temporarily away for work purposes. This change would provide consistency with how the Census Bureau counts U.S. military personnel on U.S. military vessels.

Based on the considerations described in the previous paragraph, for the 2020 Census, the Census Bureau proposes using administrative data from the DOD to count deployed personnel at their usual residence in the United States.⁵ The Census Bureau would continue to

⁵ The ability to successfully integrate the DOD data on deployed personnel into the resident population counts must be evaluated and confirmed prior to the 2020 Census.

count military and civilian employees of the U.S. Government who are stationed or assigned outside the United States, and their dependents living with them, in their home state, for apportionment purposes only, using administrative data provided by the DOD and the other federal agencies that employ them.

3. Comments on Group Homes for Juveniles and Residential Treatment Centers for Juveniles

Two comments pertained to group homes for juveniles and two comments to residential treatment centers for juveniles. All four of the comments supported counting the juveniles in these situations at their "household residence." One of the commenters on the group homes and one of the commenters on the residential treatment centers further stated that the juveniles should only be counted at their household residence if it is in the same state as the facility. If the residence is not in the same state, these two commenters stated that the juvenile should be counted at the facility. All four commenters argued that counting juveniles at the facility inflates the political power of the area where the facility is located and dilutes the representation of the juveniles' home communities.

Census Bureau Response: The Census Bureau reviewed where juveniles in these types of facilities are counted, based on the concept of usual residence. Most juveniles living in group homes are there for long periods of time and do not have a usual home elsewhere. The group home is where they live and sleep most of the time, so that is their usual residence. Conversely, most people in residential treatment centers for juveniles only stay at the facility temporarily and often have a usual home elsewhere that they return to after treatment is completed.

Based on the considerations described in the previous paragraph, the Census Bureau has determined that the practice of counting people in group homes for juveniles at the facility is consistent with the concept of usual residence. However, for the 2020 Census, the Census Bureau proposes to count people in residential treatment centers for juveniles at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they would be counted at the facility.

4. Comment on Boarding Schools

One of the comments received was related to boarding schools. The commenter suggested applying the current guidance for students attending college to students attending boarding

schools. In the past, students at boarding schools were counted at their parental home, while college students living away from their parental home while attending school were counted at the on-campus or off-campus residence where they lived and slept most of the time. The commenter noted that for foreign students attending boarding school, the school is their usual residence most of the year, and their parents live overseas. Therefore, these students likely were not counted under the 2010 guidance, even though they reside in the United States most of the year, because they do not have a parental home in the United States.

Census Bureau Response: The Census Bureau has historically counted boarding school students at their parental home, and has determined that it will continue doing so because of the students' age and dependency on their parents, and the likelihood that they would return to their parents' residence when they are not attending their boarding school (e.g., weekends, summer/winter breaks, and when they stop attending the school).

5. Comments on Specific Wording of the "Residence Rule and Residence Situations"

One letter commented on the specific wording of the residence criteria and four residence situations. The letter focused on people who experience homelessness in nontraditional ways, avoid shelters, and instead stay with family, friends, or acquaintances.

(a) Residence Criteria

The comment was to add a fourth bullet (in addition to the three bullets that we already use to present the three main principles of the residence criteria, as shown in section D of this document) with language to make it clear where people experiencing homelessness, who are not in a shelter or facility, are counted.

Census Bureau Response: The Census Bureau has determined that the current wording of the residence criteria will be retained, because they are purposely written to broadly encapsulate all residence situations in a succinct way, and it is consistent with the requirement to count people at their usual residence, as originally prescribed by the Census Act of 1790. However, in section B.5.d of this document, the Census Bureau proposes an addition to the residence situations in order to provide more clarity on where people who are experiencing homelessness are counted.

(b) Visitors on Census Day

The commenter suggested eliminating the "Visitors on Census Day" residence situation and merging it into the "People Away From Their Usual Residence on Census Day" situation. The commenter was concerned that the way the situation was described in the 2010 documentation implied that "visitors" had another home to return to, which is not the case for visitors who are experiencing homelessness.

Census Bureau Response: The Census Bureau has determined that it will retain the separate "Visitors on Census Day" situation, but proposes removing the phrase "who will return to their usual residence" from the description. Additionally, the following sentence would be added to the end of the situation wording to further clarify that not all visitors have another home to return to: "If they do not have a usual residence to return to, they are counted where they are staying on Census Day."

(c) People Who Live in More Than One Place

This commenter also suggested changing the 2010 wording for the category title "People Who Live in More Than One Place" to "People With Multiple Residences." The examples in this category were not intended to address people experiencing homelessness. However, the commenter noted that people experiencing homelessness might stay in a different place from night to night, and therefore could also be interpreted as "People Who Live in More Than One Place."

Census Bureau Response: The Census Bureau was concerned that the commenter's suggested category title of "People with Multiple Residences," might also wrongly be interpreted as applying only to people who own multiple residences. Therefore, the Census Bureau proposes to change the category title to "People Who Live or Stay in More Than One Place."

(d) People Without a Usual Residence

The commenter also suggested adding a residence situation for "couch-surfers, youth experiencing homelessness, or other people staying in your residence for short or indefinite periods of time" to the "People Without a Usual Residence" category. The commenter believed that the examples included in this category in 2010 only addressed the more typical conception of homelessness (e.g., people at soup kitchens or at non-sheltered outdoor locations), which does not align with how many other people experience homelessness in less recognized ways.

Census Bureau Response: The Census Bureau proposes to add a residence situation description to a new category called "People in Shelters and People Experiencing Homelessness," which clarifies where people are counted if they are experiencing homelessness and staying with friends or other people for short or indefinite periods of time (see section D.21.f of this document for exact wording).

(e) Nonrelatives of the Householder

Finally, the commenter suggested adding the same new situation, "couch-surfers, youth experiencing homelessness, or other people staying in your residence for short or indefinite periods of time" to the "Nonrelatives of the Householder" category.

Census Bureau Response: The Census Bureau proposes to address this comment by adding a situation for "Other nonrelatives, such as friends" to this category. Additionally, the Census Bureau proposes changing the title of this category from "Nonrelatives of the Householder" to "Relatives and Nonrelatives" and adding some situations that address relatives frequently missed or counted in the wrong place during the Census.

6. Other Comments

Three of the comments received did not address the residence criteria directly, nor did they address any particular residence situation.

(a) Clear Communication on the Residence Criteria and Residence Situations

One commenter suggested applying and communicating the residence criteria consistently across the country and cited the need for sound training for 2020 Census field workers, clear communication to 2020 Census partners and the public, and a "designated point-of-contact for residence determination."

Census Bureau Response: The Census Bureau is proposing many changes to the language and organization of the residence criteria and residence situations documentation to assist people in interpreting the criteria. However, issues related to training staff and the structure of specific 2020 Census operations are out of scope for this document.

(b) Questionnaire Content and Tabulations

One comment requested that the Census Bureau revisit the 2010 Individual Census Report (ICR) questions related to collecting information about where else the respondent might live or stay, and

making it more consistent with the household Census questionnaire. A second comment encouraged the Census Bureau to produce summary file tabulations based on the answers to the "Does Person [X] sometimes live or stay somewhere else?" question, arguing that it would "help facilitate the best interpretation and use of decennial census data at the state and local level."

Census Bureau Response: These comments are out of scope for this document.

C. Proposed Changes to the "2020 Census Residence Rule and Residence Situations"

Most of the provisions regarding where people are counted, which are described in the proposed "2020 Census Residence Rule and Residence Situations" (section D of this document), would remain unchanged from those that were used for the 2010 Census. Therefore, this section C of this document will help the reader by providing a brief description of each of the proposed changes to where people are counted. All other changes to the proposed wording and/or presentation of the residence criteria and residence situations, as compared to how they were written for the 2010 Census, would be made in order to provide more clarity or to document provisions that were not explicitly stated in the past. (In other words, any differences between the 2010 and proposed 2020 Census residence criteria and situations documents that are not explained in section C of this document are only clarifications, rather than actual changes to the residence criteria or to where people would be counted in the decennial census.)

1. Federally Affiliated Overseas

(a) Military and Civilian Employees of the U.S. Government Who Are Deployed Overseas

For the 2010 Census, military and civilian employees of the U.S. Government who were deployed or stationed/assigned outside the United States (and their dependents living with them outside the United States) were counted (using administrative data) in their home state for apportionment purposes only. For the 2020 Census, there would be no change to how the Census Bureau counts the military and civilian Federal employees who are stationed or assigned outside the United States. However, there would be a change for deployed personnel, such that military and civilian employees of the U.S. Government who are deployed outside the United States (while

stationed or assigned in the United States) would be counted at their usual residence in the United States and included in all 2020 Census data products (rather than only the apportionment counts). This change seeks to count deployed personnel in a way that is more consistent with the concept of usual residence, based on the short duration of most deployments and the fact that the personnel will return to their usual residence where they are stationed or assigned in the United States after their temporary deployment ends. More details about the considerations for this change can be found in section B of this document.

(b) Military and Civilian Employees of the U.S. Government Who Are Non-Citizens and Are Deployed or Stationed/Assigned Overseas

The "2010 Census Residence Rule and Residence Situations" were not clearly consistent regarding whether citizenship was a criterion for being included in the federally affiliated overseas population. The wording of the residence situation for military personnel overseas did not specify any citizenship criteria. However, the wording for Federal civilian employees overseas did specifically refer to U.S. citizens only, and the operational plan for the 2010 Census Federally Affiliated Overseas Count specified that both military and civilian employees of the U.S. Government who were non-citizens were excluded from the overseas counts, despite the fact that non-citizens were included in the stateside population.

After the 2010 Census, the operational assessment report for the Federally Affiliated Overseas Count recommended that the "2020 Census Residence Rule and Residence Situations" should make the guidance regarding citizenship clear and consistent not only across both military and civilian employees overseas, but also across the overseas and stateside populations. When considering such a change, the Census Bureau concluded that the rationales that are used for including the federally affiliated overseas population in the decennial census (e.g., that they are temporarily away in service to our country's government) are equally applicable to citizens and non-citizens alike. Therefore, for the 2020 Census, military and civilian employees of the U.S. Government who are deployed or stationed/assigned overseas and are not U.S. citizens (but must be legal U.S. residents to meet the requirements for federal employment) would be included in the Federally Affiliated Overseas Count (which would follow the guidelines for deployed and stationed/

assigned military personnel that are described in section C.1.a of this document).

2. Crews of U.S. Flag Maritime/Merchant Vessels

For the 2010 Census, crews of U.S. flag maritime/merchant vessels were counted based on where the vessel was located on Census Day. If the vessel was docked in a U.S. port or sailing from one U.S. port to another U.S. port, then the crewmembers were counted at their onshore usual residence in the United States. (Or if they had no onshore usual residence, they were counted at the vessel's U.S. port of departure.) Otherwise, the crewmembers were not counted in the census if the vessel was sailing from a U.S. port to a foreign port, sailing from a foreign port to a U.S. port, sailing from one foreign port to another foreign port, or docked in a foreign port.

For the 2020 Census, there would be no change to how the Census Bureau counts crews of U.S. flag maritime/merchant vessels that are docked in a U.S. port, sailing from one U.S. port to another U.S. port, sailing from one foreign port to another foreign port, or docked in foreign port. However, there would be a change for crews of U.S. flag maritime/merchant vessels that are sailing from a U.S. port to a foreign port or sailing from a foreign port to a U.S. port, such that the crewmembers of these vessels would be counted at their onshore usual residence in the United States. (Or if they have no onshore usual residence, they would be counted at the U.S. port that the vessel is sailing to or from.) This change seeks to count crews of U.S. flag maritime/merchant vessels in a way that is more consistent with the concept of usual residence, based on the fact that mariners sailing between U.S. and foreign ports typically have the same pattern of usual residence as mariners sailing between two U.S. ports (i.e., they retain an onshore residence in the United States where they live and sleep most of the time).

3. Residential Treatment Centers for Juveniles

For the 2010 Census, all juveniles staying in residential treatment centers for juveniles on Census Day were counted at the facility. For the 2020 Census, juveniles staying in this type of facility would be counted at a usual home elsewhere if they have one (where they live and sleep most of the time around Census Day) and they report a useable address for that usual home elsewhere. If they do not have a usual home elsewhere, then they would be counted at the facility. This change seeks to count juveniles staying in

residential treatment centers for juveniles in a way that is more consistent with the concept of usual residence, based on the short average length of stay at this facility type, and the fact that juveniles often retain a usual home elsewhere while staying at this facility type. More details about the considerations for this change can be found in section B of this document.

4. Religious Group Quarters

For the 2010 Census, people staying in religious group quarters were counted at a usual home elsewhere if they had one (where they lived and slept most of the time around Census Day) and they reported a useable address for that usual home elsewhere. If they did not have a usual home elsewhere, then they were counted at the facility. For the 2020 Census, all people staying in religious group quarters on Census Day would be counted at the facility.

D. The Proposed "2020 Census Residence Rule and Residence Situations"

The Residence Rule is used to determine where people are counted during the 2020 Census. The Rule says:

- Count people at their usual residence, which is the place where they live and sleep most of the time.
- People in certain types of group facilities on Census Day are counted at the group facility.
- People who do not have a usual residence, or who cannot determine a usual residence, are counted where they are on Census Day.

The following sections describe how the Residence Rule applies to certain living situations for which people commonly request clarification.

1. PEOPLE AWAY FROM THEIR USUAL RESIDENCE ON CENSUS DAY

(a) *People away from their usual residence on Census Day, such as on a vacation or a business trip, visiting, traveling outside the U.S., or working elsewhere without a usual residence there (for example, as a truck driver or traveling salesperson)*—Counted at the residence where they live and sleep most of the time.

2. VISITORS ON CENSUS DAY

(a) *Visitors on Census Day*—Counted at the residence where they live and sleep most of the time. If they do not have a usual residence to return to, they are counted where they are staying on Census Day.

3. FOREIGN CITIZENS IN THE U.S.

(a) *Citizens of foreign countries living in the U.S.*—Counted at the U.S.

residence where they live and sleep most of the time.

(b) *Citizens of foreign countries living in the U.S. who are members of the diplomatic community*—Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

(c) *Citizens of foreign countries visiting the U.S., such as on a vacation or business trip*—Not counted in the census.

4. PEOPLE LIVING OUTSIDE THE U.S.

(a) *People deployed outside the U.S.⁶ on Census Day (while stationed or assigned in the U.S.) who are military or civilian employees of the U.S. Government*—Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by federal agencies.⁷

(b) *People stationed or assigned outside the U.S. on Census Day who are military or civilian employees of the U.S. Government, as well as their dependents living with them outside the U.S.*—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by federal agencies.

(c) *People living outside the U.S. on Census Day who are not military or civilian employees of the U.S. Government and are not dependents living with military or civilian employees of the U.S. Government*—Not counted in the stateside census.

5. PEOPLE WHO LIVE OR STAY IN MORE THAN ONE PLACE

(a) *People living away most of the time while working, such as people who live at a residence close to where they work and return regularly to another residence*—

⁶In this document, "Outside the U.S." and "foreign port" are defined as being anywhere outside the geographical area of the 50 United States and the District of Columbia. Therefore, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Pacific Island Areas (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands), and all foreign countries are considered to be "outside the U.S." Conversely, "stateside," "U.S. homeport," and "U.S. port" are defined as being anywhere in the 50 United States and the District of Columbia.

⁷Military and civilian employees of the U.S. Government who are deployed or stationed/assigned outside the U.S. (and their dependents living with them outside the U.S.) are counted using administrative data provided by the Department of Defense and the other Federal agencies that employ them. If they are deployed outside the U.S. (while stationed/assigned in the U.S.), the administrative data are used to count them at their usual residence in the U.S. Otherwise, if they are stationed/assigned outside the U.S., the administrative data are used to count them (and their dependents living with them outside the U.S.) in their home state for apportionment purposes only.

Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(b) *People who live or stay at two or more residences (during the week, month, or year), such as people who travel seasonally between residences (for example, snowbirds)*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(c) *Children in shared custody or other arrangements who live at more than one residence*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

6. PEOPLE MOVING INTO OR OUT OF A RESIDENCE AROUND CENSUS DAY

(a) *People who move into a new residence on or before Census Day*—Counted at the new residence where they are living on Census Day.

(b) *People who move out of a residence on Census Day and do not move into a new residence until after Census Day*—Counted at the old residence where they were living on Census Day.

(c) *People who move out of a residence before Census Day and do not move into a new residence until after Census Day*—Counted at the residence where they are staying on Census Day.

7. PEOPLE WHO ARE BORN OR WHO DIE AROUND CENSUS DAY

(a) *Babies born on or before Census Day*—Counted at the residence where they will live and sleep most of the time, even if they are still in a hospital on Census Day.

(b) *Babies born after Census Day*—Not counted in the census.

(c) *People who die before Census Day*—Not counted in the census.

(d) *People who die on or after Census Day*—Counted at the residence where they were living and sleeping most of the time as of Census Day.

8. RELATIVES AND NONRELATIVES

(a) *Babies and children of all ages, including biological, step, and adopted children, as well as grandchildren*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they

are staying on Census Day. (Only count babies born on or before Census Day.)

(b) *Foster children*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(c) *Spouses and close relatives, such as parents or siblings*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(d) *Extended relatives, such as grandparents, nieces/nephews, aunts/uncles, cousins, or in-laws*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(e) *Unmarried partners*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(f) *Housemates or roommates*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(g) *Roomers or boarders*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(h) *Live-in employees, such as caregivers or domestic workers*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(i) *Other nonrelatives, such as friends*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

9. PEOPLE IN RESIDENTIAL SCHOOL-RELATED FACILITIES

(a) *Boarding school students living away from their parents' or guardians' home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools*—Counted at their parents' or guardians' home.

(b) *Students in residential schools for people with disabilities on Census Day*—Counted at the school.

(c) *Staff members living at boarding schools or residential schools for people with disabilities on Census Day*—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the school.

10. COLLEGE STUDENTS (and Staff Living in College Housing)

(a) *College students living at their parents' or guardians' home while attending college in the U.S.*—Counted at their parents' or guardians' home.

(b) *College students living away from their parents' or guardians' home while attending college in the U.S. (living either on-campus or off-campus)*—Counted at the on-campus or off-campus residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

(c) *College students living away from their parents' or guardians' home while attending college in the U.S. (living either on-campus or off-campus) but staying at their parents' or guardians' home on break or vacation*—Counted at the on-campus or off-campus residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

(d) *College students who are U.S. citizens living outside the U.S. while attending college outside the U.S.*—Not counted in the stateside census.

(e) *College students who are foreign citizens living in the U.S. while attending college in the U.S. (living either on-campus or off-campus)*—Counted at the on-campus or off-campus U.S. residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

(f) *Staff members living in college/university student housing (such as dormitories or residence halls) on Census Day*—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the college/university student housing.

11. PEOPLE IN HEALTH CARE FACILITIES

(a) *People in general or Veterans Affairs hospitals (except psychiatric units) on Census Day, including newborn babies still in the hospital on Census Day*—Counted at the residence where they live and sleep most of the time. Newborn babies are counted at the residence where they will live and sleep most of the time. If patients or staff members do not have a usual home elsewhere, they are counted at the hospital.

(b) *People in mental (psychiatric) hospitals and psychiatric units in other hospitals (where the primary function is for long-term non-acute care) on Census Day*—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in assisted living facilities⁸ where care is provided for individuals who need help with the activities of daily living but do not need the skilled medical care that is provided in a nursing home*—Residents and staff members are counted at the residence where they live and sleep most of the time.

(d) *People in nursing facilities/skilled-nursing facilities (which provide long-term non-acute care) on Census Day*—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(e) *People staying at in-patient hospice facilities on Census Day*—Counted at the residence where they live and sleep most of the time. If patients or staff members do not have a usual home elsewhere, they are counted at the facility.

12. PEOPLE IN HOUSING FOR OLDER ADULTS

(a) *People in housing intended for older adults, such as active adult communities, independent living, senior apartments, or retirement*

⁸ Nursing facilities/skilled-nursing facilities, in-patient hospice facilities, assisted living facilities, and housing intended for older adults may coexist within the same entity or organization in some cases. For example, an assisted living facility may have a skilled-nursing floor or wing that meets the nursing facility criteria, which means that specific floor or wing is counted according to the guidelines for nursing facilities/skilled-nursing facilities, while the rest of the living quarters in that facility are counted according to the guidelines for assisted living facilities.

communities—Residents and staff members are counted at the residence where they live and sleep most of the time.

13. U.S. MILITARY PERSONNEL

(a) *U.S. military personnel assigned to military barracks/dormitories in the U.S. on Census Day*—Counted at the military barracks/dormitories.

(b) *U.S. military personnel (and dependents living with them) living in the U.S. (living either on base or off base) who are not assigned to barracks/dormitories on Census Day*—Counted at the residence where they live and sleep most of the time.

(c) *U.S. military personnel assigned to U.S. military vessels with a U.S. homeport on Census Day*—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel's homeport.

(d) *People who are active duty patients assigned to a military treatment facility in the U.S. on Census Day*—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(e) *People in military disciplinary barracks and jails in the U.S. on Census Day*—Prisoners are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(f) *U.S. military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a military installation outside the U.S. on Census Day*—Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense.

(g) *U.S. military personnel who are stationed outside the U.S. and are living on or off a military installation outside the U.S. on Census Day, as well as their dependents living with them outside the U.S.*—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of Defense.

(h) *U.S. military personnel assigned to U.S. military vessels with a homeport outside the U.S. on Census Day*—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of Defense.

14. MERCHANT MARINE PERSONNEL ON U.S. FLAG MARITIME/ MERCHANT VESSELS

(a) *Crews of U.S. flag maritime/merchant vessels docked in a U.S. port, sailing from one U.S. port to another U.S. port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port on Census Day*—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel. If the vessel is docked in a U.S. port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port, crewmembers with no onshore U.S. residence are counted at the U.S. port. If the vessel is sailing from one U.S. port to another U.S. port, crewmembers with no onshore U.S. residence are counted at the port of departure.

(b) *Crews of U.S. flag maritime/merchant vessels engaged in U.S. inland waterway transportation on Census Day*—Counted at the onshore U.S. residence where they live and sleep most of the time.

(c) *Crews of U.S. flag maritime/merchant vessels docked in a foreign port or sailing from one foreign port to another foreign port on Census Day*—Not counted in the stateside census.

15. PEOPLE IN CORRECTIONAL FACILITIES FOR ADULTS

(a) *People in federal and state prisons on Census Day*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) *People in local jails and other municipal confinement facilities on Census Day*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in federal detention centers on Census Day, such as Metropolitan Correctional Centers, Metropolitan Detention Centers, Bureau of Indian Affairs Detention Centers, Immigration and Customs Enforcement (ICE) Service Processing Centers, and ICE contract detention facilities*—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(d) *People in correctional residential facilities on Census Day, such as halfway houses, restitution centers, and prerelease, work release, and study centers*—Residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

16. PEOPLE IN GROUP HOMES AND RESIDENTIAL TREATMENT CENTERS FOR ADULTS

(a) *People in group homes intended for adults (non-correctional) on Census Day*—Residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) *People in residential treatment centers for adults (non-correctional) on Census Day*—Counted at the residence where they live and sleep most of the time. If residents or staff members do not have a usual home elsewhere, they are counted at the facility.

17. PEOPLE IN JUVENILE FACILITIES

(a) *People in correctional facilities intended for juveniles on Census Day*—Juvenile residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) *People in group homes for juveniles (non-correctional) on Census Day*—Juvenile residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in residential treatment centers for juveniles (non-correctional) on Census Day*—Counted at the residence where they live and sleep most of the time. If juvenile residents or staff members do not have a usual home elsewhere, they are counted at the facility.

18. PEOPLE IN TRANSITORY LOCATIONS

(a) *People at transitory locations such as recreational vehicle (RV) parks, campgrounds, hotels and motels (including those on military sites), hostels, marinas, racetracks, circuses, or carnivals*—Anyone, including staff members, staying at the

transitory location are counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, or they cannot determine a place where they live most of the time, they are counted at the transitory location.

19. PEOPLE IN WORKERS' RESIDENTIAL FACILITIES

(a) *People in workers' group living quarters and Job Corps Centers on Census Day*—Counted at the residence where they live and sleep most of the time. If residents or staff members do not have a usual home elsewhere, they are counted at the facility.

20. PEOPLE IN RELIGIOUS-RELATED RESIDENTIAL FACILITIES

(a) *People in religious group quarters, such as convents and monasteries, on Census Day*—Counted at the facility.

21. PEOPLE IN SHELTERS AND PEOPLE EXPERIENCING HOMELESSNESS

(a) *People in domestic violence shelters on Census Day*—People staying at the shelter (who are not staff) are counted at the shelter. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the shelter.

(b) *People who, on Census Day, are in temporary group living quarters established for victims of natural disasters*—Anyone, including staff members, staying at the facility are counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the facility.

(c) *People who, on Census Day, are in emergency and transitional shelters with sleeping facilities for people experiencing homelessness*—People staying at the shelter (who are not staff) are counted at the shelter. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the shelter.

(d) *People who, on Census Day, are at soup kitchens and regularly scheduled mobile food vans that provide food to people experiencing homelessness*—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the soup kitchen or mobile food van location where they are on Census Day.

(e) *People who, on Census Day, are at targeted non-sheltered outdoor*

locations where people experiencing homelessness stay without paying—Counted at the outdoor location where they are on Census Day.

(f) *People who, on Census Day, are temporarily displaced or experiencing homelessness and are staying in a residence for a short or indefinite period of time*—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

Dated: June 23, 2016.

John H. Thompson.

Director, Bureau of the Census.

[FR Doc. 2016-15372 Filed 6-29-16; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. FDA-2016-F-1805]

Society of the Plastics Industry, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Keller and Heckman LLP on behalf of the Society of the Plastics Industry, Inc. (Petitioner or SPI), requesting that we amend our food additive regulations to no longer provide for the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers because this use has been abandoned. **DATES:** The food additive petition was filed on May 11, 2016. Submit either electronic or written comments by August 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

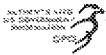
Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2016-F-1805 for "Filing of Food Additive Petition: Society of the Plastics Industry, Inc." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions:* To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be



these technologies, YPG needs to use the existing airspace and ground infrastructure at Laguna Army Airfield. Use of the Airfield is limited to "official business only" with "prior permission required." Therefore, hazardous testing could be conducted safely within proposed R-2306F without impacting non-participating aircraft.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to establish a new restricted area, R-2306F, extending from the surface to 1,700 feet MSL, in the vicinity of Laguna Army Airfield at Yuma Proving Ground, AZ. The proposed area would be used for the testing of various hazardous systems including non-eye-safe lasers, high energy radars and the development of experimental weapons. Testing would include the operation of these systems from various aircraft platforms. Restricted airspace is required to effectively test these complex integrated systems without posing a hazard to non-participating aircraft and/or ground personnel. Proposed R-2306F would be completely contained over YPG-owned land. No supersonic flights would be conducted within the proposed airspace.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 0565, 3 CFR, 1959-1963 Comp., p. 389.

§ 73.23 Arizona [Amended]

■ 2. § 73.23 is amended as follows:

* * * * *

R-2306F, Yuma West, AZ [New]

Boundaries. Beginning at lat. 32° 51' 52" N., long. 114° 26' 52" W.; to lat. 32° 52' 30" N., long. 114° 21' 03" W.; to lat. 32° 51' 15" N., long. 114° 21' 03" W.; to lat. 32° 51' 18" N., long. 114° 19' 29" W.; then clockwise along a 3.5 NM arc centered at lat. 32° 51' 52" N., long. 114° 23' 34" W.; to lat. 32° 49' 30" N., long. 114° 26' 39" W.; to lat. 32° 49' 51" N., long. 114° 26' 38" W.; to lat. 32° 50' 08" N., long. 114° 26' 33" W.; to lat. 32° 50' 17" N., long. 114° 26' 19" W.; to lat. 32° 50' 31" N., long. 114° 26' 17" W.; to lat. 32° 50' 42" N., long. 114° 26' 29" W.; to lat. 32° 51' 11" N., long. 114° 26' 34" W.; to the point of beginning

Designated altitudes. Surface to 1,700 feet MSL.

Time of designation. Intermittent, 0600-1800 local time, Monday-Saturday; other times by NOTAM.

Controlling agency. Yuma Approach Control, MCAS Yuma, AZ.

Using agency. U.S. Army, Commanding Officer, Yuma Proving Ground, Yuma, AZ.

* * * * *

Issued in Washington, DC, on July 19, 2016.

Leslie M. Swann,
Acting Manager, Airspace Policy Group.

[FR Doc. 2016-17558 Filed 7-22-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Chapter I

[Docket Number 160526465-6618-02]

Proposed 2020 Census Residence Criteria and Residence Situations; Extension of Comment Period

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Proposed Criteria; Extension of Comment Period.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this document to extend the comment period on the Proposed 2020 Census Residence Criteria and Residence Situations, which was published in the Federal Register on June 30, 2016. The comment period for the proposed criteria, which would have ended on August 1, 2016, is now extended until September 1, 2016.

DATES: Comments on the proposed criteria published on June 30, 2016 (81 FR 42577), must be received by September 1, 2016.

ADDRESSES: Direct all written comments regarding the Proposed 2020 Census Residence Criteria and Residence Situations to Karen Humes, Chief, Population Division, U.S. Census Bureau, Room 6H174, Washington, DC 20233; or Email [POP.2020.Residence.Rule@census.gov].

FOR FURTHER INFORMATION CONTACT: Population and Housing Programs Branch, U.S. Census Bureau, 6H185, Washington, DC 20233, telephone (301) 763-2381; or Email [POP.2020.Residence.Rule@census.gov].

SUPPLEMENTARY INFORMATION:

Background

The U.S. Census Bureau is committed to counting every person in the 2020 Census once, only once, and in the right place. The fundamental reason that the decennial census is conducted is to fulfill the Constitutional requirement (Article I, Section 2) to apportion the seats in the U.S. House of Representatives among the states. Thus, for a fair and equitable apportionment, it is crucial that the Census Bureau counts everyone in the right place during the decennial census.

The residence criteria are used to determine where people are counted during each decennial census. For more information on the Proposed 2020 Census Residence Criteria and Residence Situations (also referred to as the proposed "2020 Census Residence Rule and Residence Situations" in the text of the earlier document), please see the original document of proposed criteria and request for comment published in the Federal Register on June 30, 2016 (81 FR 42577).

Because of the scope of the proposed criteria, and in response to individuals and organizations who have requested more time to review the proposed criteria, the Census Bureau has decided to extend the comment period for an additional 31 days. This document announces the extension of the public comment period to September 1, 2016.

Dated: July 19, 2016.
 Nancy A. Potok,
 Deputy Director, Bureau of the Census.
 (FR Doc. 2016-17484 Filed 7-22-16; 8:45 am)
 BILLING CODE 3510-07-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR-5476-N-04]

RIN 2506-AC29

Continuum of Care Program: Solicitation of Comment on Continuum of Care Formula

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; request for comments.

SUMMARY: On July 31, 2012, HUD published an interim rule, for public comment, entitled "Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program," a program designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. HUD received 551 public comments on the interim rule. Approximately 42 of the public comments addressed the Continuum of Care formula, with the majority of these commenters seeking changes to the formula. With the interim rule now in place for 3 years, HUD seeks additional comment on the Continuum of Care formula.

Comment Due Date: September 23, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. **Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. **Electronic Submission of Comments.** Interested persons may submit comments electronically through

the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Continuum of Care (CoC) Interim Rule

On July 31, 2012, at 77 FR 45422, HUD published in the Federal Register an interim rule to implement the CoC authorized amendments to the McKinney-Vento Homeless Assistance Act in the Homeless Emergency Assistance and Rapid Transition to

Housing Act of 2009 (HEARTH Act). The purpose of the CoC program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

Section 427 of the McKinney Vento Act, as amended by the HEARTH Act, directs the Secretary to establish, by regulation, a funding formula that is based upon factors that are appropriate to allocate funds to meet the goals and objectives of the CoC program. As part of the interim rule, HUD codified the formula for establishing a CoC's Preliminary Pro Rata Need (PPRN formula) that had been used for many years prior to the interim rule to establish a CoC's PPRN. The PPRN formula is a combination of the formula used to award Emergency Solutions Grants (ESG) Program grant funds and Community Development Block Grant (CDBG) funds. Under the current PPRN formula, after a .2 percent set-aside for U.S. territories and insular areas, 75 percent of the total CoC allocation is distributed to ESG entitlement communities, generally comprised of large metropolitan cities and urban counties where homelessness is more concentrated, according to the CDBG formula. The remaining 25 percent of the CoC allocation is distributed to ESG non-entitlement communities according to the CDBG formula. Within this framework, the current CDBG formula is structured as a "dual formula" system. As set forth below, Formula A allocates funds to communities based on the following weighted factors: population, poverty, and overcrowding. Formula B assigns a different weighting scheme to an alternative menu of factors: population growth lag,¹ poverty, and pre-1940s housing.² Specifically, the existing CDBG formulas³ are weighted as follows.

¹ Population growth lag identifies slower growing communities or communities experiencing population loss as potential indicators of communities in decline and in need of development assistance.

² The share of housing units built before 1940 reflects the age of a community's housing stock, a potential indicator of blight.

³ For non-entitlement communities, Formula B uses population instead of population growth lag.

Full-Text Log of Comment Submissions on 2016 FRN on Residence Rule & Residence Situations (comment period = July 1-September 1, 2016)

Comment Submission #	Full Text of Comment Submission
c00001	<p>The Census Bureau's plan to count incarcerated persons as residents of prison, rather than of their home communities, defies the one person, one vote requirement. This plan gives districts that contain prisons a bloated count and disproportionate say in elections and public policy while undermining and diminishing the vote and voice of urban and poor communities.</p> <p>This practice has gone on far too long. Now, combining this practice with the precision mapping and data mining that enable precise gerrymandering of legislative districts, informed citizens can no longer permit this distortion of democracy.</p> <p>It would be far more cost effective to count inmates properly than to wait and face the onslaught of legal challenges that will confront the Bureau if this issue is not addressed. Recent lawsuits are just a hint of the tidal wave to come.</p> <p>I am writing this as a citizen with standing in this issue, since my own electoral districts lose representation through prison-based gerrymandering.</p> <p>I am also writing this as _____ of a statewide organization, Fair Districts PA, deeply concerned about this illegal and unconstitutional practice and determined to see reform, not just in Pennsylvania, but throughout the country.</p> <p>Please reconsider this proposal and count incarcerated persons as residents of their home communities.</p>
c00002	<p>Thank you for the changes to the proposed 2020 Census Residence Rule and Residence Situations regarding "a distinction between personnel who are deployed overseas and those who are stationed or assigned overseas." I am pleased that "for the 2020 Census, the Census Bureau proposes using administrative data from the DOD to count deployed personnel at their usual residence in the United States." This method provides a more accurate accounting of populations residing in communities surrounding U.S. military bases, and it will allow those communities to better assist our nation's service members.</p>
c00003	<p>I completely support the proposed rule to the 2020 Census Residence Rule and Residence Situations regarding the military overseas. For local cities, counties, and states who are honored to be the home of a military installation, having an accurate population count for these personnel is of utmost importance. Therefore, it is very appropriate to count those military personnel who are deployed in the census of their home base or port since these local communities must plan on providing services to these personnel. If a large number of personnel happen to be deployed overseas on April 1, when the census is conducted, a lower count is reflected in the count for these local cities, counties, and states than would be the case if these personnel were back at their usual base or port before and after deployment.</p>

	<p>The rule also makes the counting consistent with how other personnel are counted who are stationed or assigned overseas. Additionally, federal and state funding to local cities, counties, and states that are based on population would be more accurate by including those deployed personnel at their home base or port.</p> <p>Thank you for considering this much-needed rule change.</p>
c00004	<p>As a retired 27-year Navy veteran, I urge you to leave in place the method of determining a service member's state of residence as being the state from which he or she enlisted (home of record). During any career, service members are reassigned to a number of different duty stations. But, in general, a service member considers their home of record as where they have the strongest ties.</p>
c00005, c00010- c00013, c00017, c00020- c00021, c00048, c00093- c00097, c00100, c00160, c00865, c77957	<p>I am writing to provide comment and support for U.S. Census Bureau's proposed "2020 Census Residence Rule and Residence Situations." On behalf of the Christian County community, I show my support of the proposed new guidelines for counting of deployed military personnel in the upcoming 2020 Census. Under the proposal, U.S. military personnel who are deployed outside the U.S. on Census Day would be counted at the U.S. residence where they live and sleep most of the time. Counting deployed service members via this method will ensure that they are counted in the most advantageous and beneficial means for all communities.</p> <p>Military service members and their families are vital to the fabric of the communities in which they are stationed. Often, the communities surrounding a military installation work tirelessly to provide the best options, partnerships, and opportunities for their military neighbors. Our community here in Christian County, Kentucky, is no exception to that standard of excellence in service. In so many ways, Christian County has maintained a steadfast relationship--and partnership--with the Army, working to ensure our community is in tune with the quality of life needs and wishes of our soldiers and their families.</p> <p>The proposed method of counting service members who are deployed at the time of the 2020 Census will accurately show the economic impact that these service members have on the communities in which they work, play, and reside. Appropriate federal dollar funding can now be made available to these very communities, so that they may continue to provide quality of life services and opportunities.</p> <p>I pledge my continued support for economic prosperity and opportunities for the region in which Fort Campbell gains tremendous support. I thank you for your consideration of enacting what is best for our country's military personnel, their families, and the communities that they call home.</p>
c00006	<p>I am writing to beg you to NOT count the residency of incarcerated persons as the address of their prison. They should be counted as residing at the place they lived before they were imprisoned. Our prisons populations do not demographically match the people in the prison locale. This gives an inaccurate picture of the needs of the prison locale and the community they were removed from AND WILL RETURN TO. It results in the misallocation of government funds and unfair elections.</p>
c00007	<p>Great idea! About time! Thanks for all you do!!! Keep it up!</p>
c00008	<p>I am writing this letter to respond to the proposed "2020 Census Residence Rule and Residence Situations." that is open for public comment. I believe that there is a serious problem with the proposal to continue to count prisoners at the prison location.</p> <p>I am disappointed to see that this rule remains unchanged despite the thoroughly documented distortions it creates in our redistricting data.</p>

I share my experiences from the 1990, 2000 and 2010 redistricting cycles here in the hope that you will reconsider your decision. Although my State has already taken great steps toward ending prison gerrymandering, only the Census Bureau can offer us a complete solution.

I have lived, since the late 1990's, in _____ County, New York, a rural county that has a large prison population. Prisoners are not residents of our community as they originate outside of our community; they have no interaction with our community and immediately leave the community when their sentences expire or when the Department of Corrections chooses to transfer them elsewhere. Enumerating these populations as part of our community forces our community to choose between either: (1) rejecting your counts, or (2) using census data that dilutes the votes of most of our community's residents to the benefit of the few who live immediately adjacent to the prison.

I have been concerned about the implications of your "residence rule" for democracy within rural communities since the Census when I was a resident of another upstate New York county which similarly hosted a large correctional facility. Many of my _____ County neighbors and I were concerned and raised public awareness that relying on your counts resulted in county apportionment that diluted the votes of residents who did not live near the prisons.

In the late 1990's, I moved to _____ County and was again involved as a citizen activist in redistricting. There, I was pleasantly surprised to learn that I would not need to organize a post-2000 lawsuit against _____ County because my county was already committed to modifying your Census data to remove the prison populations and avoid what is now commonly called "prison gerrymandering."

However, a controversy that erupted in the neighboring county of _____ over prison counting after the 2000 Census led me to discover that the rejection of Census Bureau prison counts in rural communities was the rule, not the exception. In summary, _____ County had, after the 1990 Census, traditionally rejected your prison counts, but for "outcome determinative" reasons decided to include the prison populations in the post-2000 districts. The public objected, with thousands of county residents signing a petition requesting the redistricting plan be put on the ballot. The county leadership rejected the petition and in response the public defeated the political party responsible for the prison gerrymandering in the next election.

Around this time, an upstate newspaper contacted other counties in the state to see how they were currently handling the prison populations, and I surveyed several counties that this newspaper missed. This survey work inspired the Prison Policy Initiative to do a more formal survey analysis which they published as "Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties." The authors concluded that the majority of New York State counties with large prisons rejected prison gerrymandering.

What should be obvious from my letter is that I, along with the elected leaders of my county, was concerned that including the prison population where the Census Bureau counted it but where those people--10% of our county's Census population--do not actually reside would have a vote dilutive impact on the other parts of our county. We simply did not want to draw county legislative districts that had a

	<p>preponderance of incarcerated people. Such districts would have given every county resident living near the prisons much more voting power than the other residents of the county.</p> <p>Having considered the effects of "prison gerrymandering" on rural counties that host prisons, many of my neighbors and I came to the obvious conclusion that the Census Bureau's counts are inaccurate insofar as the Bureau counted incarcerated people as residents of the prison locations. As a result, we removed the prison populations from the one set of legislative districts that we could control--our county districts.</p> <p>And here I feel I need to clarify our approach, given some statements from plaintiffs in the recent Texas case (<i>Evenwel v. Abbott</i>) about excluding some non-voting populations from redistricting counts.</p> <p>For us, in _____ County, the decision was not <i>whether</i> to count incarcerated people, but <i>where</i> they should rightly be counted, which we think is at their home of record. We had no right to count prisoners as local constituents because they relied on the representative services of their home legislators, and there is nothing that one of our county legislators could do for them. Removing the prison population was the best we could do because we lacked authority over the redistricting bodies of the New York City Council, the Albany City Council and the other home locations of the incarcerated people. As I, along with two neighbors, wrote to you in our July 9, 2004 comment letter: "We know of no complaints from prisoners as a result, as they no doubt look to the New York City Council for the local issues of interest to them."</p> <p>Thankfully, New York State took things one step further with the passage of Part XX (ending prison gerrymandering at the state and local levels) which made sure that all state prisoners are counted in the appropriate locations. This is legislation that I and many of my neighbors supported. And, while I support Part XX, and the Bureau's new proposed data services that my state might be able to take advantage of, I must note that the law and your proposal has one shortcoming that only the Census Bureau can fix: New York did not reallocate federal prisoners to their homes; it simply removed them from the count.</p> <p>The Census Bureau is the only entity which can provide a complete solution to the redistricting confusion caused by the way the current residence rule is applied to prisoners. I urge you to adjust this policy and count all prisoners at their homes of record in 2020.</p>
c00009	Greetings. Please ensure that laws are changed such that incarcerated adults are counted as "living" within their last known home communities. This will help to ensure a more fair representation of an area's voting population.
c00010	Same content as comment c00005
c00011	Same content as comment c00005
c00012	Same content as comment c00005
c00013	Same content as comment c00005
c00014	Regarding item #10 re: where to count college students: I agree with the proposed rule. It probably provides greater assurance that the student is, in fact, counted if you do so via the school. I can

	<p>see that a student might be omitted from the count if they were not listed at their legal residence because they're "not here" and then not counted at school. A full count, it seems, is more likely if student is counted at school.</p>
c00015	<p>North Carolina was deprived of a US Representative and various apportioned tax dollars because the 2010 census counted deployed military personnel as residing in their home states.</p> <p>We support the military members locally while they are deployed as well as their families who remain here in the county.</p> <p>I support the proposed changes.</p>
c00016	<p>In the interest of accuracy, I suggest that all deployed military are counted as a resident of the county and state in which they reside. Some military deployments are for a few months and others for longer periods of time. None the less, the military person returns home to their place of residence. Thus, the great state of North Carolina, housing many federal military bases, needs to have these military numbers totaled in to the population count for the purpose of accurate representation in Congress and number of electoral votes.</p>
c00017	<p>Same content as comment c00005</p>
c00018	<p>I believe that all Military residing in a state should be counted as residents of that state. They are using the state's services, schools, roads and other provided amenities. They are truly residents.</p>
c00019	<p>I write in regards to the Census Bureau's Proposed Criteria and Request for Comment on the 2020 Decennial Census Residence Rule and Residence Situations (Docket No: 160526465-6465-01) published in the federal Register on June 30, 2016, to propose certain changes to the residence criteria used to determine where people are counted during each decennial census. I would like to offer support for the proposed changes specifically Rule 13(f) regarding the counting of deployed service members "at the U.S. residence where they live and sleep most of the time." This change will insure that my constituents are accurately in the upcoming 2020 Census.</p> <p>The results of the 2010 Census displayed an anomaly that misrepresented the counting of deployed service members for overseas contingency operations. These service members, despite not having a change in their permanent duty station, and who return to their duty station upon completion of their deployment, were counted in accordance with Rule 9(f) of the 2010 Census Residence Rule and Residence Situations:</p> <p style="padding-left: 40px;">(f) U.S. military personnel living on or off a military installation outside of the U.S. including dependents living with them – Count as part of the U.S. overseas population. They should not be included on any U.S. census questionnaire</p> <p>The Census Bureau attributes U.S. overseas population to the state on an individual's home-of-record. This practice may have worked well for members of the Department of State or other government agencies operating outside of the United States, but the Department of Defense fails to properly, and, accurately, maintain their records. According to the "2010 Census Federally Affiliated Overseas Count Operation Assessment Report," dated March 19, 2012, "only 59 percent of the 2010 Department of Defense Records contained a home of record."</p>

	<p>As a result of using inaccurate and missing records for the tabulation of deployed service members, the surrounding military communities, which support the families of those service members, were calculated to have a lower population than what should be attributed to the community.</p> <p>My constituents residing in the region around Fort Campbell, Kentucky, experienced this first-hand following the 2010 census. Despite record home sales, increased public school enrollment, and other economic indicators supporting population growth, the calculated population remained relatively unchanged from the 2000 Census. The only explanation for the discrepancy is the deployment of service members from Fort Campbell to Afghanistan.</p> <p>Starting in late 2009 and continuing through 2010, members of the 1st, 2nd, 3rd, and 4th Brigade Combat teams of the 101st, the 101st Sustainment Brigade, the 159th and 101st Combat Aviation brigades were all deployed to sustain the military "surge" in Afghanistan. It is estimated that at least 10,000 service members were deployed at the collection time of the 2010 Census. Those service members then returned to Fort Campbell at the end of their deployment.</p> <p>I request that the Census Bureau maintain and implement the proposed changes to the "2020 Residence Rule and Residence Situations" as drafted. This will create one consistent and logical method for counting deployed service members. By counting deployed service members according to where they actually live, the Bureau will receive more accurate reports of population and ensure communities have the needed resources to support these soldiers and their families.</p> <p>Thank you for your time and thoughtful consideration of these proposed changes.</p>
c00020	Same content as comment c00005
c00021	Same content as comment c00005
c00022	North Carolina should receive full credit for the troops and their families that reside here. Undercounting troops due to deployment when North Carolina is their usual residence is unfair and costs North Carolina and Craven County Federal funds for education, infrastructure and other Federal Programs. The service members and their families deserve to be counted as residents of North Carolina.
c00023	Black lives count. All lives count. Census counting officials, use this opportunity correctly. I appeal to the better angels of your nature.
c00024	<p>I understand that present rules define prison inmates and residents of that county. If this is in fact correct, then hopefully it will be corrected before the next Census.</p> <p>Population, as you well know, is a factor in determining many federal distributions as well as representation. I spent three years incarcerated and was moved from prison to prison six times. This is done by the Texas Department of Corrections to game the Government's requirements for prisons.</p>
c00025	I am writing to urge you to count prisoners at their home residence rather than the location of their incarceration. By counting them at the prison location the Census Bureau is falsely representing the prison community populations. In most state constitutions and statutes, it explicitly states that incarceration does not change a residence. Including the incarcerated people in the population of the area they are

	<p>confined leads to an imbalance of district population. Looking through the lens of State Democracy, districts with prisons receive enhanced representation and districts without prisons state representation is diminished.</p> <p>The Census Bureau's decision to count incarcerated people in their area of confinement interferes with equal representation in virtually every state.</p> <p>To date, over 200 communities have discovered and addressed this problem and to ensure equal representation, they have drawn districts that exclude prison populations. I urge the Census Bureau to adopt this fair and democratic approach to avoid further misrepresentation.</p>
c00026	<p>I do not understand why the Census Bureau is proposing to continue to count prisoners as residents of the place where they are incarcerated rather than as residents of the place that was their home before they were incarcerated. Overwhelming objective evidence shows that this distorts the demographic count as well as the political process. Speaking personally as a former prisoner, I certainly had no thought of staying at any of the places where I was incarcerated (I was transferred a few times) after release. And of all the prisoners and ex-prisoners I have known over the years up to this day, I cannot think of one who decided to live at their place of confinement after release unless, as occurs occasionally, their place of confinement happened to be the same as their home residence. I know that there are political forces at work here, and I sincerely hope that you are not giving in to political pressure in promulgating this residence rule. In any case I implore you to please reconsider.</p>
c00027	<p>My name is _____ and I am the _____ of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawaii for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawaii individuals living behind bars or under the “care and custody” of the Department of Public Safety. <u>We are always mindful that approximately 1,400 of Hawaii’s imprisoned people are serving their sentences abroad - thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.</u></p> <p>Community Alliance on Prisons is saddened that the U.S. Census Bureau has ignored the overwhelming comments in support of changing how incarcerated persons are counted and instead has determined that the practice of counting prisoners at the correctional facility for the 2020 Census would be consistent with the concept of usual residence.</p> <p><i>“When the Census began in 1790, uses for the data were limited. Population statistics were rarely used for planning purposes until the 20th century. It was not until the 1960s that state legislatures were required to periodically redraw legislative district lines to comply with the “One Person One Vote” rule of equal numbers of people in each legislative district. In 1790, the Census’ sole role was to count the number of people in each state to determine their relative populations for purposes of Congressional reapportionment. It didn’t matter — for purposes of comparing Nevada’ population to Utah’s — whether an incarcerated person was counted at home or in the Nevada State Prison, as long as they were counted in the right state. Census data is used very differently today than it was in 1790, and our society has changed radically, but the Census’ method of counting prisoners has unfortunately remained the same.” [1]</i></p> <p>We are, therefore, profoundly disappointed by the Census Bureau proposal to again count nearly 2 million people in the wrong place on Census day. Continuing this outdated practice will ensure an inaccurate 2020 Census and another decade of prison gerrymandering. Leaving the current practice in place defies the very concept of democracy and promotes even more inequality.</p>

Hawaii has been banishing a significant portion of our prison population to corporate prisons on the continental United States for twenty-one years. This failed social experiment has wrought much anguish to our people and communities, the families of those banished, and our over-burdened taxpayers. Our people have not moved to these locations, they were sent involuntarily and will return to their homes and families in Hawaii after serving their sentences. Hawaii is their home.

We are well aware of how the corporate prison industry has “gamed” the system by building their dungeons in small towns, enticing public officials who can then benefit from increased federal appropriations to their towns.

Prisons have become a growth industry for rural America with a new prison opening in a small town every fifteen days over the last decade. [2] Now a \$60 billion industry, [3] prisons have developed the economic muscle to bend state priorities to their needs. There are now so many people in prison that legislators who have prisons in their districts are able to short-circuit the democratic process that would otherwise govern the prison industry.

The importance of accuracy in counting citizens to determine voting districts has long been recognized as vital to a thriving democracy. In the 1960’s, the Supreme Court struck down state legislative district plans that gave some citizens more access to government than others, declaring the “One Person One Vote” rule and the principle that “legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.” [4]

There is a basic unfairness in the decision to count incarcerated people in the facility to which they have been involuntarily sent when the Census Bureau has determined that there is a distinction between military personnel who are deployed overseas and those who are stationed or assigned overseas. Deployments are typically short in duration, and **the deployed personnel will be returning to their usual residence** where they are stationed or assigned in the United States after their temporary deployment ends.

How is military deployment different from those involuntarily banished outside their homeland when our incarcerated people will return to Hawaii upon the completion of their sentences? When *“counting deployed personnel at their usual residence in the United States follows the standard interpretation of the residence criteria to count people at their usual residence if they are temporarily away for work purposes”*, we fail to see the difference when counting people who are temporarily sentenced to prisons outside of Hawaii.

Justin Levitt, professor of constitutional law and the law of democracy at Loyola Law School, as well as a practitioner and litigator in the area of political participation encouraged the Census Bureau to count incarcerated individuals at their last known address before incarceration as a means to further equal representation in the democratic process. Professor Levitt bases his comments on the structure of representation and the effects of various voting systems and districting plans.

He explains that the Census counts most people at their “home.” Those whose “usual residence” is different from their “home” are typically in a new location for work or education, “and they are generally intertwined with the communities where they are laying their

	<p>heads most often” by interacting with their new neighbors, following community rules and regulations, and enjoying the benefits of local services and activities. However, <u>this is not the case for the 2.2 million people in the United States who are incarcerated. Professor Levitt points to the fact that incarcerated individuals have little in common with the residents in the communities surrounding their correctional facilities.</u></p> <p>Incarcerated individuals do not interact with the local community, and “most Village Township residents will not likely consider them ‘neighbors’”. Elected officials themselves do not always consider incarcerated people to be their constituents. As Professor Levitt recounts:</p> <p style="text-align: center;"><i>[I]n 2002, a New York state legislator representing a district housing thousands of incarcerated individuals said that given a choice between the district’s cows and the district’s prisoners, he would “take his chances” with the cows, because “[t]hey would be more likely to vote for me.”</i></p> <p><u>Indeed, according to Professor Levitt, 28 states have explicitly provided that incarcerated persons do not lose their residence in their home communities when they are incarcerated.</u></p> <p>The <u>New York Times</u> has written nine editorials highlighting how the prisoner miscount harms democracy, and has been joined by the editorial boards of papers as diverse as the <u>Milwaukee Journal-Standard</u>, the <u>Flint Journal</u> (Michigan) and the rural <u>Jackson City Patriot</u> (Jackson City, Michigan).</p> <p>Please help us correct this problem and get back to the ‘One Person One Vote’ ideal. This is sacred to our democracy. Please help us to achieve fair and equal representation to all the citizens by revising the Residence Rule or Residence Situations to count incarcerated people at their home in the Census. PLEASE PROMOTE DEMOCRACY!</p> <p>[1] New research on Nevada, Montana, and Idaho: How the census is watering down the voting power of some communities, by Peter Wagner, February 7, 2005. http://www.prisonersofthecensus.org/news/2005/02/07/wpp/</p> <p>[2] <i>Building a Prison Economy in Rural America</i>, Tracy Huling in <i>Invisible Punishment: The Collateral Consequences of Mass Incarceration</i>, Mark Maurer and Med Chesney-Lind, eds. (New York, The New Press, 2002).</p> <p>[3] Bureau of Justice Statistics, Justice Expenditure and Employment in the United States, 2003, Table 3.</p> <p>[4] <i>Reynolds v Sims</i>, 377 U.S. 533 (1964), at 562.</p>
c00028	<p>As a public servant who formally worked for the _____ legislature and now for the _____ state legislature, I want to urge you to end the practice of counting people in the wrong place (prison gerrymandering). It is critical that we have an accurate, fair, and truly representative 2020 Census.</p> <p>Please be on the right side of history on this seemingly minor but ultimately very impactful decision.</p>
c00029	<p>I am writing regarding the continued practice of counting prison population at the place of incarceration rather than the home residence where they lived upon committing the crime that created their reason for temporary confinement at what is referred to as the "Grey-Bar</p>

	<p>Motel." This practice places an unbalanced voting power to districts containing prisons. Having served as _____ for the Metropolitan Government of _____, I have seen this impact first hand.</p> <p>As _____, the "population" of the prison impacted the ability to keep neighborhoods together during redistricting. From a voting rights standpoint, in a district of only 16,000 to 18,000, when 2000 of those are incarcerated, temporary, and generally unable to participate in the community or voting, it gives the actual residents an 11% to 12.5% voting advantage over other districts. This should be corrected.</p> <p>I ask that future Census efforts avoid this practice.</p>
c00030	<p>I am writing in regards to the federal register notice on <i>Residence Rule and Residence Situations</i>, 81 FR 42577 (June 30, 2016). I urge you adjust the Usual Residence rule to count incarcerated people at their home address, not where they happen to be located on Census Day.</p> <p>The Census Bureau is an honest agency and an extraordinary source of information. I am a professional researcher and I use Census data regularly. I'm disappointed that the Bureau continues to use the old rule, now that the problems have become so clear.</p> <p>As you know, the median time served in most prisons is roughly four years, far less than the decennial census. As you may also know, people move around regularly within the system, staying in any particular prison for only part of their terms.</p> <p>(People are moved to adjust capacity, as some facilities become crowded while others have extra space; they are moved to accommodate protection orders, as co-defendants or witnesses enter or exit the system, and individuals must be confined separately from each other; and they are moved to accommodate medical needs, court dates, parole hearings or any number of other internal administrative events.)</p> <p>The Census Bureau can not and should not try to track movements in this way. The Bureau should enumerate people who are temporarily confined in the location they consider their homes, and in the neighborhood to which they will return long before the next census. It is most accurate and most fair.</p> <p>Thank you for your time and attention. You can do better.</p>
c00031	<p>My name is _____ and I am _____ of the _____ County Council. This testimony is respectfully offered on behalf of the 6,000 Hawaii individuals living behind bars or under the "care and custody" of the Department of Public Safety. <u>We are always mindful that approximately 1,400 of Hawaii's imprisoned people are serving their sentences abroad - thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.</u></p> <p>I am disappointed that the U.S. Census Bureau has ignored the overwhelming comments in support of changing how incarcerated persons are counted and instead has determined that the practice of counting prisoners at the correctional facility for the 2020 Census would be consistent with the concept of usual residence.</p>

“When the Census began in 1790, uses for the data were limited. Population statistics were rarely used for planning purposes until the 20th century. It was not until the 1960s that state legislatures were required to periodically redraw legislative district lines to comply with the “One Person One Vote” rule of equal numbers of people in each legislative district. In 1790, the Census’ sole role was to count the number of people in each state to determine their relative populations for purposes of Congressional reapportionment. It didn’t matter — for purposes of comparing Nevada’ population to Utah’s — whether an incarcerated person was counted at home or in the Nevada State Prison, as long as they were counted in the right state. Census data is used very differently today than it was in 1790, and our society has changed radically, but the Census’ method of counting prisoners has unfortunately remained the same.” [1]

We are, therefore, profoundly disappointed by the Census Bureau proposal to again count nearly 2 million people in the wrong place on Census day. Continuing this outdated practice will ensure an inaccurate 2020 Census and another decade of prison gerrymandering. Leaving the current practice in place defies the very concept of democracy and promotes even more inequality.

Hawaii has been banishing a significant portion of our prison population to corporate prisons on the continental United States for twenty-one years. This failed social experiment has wrought much anguish to our people and communities, the families of those banished, and our over-burdened taxpayers. Our people have not moved to these locations, they were sent involuntarily and will return to their homes and families in Hawaii after serving their sentences. Hawaii is their home.

We are well aware of how the corporate prison industry has “gamed” the system by building their dungeons in small towns, enticing public officials who can then benefit from increased federal appropriations to their towns.

Prisons have become a growth industry for rural America with a new prison opening in a small town every fifteen days over the last decade. [2] Now a \$60 billion industry,[3] prisons have developed the economic muscle to bend state priorities to their needs. There are now so many people in prison that legislators who have prisons in their districts are able to short-circuit the democratic process that would otherwise govern the prison industry.

The importance of accuracy in counting citizens to determine voting districts has long been recognized as vital to a thriving democracy. In the 1960’s, the Supreme Court struck down state legislative district plans that gave some citizens more access to government than others, declaring the “One Person One Vote” rule and the principle that “legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. [4]

There is a basic unfairness in the decision to count incarcerated people in the facility to which they have been involuntarily sent when the Census Bureau has determined that there is a distinction between military personnel who are deployed overseas and those who are stationed or assigned overseas. Deployments are typically short in duration, and **the deployed personnel will be returning to their usual residence** where they are stationed or assigned in the United States after their temporary deployment ends.

How is military deployment different from those involuntarily banished outside their homeland when our incarcerated people will return to Hawaii upon the completion of their sentences? When “*counting deployed personnel at their usual residence in the United States follows the standard interpretation of the residence criteria to count people at their usual residence if they are temporarily away for work purposes*”, we fail to see the difference when counting people who are temporarily sentenced to prisons outside of Hawaii.

Justin Levitt, professor of constitutional law and the law of democracy at Loyola Law School, as well as a practitioner and litigator in the area of political participation encouraged the Census Bureau to count incarcerated individuals at their last known address before incarceration as a means to further equal representation in the democratic process. Professor Levitt bases his comments on the structure of representation and the effects of various voting systems and districting plans.

He explains that the Census counts most people at their “home.” Those whose “usual residence” is different from their “home” are typically in a new location for work or education, “and they are generally intertwined with the communities where they are laying their heads most often” by interacting with their new neighbors, following community rules and regulations, and enjoying the benefits of local services and activities. However, this is not the case for the 2.2 million people in the United States who are incarcerated. Professor Levitt points to the fact that incarcerated individuals have little in common with the residents in the communities surrounding their correctional facilities.

Incarcerated individuals do not interact with the local community, and “most Village Township residents will not likely consider them ‘neighbors’”. Elected officials themselves do not always consider incarcerated people to be their constituents. As Professor Levitt recounts:

[I]n 2002, a New York state legislator representing a district housing thousands of incarcerated individuals said that given a choice between the district’s cows and the district’s prisoners, he would “take his chances” with the cows, because “[t]hey would be more likely to vote for me.”

Indeed, according to Professor Levitt, 28 states have explicitly provided that incarcerated persons do not lose their residence in their home communities when they are incarcerated.

The New York Times has written nine editorials highlighting how the prisoner miscount harms democracy, and has been joined by the editorial boards of papers as diverse as the Milwaukee Journal-Standard, the Flint Journal (Michigan) and the rural Jackson City Patriot (Jackson City, Michigan).

Please help us correct this problem and get back to the ‘One Person One Vote’ ideal. This is sacred to our democracy. Please help us to achieve fair and equal representation to all the citizens by revising the Residence Rule or Residence Situations to count incarcerated people at their home in the Census. PLEASE PROMOTE DEMOCRACY!

	<p>[1] New research on Nevada, Montana, and Idaho: How the census is watering down the voting power of some communities, by Peter Wagner, February 7, 2005. http://www.prisonersofthecensus.org/news/2005/02/07/wpp/</p> <p>[2] <i>Building a Prison Economy in Rural America</i>, Tracy Huling in <i>Invisible Punishment: The Collateral Consequences of Mass Incarceration</i>, Mark Maurer and Med Chesney-Lind, eds. (New York, The New Press, 2002).</p> <p>[3] Bureau of Justice Statistics, <i>Justice Expenditure and Employment in the United States, 2003</i>, Table 3.</p> <p>[4] <i>Reynolds v Sims</i>, 377 U.S. 533 (1964), at 562.</p>
c00032	<p>I am writing to ask you to reconsider your decision to count prisoners as citizens of the prison they are in instead of their home address. In Florida, where most prisons are located in rural areas, this leads to over-representation of their rural counties and under-representation in their home counties.</p>
c00033	<p>Justice for Families (J4F) submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau’s proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p> <p>J4F is a national organization that was created by families, for families that have been impacted by the criminal justice system and incarceration. We have nearly 3000 families in 38 states and the District of Columbia. As families that remain behind when our loved ones are incarcerated, we understand and live with the consequences of unequal representation in the Census data. The majority of our families live in poor communities of color that have little to no say in their local and state government, thus making an already vulnerable community even more vulnerable. Our families’ experiences have proven time and again that the best solutions to community problems come from the impacted community. When the community is denied accurate representation in the Census data, their solutions and voices go unheard while the voices of those who have no stake and little understanding of the community are given greater value and power.</p> <p>The Census Bureau defines “usual residence” as the place where a person “eats and sleeps most of the time,” but fails to follow that rule when counting incarcerated people. The majority of people incarcerated in Rhode Island, for example, spend less than 100 days in the state’s correctional facilities. If the same people were instead spending 100 days in their summer residence, the Bureau would count them at their regular home address. Even students in boarding schools get counted at their home address whether or not they eat and sleep there most of the time. The Census Bureau continues to carve out an unexplained exception for incarcerated people in order to count them in the wrong place.</p> <p>The Bureau’s failure to update its rules regarding incarcerated persons is particularly troubling given that the Bureau decided that other populations – deployed overseas military, and juveniles staying in residential treatment centers – should be counted in their home location even if they are sleeping elsewhere on Census Day. It made these changes even though there were far fewer public comments identifying these issues as causing the magnitude of problems that the public commentary on the prison miscount highlighted.</p> <p>The Census Bureau should honor the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96% of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus</p>

	<p>among stakeholders, which is based on a thorough understanding of the realities of modern incarceration, deserves far more consideration than it was given.</p> <p>As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation.</p> <p>The Census Bureau's practice of counting incarcerated people in the wrong place had relatively little impact on the overall accuracy of the Census while prison populations remained relatively low, but the growth in the prison population over the last few decades urgently requires the Census to update its methodology. The incarcerated population has more than quadrupled since the 1970's, and the manner in which this population is counted now has huge implications for the accuracy of the Census.</p> <p>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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting, it artificially inflates the political power of the areas where the prisons are located and dilutes the political power of all other urban and rural areas without large prisons. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable. Massachusetts legislators, for example, have already expressed concerns about that state's ability to use alternative data in their 2015 comment to the Bureau (comment numbered c0161).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. My organization believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00034	<p>I am writing to express my opposition to the inaccurate and outdated practice of counting incarcerated people as "residents" of the prison location instead of their home communities in your proposed 2020 Census residence rules.</p> <p>The Census Bureau is wrong to consider incarcerated people as residents of the correctional facility. Incarcerated people do not take up residency in prison, as if anyone chooses to "move" to prison. Incarcerated people are people with rights who deserve to have a say in their democracy both in and out of prison, and we should be working to ensure that all incarcerated people have those rights, not putting up more barriers for them.</p>

	<p>By counting people in the wrong place, the Bureau is also ensuring an inaccurate 2020 Census. By counting incarcerated people as if they were residents of a prison makes the Census less accurate for everyone, a particularly important issue in Michigan where our legislative districts are already heavily gerrymandered.</p>
c00035	<p>This rule change will help end prison gerrymandering and is consistent with some of the greatest Supreme Court opinions of the 20th century -- Baker v. Carr and Reynolds v. Sims -- that enshrined the principle that our legislators must represent the same number of people. Counting the incarcerated, especially in our era of mass incarceration, as residents of the prison communities where they can not vote instead of as residents of their actual home communities distorts our legislatures by draining the appropriate political influence from the communities where prisoners are from and enhancing the political influence of those who represent prison communities.</p> <p>That isn't fair. It isn't right.</p> <p>And I hope you can change it.</p> <p>Thank you for the opportunity to provide comment.</p>
c00036	<p>As a tax paying U.S. citizen, I am EXTREAMLY disturbed, and OFFENDED that the Census Bureau has totally ignored the comments of 96% of the people who took the trouble to write to you last year regarding counting people who are incarcerated in prison rather than at their home address. I was one of those people who wrote to you.</p> <p>I have to ask: If the 2020 Census Residence Rule Supporting the Counting of Incarcerated People at Their Home Address is not applied – then why bother taking a census at all in 2020?</p> <p>We know right now that the Census methodology as it stands will be inaccurate, so the whole Census is going to be skewed. What a waste of my taxpayer money. So why bother; just cancel the 2020 Census and put the funding into early childhood education where we know the money won't be a waste.</p> <p>The planned inaccurate counting will perpetuate the false perception of democracy that results from padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else. This is harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>And more if the incarcerated people in these areas were actually represented by the politicians who have prisons and jails in their catchment areas, it would at least be a hint of democratic representation. But they don't. In my 20 years plus of visiting a person close to our family in various facilities in the U.S. I NEVER once ever heard of a local elected representative coming in to talk to his/her constituents behind the walls.</p>

c00037	<p>I am writing to say that I think that the "usual residence" for the incarcerated should be their home address. An exception might be made for those at Maximum Security Prisons, as the expectation would be that those at such institutions have either life or very long sentences, whereas most of those incarcerated at other prisons are released and return to their home area within the decade after a census.</p>
c00038	<p>One would think that a good response – over 90% – would suffice the Bureau's request for 'public comment' regarding <u>rules for incarcerated persons at their home address.</u></p> <p><u>Not so!</u> You've found a way to circumvent the process by proposing rules for the 2020 census that will allow you to continue this discredited practice. Since it doesn't come out of your pocket ... or cost the bureau a single penny ... it's an expense that taxpayers will be burdened with and unfortunately, <u>one more way of wasting taxpayers' money!</u></p> <p>As a resident of New York, we found that seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents.</p> <p>For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes. And then, in the appeals process, a U.S. Federal Court recognized that legislators were drawing electoral lines by counting inmates ... giving themselves additional powers in their own districts! The Court acknowledged in their decision that “gerrymandering was a threat to electoral fairness” and ruled against its continued practice!</p> <p>Your own Census Bureau was made aware of this problem a decade ago, when a report (*) it commissioned from the National Research Council found that its method for counting inmates distorted the political process and raised “legitimate concerns” about “equity and fairness in the census.” (*) <u>Another waste of taxpayers' money!</u></p> <p>Until the Census Bureau changes the way it counts prisons, the principle of one person one vote will continue to suffer.</p> <p><u>It's no wonder the public is frustrated with government ... there is no accountability for what taxpayers' money is paying for!</u></p>
c00039	<p><i>Aloha. Accuracy in counting citizens to determine voting districts is vital to a democracy, and I am very concerned about restoring and preserving democracy. I see great unfairness in the decision to count incarcerated people in the facility to which they have been involuntarily sent. Hawaii has been sending a significant portion of our prison population to corporate prisons on the continental United States for twenty-one years. This has created great suffering for our people and the families of those banished. <u>Our people have not moved to these locations, they were sent involuntarily and will return to their homes and families in Hawaii after serving their sentences. Hawaii is their home.</u></i></p> <p><i>How is military deployment different from those involuntarily banished outside their homeland when our incarcerated people will return to Hawaii upon the completion of their sentences?</i></p>

The Census Bureau has determined that there is a distinction between military personnel who are deployed overseas and those who are stationed or assigned overseas. Deployments are typically short in duration, and the deployed personnel will be returning to their usual residence where they are stationed or assigned in the United States after their temporary deployment ends.

Leaving the current practice in place opposes democracy and promotes more inequality and prison gerrymandering. I am sadly aware of how the corporate prison industry has “gamed” the system by building in small towns, enticing public officials who can then benefit from increased federal appropriations to their towns. [1]

Prisons have become a growth industry for rural America, with a new prison opening in a small town every fifteen days over the last decade. [2] Now a \$60 billion industry,[3] prisons have the economic power to bend state priorities to their needs. There are now so many people in prison that legislators who have prisons in their districts are able to short-circuit the democratic process that would otherwise govern the prison industry.

The importance of accuracy in counting citizens to determine voting districts is well recognized as vital to democracy. In the 1960’s, the Supreme Court struck down state legislative district plans that gave some citizens more access to government than others, declaring the “One Person One Vote” rule and the principle that “legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. [4]

Justin Levitt, professor of constitutional law and the law of democracy at Loyola Law School, as well as a practitioner and litigator in the area of political participation encouraged the Census Bureau to count incarcerated individuals at their last known address before incarceration as a means to further equal representation in the democratic process. Professor Levitt bases his comments on the structure of representation and the effects of various voting systems and districting plans.

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Incarcerated individuals do not interact with the local community, and “most Village Township residents will not likely consider them ‘neighbors.’” Elected officials themselves do not always consider incarcerated people to be their constituents. As Professor Levitt recounts:

[I]n 2002, a New York state legislator representing a district housing thousands of incarcerated individuals said that given a choice between the district’s cows and the district’s prisoners, he would “take his chances” with the cows, because

	<p style="text-align: center;"><i>“[t]hey would be more likely to vote for me.”</i></p> <p><i>According to Professor Levitt, 28 states have explicitly provided that incarcerated persons do not lose their residence in their home communities when they are incarcerated.</i></p> <p><i>The <u>New York Times</u> has written nine editorials highlighting how the prisoner miscount harms democracy, and has been joined by the editorial boards of papers as diverse as the <u>Milwaukee Journal-Standard</u>, the <u>Flint Journal</u> (Michigan) and the rural <u>Jackson City Patriot</u> (Jackson City, Michigan).</i></p> <p><i>‘One Person One Vote’ is a foundation of our ideal of democracy. Please contribute to achieving fair and equal representation to all the citizens by revising the Residence Rule or Residence Situations to count incarcerated people at their home in the Census. Mahalo nui loa. ~Thank you very much.</i></p> <hr/> <p><small>[1] <i>New research on Nevada, Montana, and Idaho: How the census is watering down the voting power of some communities, by Peter Wagner, February 7, 2005. http://www.prisonersofthecensus.org/news/2005/02/07/wpp/</i></small></p> <p><small>[2] <i>Building a Prison Economy in Rural America, Tracy Huling in Invisible Punishment: The Collateral Consequences of Mass Incarceration, Mark Mauer and Med Chesney-Lind, eds. (New York, The New Press, 2002).</i></small></p> <p><small>[3] <i>Bureau of Justice Statistics, Justice Expenditure and Employment in the United States, 2003, Table 3.</i></small></p> <p><small>[4] <i>Reynolds v Sims, 377 U.S. 533 (1964), at 562.</i></small></p>
c00040	<p>Since the US has more people in prison than any country in the world, it seems logical that they need to be counted in a census. The question is where do they reside. If you count them as "residence" of where they are incarcerated, then you have the following problems: 1. Most prisoners are black and male. 2. Prisoners can be moved from facility to facility. 3. A prisoners real "home" is removed from conscienceness. 4. Prison locations can be influenced by politics, thus an incentive to increase prison populations.</p> <p>I recommend that you use their last know street address as their place of residence. If the prison system is really about rehabilitation, that's where they are most likely to go when they are released.</p>
c00041	<p>Prisons are located in gerrymandered districts to enhance a state's popular political party. It takes away the voting power of the people and places it in the hands of the government. Please undo this. Count prisoners as located in the area from which they came. Yes, it will be very convenient for the Census bureau to count them where they are found and any prison controlled issuance of the inmate's address might be falsified by the guards, but in total with the mass number of inmates, it is worth the effort to ensure fairness. The statistics the Census could derive noting the source location of inmates might be well worth it to the DOJ. It might highlight overzealous police or the need for jobs and education in those areas. Government (Federal agencies) should not support another government entity (State political parties) in the denial of citizen's rights.</p>
c00042	<p>As a county jail administrator for the last three decades, I am not in favor of using prisons and jails to determine an individual's residency for census purposes.</p> <p>First, and probably most significant for the purpose of gathering accurate data, many jail inmates will be counted twice - once through the monitored collection of census data in the facility, and they will usually still be added to the census by the individual completing the form</p>

	<p>at their permanent residence. This problem may be less likely with the longer-lasting temporary housing in prisons, but it is still a potential barrier to obtaining the best data possible with the system currently in place.</p> <p>Bad data leads to errors in decision making, whether it is for the purpose of drawing political boundaries, determining the demographics of a zip code or outlining school districts. Whether or not an inmate can vote should have no bearing on whether or not they are counted accurately; many inmates in jails can and do vote.</p> <p>Additionally, using prison inmates to draw political districts has created what is quite frankly, shenanigans, when it comes to determining demographics of specific areas. Here are some articles illustrating the type of issues that should concern any citizen, incarcerated or not, who cares about a fair distribution of services and representation:</p> <p>http://www.miamiherald.com/news/state/florida/article31489022.html</p> <p>https://aclufl.org/2016/03/21/federal-court-declares-prison-gerrymandering-in-jefferson-county-florida- unconstitutional/</p> <p>http://thinkprogress.org/politics/2015/09/24/3705270/florida-prison-gerrymandering/</p> <p>These articles are but a sampling of the issues the state I reside in has had to further legislate and litigate that grow from the practice of the US Census. At the very least, the adult incarcerated population should be treated, census-wise, as is the population of detained juveniles.</p> <p>Please reconsider the determination to keep the process the same. I would prefer we get and use the most accurate data we can, especially when that data correlates to real live human beings. Surely there is a way to count one as a temporary residence or other method to prevent the problems described previously. Thank you for your consideration.</p>
c00043	<p>I strongly disagree with the decision to count prisoners as "residents" of a district. It distorts the census because the prisoners do not have civil rights and cannot vote in elections.</p> <p>I strongly urge you to follow the results of the study on this issue which correctly states that it is a distortion of the democratic process.</p>
c00044	<p>You must count these people from where they come from, not their prison address. To do otherwise grossly distorts the counts.</p> <p>As the New York Times states in a recent editorial,</p> <p>'The federal courts have recently begun to see this gerrymandering as a threat to electoral fairness. In May, for example, a United States District Court held that the city of Cranston, R.I., had violated the principle of one person one vote by deeming inmates at a correctional facility "residents" for the drawing of district lines for the City Council and the local school committee.'</p>

	<p>Your position smacks of partisanship, not to mention willful ignorance of election laws and judicial decisions on the same. Please change your decision and count fairly.</p>
c00045	<p>The Voting Rights and Civic Participation Project (VRCPP) at New York Law School submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). 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 at on Census Day.</p> <p>The VRCPP seeks to address the numerous barriers that prevent poor and minority communities from having an equal voice, and an equal vote, in our country’s democratic institutions. The VRCPP coordinates with advocates in the voting rights and civil rights community to protect the right to vote and to challenge recent restrictions on voting rights in states across the country, as well as to address long-term challenges to civic participation, including the Census, redistricting and jury service.</p> <p>The proposed Residence Rule will continue to count 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.¹ 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. Indeed, the U.S. District Court for the District of Rhode Island recently allowed a challenge to that state’s prison districts to proceed, holding that that local prison inmates “lack a ‘representational nexus’ with the [local] City Council and School Committee.”²</p> <p>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.³ Every person counted in prison on Census Day is one fewer resident counted in the home 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.</p> <p>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. ⁴</p> <p>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</p>

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.

I have studied how Maryland and New York implemented their new laws and my analysis 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.⁵ My 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 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.

My 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 – 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.⁶
 - 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.⁷

3. Conduct experiments using existing state corrections data to evaluate how these administrative records, in their current form, would impact Census Bureau workflow and 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*⁸ to establish "correctional specialists" to coordinate the Bureau's enumeration of people confined in correctional facilities will improve efficiency and standardization.

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.

¹ 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).

² *Davidson v. City of Cranston*, No. 14-91L, 2016 WL 3008194 *5 (D.R.I. May 24, 2016) (quoting *Calvin v. Jefferson County Board of Commissioners*, No. 4:15CV131, 2016 WL 1122884 *8 (N.D. Fla. March 19, 2016)).

³ 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 which found that most Maryland prisoners returned to Baltimore after their release from prison).

⁴ 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).

⁵ 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>.

⁶ 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.

⁷ 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/.

	<p>8 Barbara Owen and Anna Chan, <i>Ethnographic Study of the Group Quarters Population in the 2010 Census: Jails and Prisons</i> 37 (2013), available at http://www.census.gov/srd/papers/pdf/ssm2013-06.pdf.</p>
c00046	<p>The New Jersey Association on Correction submits this comment in response to the Census Bureau 's Federal Register notice regarding the Residence Rules and Residence Situation 81FR 42577(June 30, 2016). The Association urges you to count incarcerated people at their home address rather than the particular facility that they happen to be located on Census day. If we count juveniles in residential programs, students in Boarding Schools and military personnel with overseas assignments in their home addresses we should do the same for those incarcerated.</p> <p>We currently incarcerate more than 2,000,000 individuals in the US. 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 5393 Census Blocks that are located far from the actual homes of the incarcerated people. When this data is used for redistricting, prisons inflate the political power of those who live near them. This also serves to make the Census less accurate.</p> <p>When this issue was opened for comment in 2015, 96% of the comments received by the Census Bureau supported the idea of counting individuals at their home not at the prison cell they currently occupied. I was hopeful that this kind of support would result in a positive response from the Bureau. I was disappointed to learn otherwise.</p> <p>Thank you for the opportunity to comment on the Bureau's efforts to count everyone in the right place. The Association believes in a population count that is accurate. We urge you to count the incarcerated as residents of their home addresses and not the prison community they happen to be in on Census day.</p>
c00047	<p><i>This comment submission contains graphics that cannot be displayed in this table. It is available as Appendix Attachment c00047.</i></p> <p>As the _____ for AIDS Alabama, I wish to express my opposition for the proposed 2020 census criteria regarding incarcerated adults which designates that their residency be counted based on the jail, prison, or detention facility in which they are incarcerated. This guideline will not only result in a less accurate census count, but will contribute to redistricting which dilutes political representation, especially for already marginalized communities. Establishing the residency of incarcerated adults as based on their legal residence - instead of their place of incarceration - will ensure that the 2020 census can more accurately depict local populations and safeguards against possible misrepresentation as a result of redistricting.</p> <p>Prisons, jails, and other detention facilities are predominately located in rural or suburban counties. A 2014 analysis by the Vera Institute of Justice found that 62% of the U.S. jail population was incarcerated in mid-sized or small counties, with nearly half (44%) in counties of under 250,000 non-incarcerated residents. There are also large racial disparities in the demographic breakdown of those incarcerated. Numerous studies (including the 2014 Vera Institute analysis and a 2016 report by The Sentencing Project entitled <i>The Color of Justice: Racial and Ethnic Disparities in State Prisons</i>) have demonstrated that people of color in this country are far likelier than whites to be arrested and incarcerated. The incarceration rate of African Americans, for example, is over 5 times that of whites, and Latinos are incarcerated at a rate 1.4 times that of whites. Racial disparities in some states are even worse, such as my state of Alabama, where over</p>

	<p>half the prison population is black. Lastly, it is important to note that in only two states Maine and Vermont can prisoners vote while incarcerated.</p> <p>In light of this evidence, it can be seen how the decision to count incarcerated persons as residents of the county in which their facility is located during the Census would contribute to misrepresentation on a number levels. For residents of rural and small counties housing a large jail, prison, or detention center, local redistricting would be skewed towards the detention facility, despite the fact those prisoners are most likely unable to vote and have permanent legal residence somewhere else. This dilutes the power of local residents in political decisions that directly impact their lives. Meanwhile, those same counties will have a disproportionate say in state and federal matters at the expense of the urban areas from which many of those incarcerated individuals have permanent legal residence. For those who are incarcerated for short periods, this may result in them spending the majority of the year in another locale than that in which they were counted for the Census.</p> <p>The impact this policy would have on racial inequities is also gravely important to consider. Since people of color are over represented in detention facilities, criteria counting incarcerated adults as residing in the counties in which they are detained would skew data obtained by the Census. As a result, demographic research and analysis carried out to inform policies would likewise be inaccurate, hampering the ability of local, state, and federal officials to see and address disparities. For example, a rural or suburban county housing a large prison facility may appear in the data as more diverse and having a lower average income than in reality, masking geographic disparities. In addition to erroneous data on racial inequities, the proposed criteria also reduces the political power of communities of color. Rural, predominately white counties that are more likely to contain detention facilities would be over represented at state and federal levels due to the mechanisms described above, essentially weighting their political input greater than that of communities of color, which are predominately urban. Whats more, those incarcerated individuals who are subsequently released would return home to find they have less local government representation, and thus reduced input on policy decision directly impacting their lives.</p> <p>In summary, by counting incarcerated adults as residents of the county housing their detention facility, the proposed criteria for the 2020 U.S. Census would invariably contribute to inaccurate demographic data and political misrepresentation at various levels of government. For this reason, I strongly suggest that the U.S. Census Bureau revise the proposed criteria to instead count incarcerated adults according to their home address. I have included supporting documents with this submission for further review, if you so wish. Thank you for your time, and I hope the U.S. Census Bureau will take these points into serious consideration going forward.</p>
c00048	<p>I am writing to provide comment and support for U.S. Census Bureau’s proposed “2020 Census Residence Rule and Residence Situations”.</p> <p>On behalf of the Christian County community, I show my support of the proposed new guidelines for counting of deployed military personnel in the upcoming 2020 Census. Under the proposal, U.S. military personnel who are deployed outside the U.S. on Census Day would be counted at the U.S. residence where they live and sleep most of the time. Counting deployed service members via this method will ensure that they are counted in the most advantageous and beneficial means for all communities.</p>

	<p>Military service members and their families are vital to the fabric of the communities in which they are stationed. Often, the communities surrounding a military installation work tirelessly to provide the best options, partnerships, and opportunities for their military neighbors. Our community here in Christian County, Kentucky, is no exception to that standard of excellence in service. In so many ways, Christian County has maintained a steadfast relationship—and partnership—with the Army, working to ensure our community is in tune with the quality of life needs and wishes of our soldiers and their families.</p> <p>The proposed method of counting service members who are deployed at the time of the 2020 Census will accurately show the economic impact that these service members have on the communities in which they work, play, and reside. Appropriate federal dollar funding can now be made available to these very communities, so that they may continue to provide quality of life services and opportunities.</p> <p>I pledge my continued support for economic prosperity and opportunities for the region in which Fort Campbell gains tremendous support. I thank you for your consideration of enacting what is best for our country’s military personnel, their families, and the communities that they call home.</p>
c00049	<p>I represent _____, state of Oklahoma and submit this comment in response to the Census Bureau's Federal Register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016}. The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census Day ignores the reality of incarceration: prisons are not a "usual residence."</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. Equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>The reality is that when my constituents are incarcerated, they are often sent to prisons outside _____, but they still rely on me for representation. Over the course of their incarceration, the prison administration may move them between different prisons, located in many of my colleagues' districts, but they remain my constituents. Their home in my district remains their only stable, permanent, "usual" residence. Counting them as if they were residents of the facility where they happen to be held on Census day doesn't reflect the modern lived reality of our communities.</p> <p>I note that your proposed method of counting the incarcerated populations inconsistent with how you count other groups that eat and sleep in a location that is not their usual residence. For example, I note that your proposed rules will count boarding school students at their home address even if they spend most of their time at the school. The same approach should be taken when counting incarcerated people.</p> <p>I am also concerned about the impact of your resident rules on racial justice in my state. Our state disproportionately incarcerates disproportionately African-American or Latino people so when you count them in the wrong location, and that data is used for redistricting it further undermines the political power of minority communities.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives</p>

	<p>to follow the residence rule to count everyone in the right place. I believe that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00050	<p>Thank you for this opportunity to respond to the Census Bureau’s Notice seeking comments on the Bureau’s proposed 2020 Census Residence Rule and Residence Situations (81 FR 42577, June 30, 2016). The League of Women Voters of Virginia urges the Bureau to change the method it uses to count the prison population due to the impact it has on voter representation and on the League’s mission to protect voting rights, ensure fair and equal representation, and promote accurate redistricting.</p> <p>In 2015, in response to the Census Bureau’s request for comments on its interpretation of its “usual residence” rule, the Bureau received 156 comments, asking the Bureau to change its interpretation of how the residence rule applies to prisoners and to count them at their home or pre-incarceration addresses. Six comments opposed changing the rule. It is difficult to understand why the great weight of those comments in favor of changing the rule did not persuade the Bureau to change its approach with respect to prisoner counts.</p> <p>The Bureau created the “usual residence” rule through administrative interpretation of the Census Act of 1790. While a few changes have been made to those rules since that time in order to keep up with the changing demographics of America, the rule to count prisoners where they are incarcerated, not at their home residences, has remained unchanged over the last centuries.</p> <p>Doubtless in 1790 when citizens were less mobile, these terms in the statute, “usual place of abode,” “settled place of residence ...in any family,” and “every person occasionally absent at the time of the enumeration, as belonging to that place in which he usually resides in the United States,” meant one’s home location. Back in 1790, this rule made sense because there were few prisoners and they were imprisoned and punished in their home locations. Since 1980, however, the prison population has quadrupled and, prisoners are now typically incarcerated in rural areas far from home. This change in circumstances and failure to change the residence rule in the context of today’s imprisonment practices results in prison gerrymandering, granting greater representation to rural areas that contain prisons and, hence, unequal representation for residents in districts that contain no prisons (both urban and rural). It is time for the Census Bureau to update its interpretation of the people in prison on Census day.</p> <p>In this proposed rule, when the Bureau does make a change in its interpretation of the “usual residence” rules, it appears to lean heavily on how long individuals are away from home. For example, military now <i>deployed</i> overseas will be counted at their home addresses. Other military <i>stationed or assigned</i> overseas will be counted as previously in their “home of record” state for apportionment purposes only. Residents of juvenile group homes are counted at the group home location because they are there for long periods of time while juveniles in residential treatment centers will be counted at their home locations because the Census Bureau believes individual stays are relatively short.</p> <p>A factual survey about prisoner time served at each prison nationwide might reveal that vast numbers of prisoners serve two years or less. In Virginia, the median time served in state prison for someone released in 2014 was 19.5 months. But even while they were in state custody they were likely to have been moved between different facilities, making the time spent at any given facility much shorter. We don’t have that data available for Virginia, but in New York, for example, the median length of stay in any given facility is about seven</p>

months and in Rhode Island it is under 100 days. Length of stay does not appear to support the Bureau's reasoning for continuing to count prisoners at their prison locations where typical prisoner time served can be shorter than deployments overseas.

Also of concern in this proposed rule is that the Census Bureau leaves it up to the states individually to decide whether to include their own prisoner population counts when they redistrict. If states decide they want to exclude prisoner counts when they redistrict, states must either do the calculations themselves or submit a data file to the Census Bureau (indicating where each prisoner is incarcerated on Census Day and their pre-incarceration address) in a specified format. The Census Bureau will review the submitted file and then, if it includes the necessary data, provide a product that contains supplemental information the state can use to construct alternative, within-state tabulations for its own purposes. But even with this proposed solution states still cannot, as a practical matter, account for all of their residents who may be in other states' prisons or in a federal facility. It is not clear why the Census Bureau does not use its statutory authority (to collect accurate census data) to ask states simply to do that.

Some localities in Virginia at town, city, and county levels have chosen to exclude their prisoner counts on occasion when making redistricting decisions. Six counties have adjusted their Census data and did not include prisoner counts when drawing their supervisors' districts. Eighteen other counties in Virginia used Census data and included prison populations when drawing their supervisors' districts. Such individual decision-making only adds to a lack of uniformity within states and among states, leading to inaccuracy in the way prisoners are treated for redistricting purposes.

This is a problem in rural communities that contain large prisons because it seriously distorts redistricting at the local level (county commissions, city councils, and school boards). The Constitutional principle of one person, one vote should not be a county by county or state by state issue. It is a federal issue about representational equality.

Already four states (Maryland, New York, California and Delaware) now count prisoners at their home locations for redistricting purposes; other states do not. Two recent court decisions in Rhode Island and Florida have held that counting prisoners at prisons in districts for local redistricting purposes as if those prisoners are eligible voters violates the Constitution's one person, one vote principle. Here are links to the two decisions: http://www.prisonersofthecensus.org/Calvin_v_Jefferson-Order.pdf; <http://riaclu.org/images/uploads/Davidson.v.Cranston.decision.pdf>. Cranston is now on appeal. These cases make it more likely that other challenges to using Census data will follow if the Bureau does not change the way it counts incarcerated people. The Bureau's proposed rules lead to greater uncertainty as states redistrict in 2021.

Under its statutory authority to collect accurate census data, the Census Bureau can ask states and the federal Bureau of Prisons to submit a data file, indicating where each prisoner is incarcerated on Census Day and prisoner's pre-incarceration address. We ask the Census Bureau to exercise that authority in order to conduct an accurate Census.

Continuing to count prisoners at their places of incarceration makes it more likely than not that states will continue to count prisoners in districts where they should not be counted, resulting in impermissibly unequal representation in districts that do not contain prisons.

	<p>Failing to interpret “usual residence” to reflect today’s vastly changed circumstances promotes the likelihood that more federal courts will hold that the Bureau’s failure to update its residence rules results in state redistricting plans that violate the Constitution.</p> <p>Therefore, the League urges the Census Bureau to change the “usual residence” rules for the 2020 Census so that prisoners are counted at their pre-arrest home jurisdiction. Fairness in voting power will result and will prevent constitutional violations of the one person, one vote requirement.</p>
c00051	<p>Based on the following criteria for Foreign Citizens in the U.S., it is not clear whether foreign "snowbirds" - those who are foreign citizens but stay in the U.S. for 4 to 5 months every year - would be considered to be "living" in the U.S. under (a) or "visiting" under (c) below. Suggest a clarification to differentiate between "living" and "visiting," perhaps expand (a) to state "...living or staying in the U.S. for an extended period of time exceeding _____ months." For local government jurisdictions with high percentages of Foreign Citizen "snowbirds," this is an important distinction. As an example, our jurisdiction has an official population of approximately 6,700. However, for almost half of the year the actual population is closer to 20,000 due to snowbirds, many of whom are Canadian or European citizens. These snowbirds do not come for only a couple of weeks, but stay for several months. This places a different burden on the local governing jurisdiction than short-term vacationers would place. Therefore, it would seem justified to provide a clarification in the criteria below in order to more accurately reflect the Foreign snowbird impact on local jurisdictions.</p> <p>3. FOREIGN CITIZENS IN THE U.S.</p> <p>(a) Citizens of foreign countries living in the U.S. Counted at the U.S. residence where they live and sleep most of the time. (b) Citizens of foreign countries living in the U.S. who are members of the diplomatic community counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live. (c) Citizens of foreign countries visiting the U.S., such as on a vacation or business trip Not counted in the census.</p>
c00052	<p><i>This comment submission contains graphics that cannot be displayed in this table. It is available as Appendix Attachment c00052.</i></p> <p>I am writing to comment on the proposed rules and to share some valuable insight. I have followed the Prison Gerrymandering Project with much interest - since they hyper focus on where prisoners should be counted - and not in their cells - but completely ignore other populations that have a similar minimal if any connection to their community. That population I speak of is the extensive number of undocumented individuals particularly those in gateway communities.</p> <p>By way of background, I was _____ the Village of Port Chester on the Voting Rights case brought by the Federal Government. Our case resulted in implementation of a cumulative voting scheme to replace an at large system that the Federal Government opposed. As demonstrated by the attached expert report of Clark Benson, Port Chester demonstrated that a serious problem occurred in a redistricting plan that sought to create a minority Hispanic district to resolve a determined Section 2 violation. The plan seriously devalued the vote of everyone else in the community by basing districting in part on individuals that were unable to participate as voters in the community - much like prison gerrymandering.</p>

	<p>Interestingly, from the Prison Gerrymandering site, the Court in the Cranston Rhode Island case highlighted the fact that the average stay of a prisoner in that case was not significant. What do you think is the average stay of one passing through an immigrant gateway community?</p> <p>The most important part of your work would be to clearly identify the CVAP within each of the census areas, to the smallest zone fiscally possible. This will allow for a CVAP analysis to be performed, included, utilized and adopted as a requirement to redistricting efforts to correct disparities created by redistricting solely on the basis of total population - particularly at a local level. The elimination of rotten boroughs would result which can only be viewed as a positive for our democracy.</p> <p>Certainly, identifying areas of low CVAP will also be helpful for government bureaucrats that need to determine where aid to individuals needs to be disbursed, helping to ensure that the neediest amongst us - regardless of the immigration status, can be assisted.</p> <p>I thank you for the opportunity to submit these comments and the attached report to you.</p>
c00053	<p>I represent Michigan's _____ and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility they are located at on Census Day ignores the reality of incarceration: prisons are not a "usual residence."</p> <p>As an elected representative, I am keenly aware that democracy, at its core rests on equal representation. Equal representation, in turn, rests on an accurate count of the nation's population. The reality is that when my constituents are incarcerated, they are often sent to prisons outside my district, but they still rely on me for representation. Over the course of their incarceration, prison administrators may move them between different prisons, located throughout many of my colleagues' districts, but they continue to be my constituents. Their home in my district remains their only stable and permanent residence. Counting them as residents of the facility where they are held on Census day does not reflect the modern reality of our communities.</p> <p>I note that your proposed method of counting the incarcerated population is inconsistent with how you count other groups that temporarily reside in a location other than their usual residence. For example, one proposed rule will count boarding school students at their home addresses even if they spend most of their time at school. The same approach should be taken when counting our nation's incarcerated individuals.</p> <p>I am also concerned about the impact of your residence rules on racial justice in my state. The State of Michigan disproportionately incarcerates African-American and Latino populations, so when counted in the wrong locations and legislative districts are drawn accordingly, it further undermines the political power of minority communities.</p> <p>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. I believe that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00054	<p>Common Cause Delaware (CCDE) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people</p>

at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.

Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of the core mission of CCDE to promote civic engagement and accountability in government, as is ensuring that every eligible American's vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district, while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy, and it hurts the communities from which these incarcerated persons hail.

The Census Bureau should honor the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96% of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of modern incarceration, deserves far more consideration than it was given.

As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. The country's exploding prison population requires the Bureau to adapt once again.

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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting, it artificially inflates the political power of the areas where the prisons are located and dilutes the political power of all other urban and rural areas without large prisons.

Currently, four states including our own (California, Delaware, Maryland, and New York) and over 200 individual counties and municipalities adjust Census population data to avoid prison gerrymandering when drawing their districts. Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable.

For example, in 2010, when Delaware became the second state to pass a law to end prison-based gerrymandering, the Department of Corrections collected and transmitted the address information but, unfortunately, the state was unable to arrange for the geocoding of this address data in time for the legislature's deadline on making their proposals public and had to, reluctantly, postpone full implementation until 2021. A change in the residence rule for incarcerated people by the Census Bureau would meet the state's needs in a much more streamlined fashion.

	<p>We're proud Delaware took the first step towards undoing prison-based gerrymandering, but it hasn't been a smooth process, and there is a better way. This ad hoc approach in a few states is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation's foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau to follow the residence rule to count everyone in the right place. My organization believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00055	<p>I have reviewed the Proposed 2020 Residency Rule published in the Federal register on June 30, 2016, and I am writing to provide feedback that I think will be useful during the process of finalizing the rule. There are three aspects of the rule that I will be commenting on. Those are the place to count prisoners, where to count residents of boarding schools, and how those in transitory locations are counted.</p> <p>The proposed rule indicates that Census will continue with the long-standing practice of counting prisoners in the facility in which they are located at the time of the enumeration. I fully support this aspect of the rule as it maintains fidelity to the principle of counting persons where they stay and sleep most of the time. Persons in correctional facilities stay and sleep in the prison, in most cases, all of the time that they are incarcerated and therefore should be counted at that location. The argument to count the prisoners at their residence prior to incarceration goes against the principle of counting persons at their usual residence.</p> <p>The proposed rule indicates that students in residential school facilities that are enrolled at less than the college level should be counted at their parent or guardians' home. This portion of the rule is misguided. This rule moves residents who spend nine or more months at a location back to a location where they do not spend most of their time. Students in boarding schools often partake in the activities of the communities in which their schools are located and share in consuming the resources, physical, environmental, and social, that the community has to offer. I understand that boarding school students present a potential problem with double counting, once by the parents and once by the school, but there should be a procedural or instructional mechanism in place to account for this rather than going against the principle of counting people where they spend most of their time. The logic of this portion of the rule is doubly confounding when viewed from the vantage point of how college students are counted. These students are often just as financially dependent on their parents as their younger peers are, yet they will be counted at the school rather than with their parents. For the internal consistency of the rule, boarding school students should be counted at the place where they spend the majority of their time.</p> <p>The final portion of the rule that needs comment is the section dealing with those in transitory locations. My concern is not with the logic of this portion of the rule, rather I have concerns about its implementation. My concern is specifically with those found in facilities that cater to recreational vehicles (RV). Through conversation with Census staff, my understanding is that during the count of transitory locations persons found in RV parks are asked if it is their usual location. If they respond in the negative then they are not counted as it is</p>

	<p>assumed they will return to their usual place of residence and be counted as part of the normal enumeration. This is logically consistent with the rest of the rule, but not practically consistent. The fact is that many persons whom enumerators will find in RV parks spend a majority of their time in RV parks, just not the same one. Someone may winter in, for example, Florida for three or four months and then relocate to the north, for example, to Michigan for the warmer months of the year. The primary issue here is that these people will not be counted in their usual place as they will not be counted at all. If, as in my examples, someone spends four months in Florida and tells the enumerator that they do not spend most of their time in Florida, but spends eight months in Michigan, in another RV park, during the warmer months, they will not be counted at all, as they would have missed the enumeration of transitory locations in Michigan. The solution to this is to add a simple second step to the enumeration of transitory locations that would ask if the person spends most of their time in a combination of transitory locations. If the respondent indicates that they are usual residents of multiple transitory locations then they should be counted at one of these locations. My concern is less, referring again to the example locations, whether they are counted in Florida or Michigan, but that they are counted somewhere.</p> <p>Thank you for this opportunity to comment on the proposed residency rule. I believe that the majority of the rule is sound and will ensure that people are counted once and in the right place. Please do not hesitate to contact me if you would like clarification on any point that I have raised.</p>
c00056	<p>As their duly elected representative to _____, I submit this comment on behalf of the residents of New York's _____ in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will guarantee an inaccurate 2020 Census, and another decade of decisions based on distorted data that misrepresents our demographic composition.</p> <p>The Census Bureau's proposal to continue to count incarcerated individuals as residents of the correctional facility in which they are located at the time of the census is an arbitrary rejection of both accuracy and public consensus. When the Bureau asked for public comment on its residence rules in 2015 96 percent of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address.¹ This level of consensus amongst stakeholders is rare, and deserved more consideration than it appears to have been given.</p> <p>Historically, a relatively low prison population in the United States ensured that this inaccurate methodology had relatively little impact on the overall accuracy of the Census, but the growth in the prison population over the last few decades urgently requires the Census Bureau to update its methodology, and stop counting prisoners as residents of the cells in which they are temporarily incarcerated instead of their home address.² American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. The designation of a prison cell as a residence concentrates the inmate population, which is disproportionately male, urban, and African-American or Latino, into just a few thousand Census blocks that are located far from their actual residences. ³ The erroneous manner in which this population is counted degrades the accuracy of census, and must be corrected.</p>

The impact of this flawed methodology is well documented in New York State, where, in 2007, thirteen rural counties chose to correct the Census count and remove their prison population prior to redistricting to avoid vote dilution in their districts.⁴ The 2000 Census miscounted 43,740 New York City residents in upstate prison cells.⁵ In addition seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes.⁶ Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.⁷

While the Census Bureau arbitrarily disregarded the overwhelming public consensus regarding inmate populations, it decided that other populations - deployed overseas military, and juveniles staying in residential treatment centers - should be counted in their home location even if they are sleeping elsewhere on Census Day.⁸ The Bureau made these changes even though there were far fewer public comments identifying potential concerns from miscounting these populations.

The Bureau's failure to update its residence rules is particularly disturbing because federal courts have started to recognize that the Bureau's prison count can result in constitutional violations of one person, one vote requirements.⁹ Counting incarcerated people at the location of the facility condones violations of equal representation and ensures legal challenges to the constitutionality of redistricting plans at the state and local level. There have already been successful constitutional challenges to prison gerrymandering in Jefferson County Florida and Cranston Rhode Island.¹⁰ In Florida, the Court ruled the Jefferson County School District's redistricting plan, which counted the inmates of the local state correctional facility as residents of one school board district, unconstitutionally diluted the voting power of voters in the other districts, violating the "one person one vote" principle of the Equal Protection Clause of the 14th Amendment. The Bureau's current refusal to change the way it counts incarcerated populations will ensure that these constitutional challenges continue into the coming decades.

The Bureau's proposal to allow States to request individualized Census counts that reallocate incarcerated populations at their home addresses is a tacit admission of the inefficacy of its current counting rules. Only four states, (CA, DE, MD and NY) would be able to reallocate their populations according to these individualized counts. The remaining State's face another decade of potential legal challenges to redistricting plans. In order to fairly serve its data users in state and local governments, the Census Bureau must change how it counts prisoners.

¹ Full-Text Log of Comment Submissions to "2020 Decennial Census Residence Rule and Residence Situations; Notice and Request for Comment," 80 Federal Register 28950 (May 20, 2015) (available at: https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2015-12118_FRN_Comments.pdf).

² *The Sentencing Project*, Fact Sheet: Trends in U.S. Corrections (available at <http://sentencingproject.org/wp-content/uploads/2016101/Trends-in-US-Corrections.pdf>).

³ *Prison Policy Initiative*, Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties, (2007) (available at: <http://www.prisonersofthecensus.org/nycounties/>).

⁴ *Id.*

	<p>5 <i>Id.</i></p> <p>6 <i>Demos</i>, "Implementing Reform: How Maryland & New York Ended Prison Gerrymandering," (August 15, 2014) (available at http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering).</p> <p>7 The Hartford Courant, "Bill Proposed to End 'Prison Gerrymandering,'" (February 10, 2016) (available at http://www.courant.com/politics/hc-prison-gerrymandering-connecticut-20160210-story.html).</p> <p>8 81 FR 42577 (June 30, 2016).</p> <p>9 <i>Calvin v. Jefferson</i>, case 4: 15-cv-00131-MW-CAS., N.D. Fla. (March 19, 2016).</p> <p>10 <i>Id.</i></p>
c00057	<p>We write to resubmit our comments in response to the Census Bureau's federal register notice regarding the Proposed 2020 Census Residence Criteria and Residence Situations (FR Doc. 2016-15372 Filed 6-29-16). The fact that the Census Bureau plans to offer a product to assist states to reallocate their own prisoner population counts is perhaps a step in the right direction but we question why this method will not be used for the official decennial census count.</p> <p>In our letter to you dated July 8, 2015 we wrote: "The most expedient and streamlined avenue for changing the method for counting prison populations lies with the Census Bureau changing their prisoner residence rule procedure. This would provide a systematic and consistent tabulation approach for calculating Congressional re-apportionment and one that is uniform for redistricting in all 50 states. Such a change on the federal level will rectify the perceived inequalities in counting prisoners and eliminate costly litigation for states to defend redistricting plans based on adjusting local prison populations."</p> <p>It remains our belief that prisoners should be counted at their last place of residence so the official count is consistent nationwide and costly litigation avoided due to local methodologies adopted to meet this result.</p> <p>Therefore, we again urge you to change Census Bureau policy to count incarcerated people as residents of their home address, rather than at the place of their incarceration.</p>
c00058	<p>I am writing about my opposition to the recent proposal on how to implement residence guidelines for the 2020 Census. I believe the Census Bureau is wrong to consider incarcerated people as residents of the correctional facility, rather than at their home address. The current method of counting has proven to be inaccurate and outdated. As a state senator, representing a predominately urban area, I am requesting a more fair and equitable representation of all people and communities.</p> <p>The Bureau has chosen to continue counting people in the wrong place, ensuring an inaccurate 2020 Census. With the next census just four years away, planning is already underway. For this reason, I urge the Bureau to make the necessary steps to ensure, at this early point in the planning process, that the 2020 census can count incarcerated people at their home addresses.</p> <p>As you know, the Census Bureau's current "residence rules" instruct the Bureau to tabulate incarcerated people as residents of the prison location, even though incarcerated people are not considered residents of the prison location for other purposes. At the time of the nation's first census, the question of where incarcerated people were counted was of little importance because very few people were behind bars. Today, nearly 1 percent of the U.S. adult population is incarcerated. By designating a prison cell as a residence, the Census Bureau</p>

	<p>concentrates a population that is disproportionately male, urban, and African-American or Latino in approximately 1,500 federal and state prisons that are far from their home communities.</p> <p>I recognize that the Census Bureau seeks to conduct the fairest, most accurate, and most efficient census possible, and I also understand that this undertaking requires decade-long preparations. I therefore urge you, in your research and planning for the 2020 census, to make it a priority to develop a methodology to tabulate incarcerated people at their home addresses.</p> <p>I thank you for your careful consideration of this issue.</p>
c00059	<p>As a resident of Pennsylvania, I am against the counting of inmates in prisons and halfway houses as being residents where they are incarcerated. Pennsylvania law states: for the purpose of determining residence, an inmate in a penal institution is deemed to reside where the individual was last registered to vote before being confined in the penal institution; or if the inmate was not registered to vote prior to confinement, the individual is deemed to reside at the last known address before confinement; or a new residence established while confined (for example, if the inmate's spouse establishes a new residence in which the inmate intends to reside upon his/her release from confinement).</p> <p>Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote. It also violates the one person, one vote requirement of the U.S. Constitution's Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>The proposed census residence criteria as they relate to prisoners has the unintended consequence of swelling the populations of those areas containing prisons. This, in turn, gives more influence to politicians who view prisons in their home areas as job generators, and push programs to increase the prison population.</p> <p>I urge this provision be modified for purposes of the U.S. Census.</p>
c00060	<p>Please count deployed service members according to where they actually live. Then the Bureau will receive more accurate reports of population and ensure communities have the needed resources to support these soldiers and their families.</p> <p>Thank you and God Bless.</p>
c00061	<p>I want to thank the Honorable Kentucky Senator Rand Paul for giving proper attention to the matter of the 2020 Decennial Census Residence Rule & Residence Situation. Also, thanks to the Honorable John H. Thompson and the Census Bureau for indicating they will make this common sense proposal a reality.</p> <p>A proper accounting for all military personnel and their Usual Residence will give each community consistency for their citizens. Being a Kentuckian, I'm interested in making certain my fellow Kentuckian's and all those who defend this great nation are credited with the proper residence designation.</p>

c00062	<p>Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote.</p> <p>It also violates the one person, one vote requirement of the U.S. Constitutions Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>Miscounting of urban prisoners in the rural districts where most PA prisons are located swells the population base of those districts. It enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration. The practice distorts our democratic process and undermines government of, by and for the people.</p>
c00063	<p>As a resident of the state of Kentucky, I was appalled to learn that our Military who are serving overseas on assignment are not counted in the Census of bases such as Fort Campbell. Many leave family and homes behind who long for their return and maintain the residence. Our Military both active and reserve who are called up to duty away from their homes MUST be included in the Census count.</p>
c00064	<p>Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote.</p> <p>It also violates the one person, one vote requirement of the U.S. Constitutions Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>Miscounting of urban prisoners in the rural districts where most PA prisons are located swells the population base of those districts. It enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration. The practice distorts our democratic process and undermines government of, by and for the people.</p>
c00065	<p>Prisoners should not be counted as permanent residents of the district where the prison is located. Most of them are serving limited sentences. Most prisons are in rural areas; many prisoners come from urban areas. Rural and urban area's needs are often district. Not allowing prisoners' votes to reflect their area's needs weakens the power of the prisoner's vote and violates the spirit of the one man, one vote decision.</p>
c00066	<p>I am highly opposed to designating a prisoner as a resident of his prison instead of as a resident of his previous address. Such a practice inflates the population and clout of the prison political area and therefore encourages the building of prisons. It also removes the prisoner from any contact with his home politics if and when he is free to take part in them.</p>
c00067	<p>I think it's ridiculous that the Census Bureau once again plans to count prison/detention facility inmates as residents of the location the prison/detention facility is located at. If the incarcerated individuals made the choice themselves to live in that location, as college students choose to live away from their homes, that would be a different story. But incarcerated individuals had no say in where they are housed.</p> <p>I fully support all the comments already made and listed in your "Proposed 2020 Census Residence Criteria and Residence Situations" report section B 1. Especially the fact that counting incarcerated individuals as you do violates the state of Pennsylvania laws.</p>

c00068	<p>I beg you to revise the current rule for counting prisoners. Prisoners should be counted in their home regions--NOT in that of the prison, where the representatives often profit from their incarceration. This is a clear conflict of interest and a violation of the constitution's 14th amendment, which guarantees "one person one vote." To count prisoners with those who profit from their incarceration is analogous to allowing slaveholders to claim representation according to the number of slaves they owned. That a disproportionate number of prisoners are black, while the prisons are often housed in white, rural districts, only makes the analogy more clear. Mass incarceration is not a problem that can be solved by the Census, but at the very least, the Census should not be used to further entrench it. I thank you in advance for considering my comment.</p>
c00069	<p>To support equal representation in the democratic process and prisoner rehabilitation and re-entry to their communities, I ask you to revise the Residence Rule to count incarcerated people as residents of their last home address before incarceration.</p> <p>Currently 1400 Hawaii prisoners are being counted as Arizona residents, affecting resources and voting district calculations for our communities. These Hawaii prisoners are in another state not by their own choice. When they've served their terms and return to Hawaii, their communities need to be equipped to serve them. Please revise the Residence Rule.</p>
c00070	<p>As a longtime residents of the Aloha State of Hawaii, we am concerned and dismayed to learn that prisoners who are from Hawaii but are forced to serve their sentences in for-profit prisoners on the mainland, will not be counted as part of their Hawaiian communities in the upcoming census.</p> <p>We implore you to revise the Residence Rule to include people who are incarcerated while conducting the census. These are the communities that they will return to after completing their sentences and we need to give the communities the resources and support they need to help our people reintegrate successfully.</p> <p>Thank you for your consideration of this not only quantitative matter but also one of moral and human rights imperatives to treat prisoners like human beings of worth and dignity in their communities, not just a throw-away population!</p>
c00071	<p>Current census practice counts 1400 Hawaii prisoners as Arizona residents affecting resources and voting district calculations for communities.</p> <p>These prisoners did not choose to go to another state and will return to Hawaii after their terms have been served. Their communities need to be equipped to serve them.</p> <p>To be fair, to support equal representation and to support prisoner re-entry into their communities, I ask you to Revise the Residence Rule to count incarcerated people as residents of their last home address prior to their incarceration.</p>
c00072	<p><i>This comment submission contains graphics that cannot be displayed in this table. It is available as Appendix Attachment c00072.</i></p>

	<p>Enclosed please find a resolution unanimously adopted by the Board of Supervisors of Prince George County, Virginia supporting the Census Bureau 's proposed 2020 Census Residence Rule 15 that counts incarcerated people as residents of the correctional facility where they have been assigned (Attachment A).</p> <p>Prince George County is located just south of the James River approximately 30 miles southeast of the City of Richmond metropolitan area. The County is a political subdivision of the Commonwealth of Virginia with no incorporated cities or towns within Prince George. Prince George provides a full-range of municipal services to its residents. Our population as of 2015 was estimated at 37,862 persons (Attachment B).</p> <p>There are two correctional facilities located entirely within Prince George County: the Federal Correctional Institution, Petersburg, which houses approximately 2,827 low- and medium-security convicted felons; and the Riverside Regional Jail, which houses approximately 1,552 persons, that includes misdemeanants from Prince George County and six other nearby localities as well as state inmates awaiting transit to state prisons. Many of the inmates at the federal facility have been sentenced to relatively long periods of incarceration. Counting these prisoners as part of Prince George County is logical, because the County is responsible for providing or assisting emergency response services for both facilities and has certain law enforcement responsibilities at the jail performed by our police department and Sheriff s office. Moreover, family visitors to either facility travel on local roads and use local commercial services such as hotels and restaurants. Any other approach to counting inmates is likely to result in a national undercount because of the difficulty in tracking inmates in transit.</p> <p>For these reasons, the Prince George County Board of Supervisors has voiced its unanimous support for the proposed "2020 Census Residence Rule and Residence Situations" Rules 15(a) and 15 (b) for counting prisoners in both prisons and jails at the facilities in which they are incarcerated. By this letter, the County endorses these proposed Census rules and encourages the U.S. Census Bureau to adopt them as written.</p> <p>Thank you for your consideration of the County's position in this matter.</p>
c00073	<p>I disagree with the proposed changes to the census. It seems that the residence qualifications will be misrepresentative of the actual population distribution. Someone who is incarcerated should be counted with the community that they are from not where the prison is. These people should also not be counted toward redistricting since they are not allowed to vote.</p>
c00074	<p>I am writing in response to your June 30 federal register notice regarding the Residence Rule and Residence Situations.</p> <p>A lot of people from my community end up in prison, and it's not fair that they get counted as if they were residents of the prison town instead of at home with us. Giving our political power to people who want to lock up more of our community members just doesn't make sense.</p> <p>I am disappointed that you propose to conduct yet another inaccurate Census.</p>

	<p>Because I believe in a population count that accurately represents my community, I urge you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p>
c00075	<p>I am submitting this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p> <p>I am _____ the _____ School of Medicine in Chicago, Illinois. I have studied criminal justice issues for over twenty-five years. The question of <i>prison gerrymander</i> is critically important. The resolution of this issue will reflect directly on the state of democracy in the United States.</p> <p>The Census Bureau defines "usual residence" as the place where a person "eats and sleeps most of the time", but fails to follow that rule when counting incarcerated people. The majority of people incarcerated in Rhode Island, for example, spend less than 100 days in the state's correctional facilities. If the same people were instead spending 100 days in their summer residence, the Bureau would count them at their regular home address. Even students in boarding schools get counted at their home address whether or not they eat and sleep there most of the time. The Census Bureau continues to carve out an unexplained exception for incarcerated people in order to count them in the wrong place.</p> <p>The Bureau's failure to update its rules regarding incarcerated persons is particularly troubling given that the Bureau decided that other populations - deployed overseas military, and juveniles staying in residential treatment centers - should be counted in their home location even if they are sleeping elsewhere on Census Day. It made these changes even though there were far fewer public comments identifying these issues as causing the magnitude of problems that the public commentary on the prison miscount highlighted.</p> <p>The Census Bureau should honor the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96% of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of modern incarceration, deserves far more consideration than it was given.</p> <p>As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation.</p> <p>The Census Bureau's practice of counting incarcerated people in the wrong place had relatively little impact on the overall accuracy of the Census while prison populations remained relatively low, but the growth in the prison population over the last few decades urgently requires the Census to update its methodology. The incarcerated population has more than quadrupled since the 1970's, and the manner in which this population is counted now has huge implications for the accuracy of the Census.</p>

	<p>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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting, it artificially inflates the political power of the areas where the prisons are located and dilutes the political power of all other urban and rural areas without large prisons. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.</p> <p>Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable. Massachusetts legislators, for example, have already expressed concerns about that state's ability to use alternative data in their 2015 comment to the Bureau (comment numbered cl61).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. My organization believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00076	<p>Last month, the Federal Census Bureau failed to end prison-based gerrymandering.</p> <p>Prison-based gerrymandering threatens our democracy's commitment to fair representation and leads to certain districts becoming largely composed of voiceless individuals, since prisoners cannot vote in most states. As a result, the voters in these districts receive inflated representation, while the districts where the incarcerated people truly reside are underrepresented.</p> <p>According to Florida Common Cause State Board Chair Peter Butzin, in Florida's 4th District, 48% are incarcerated at the Calhoun Correctional Institution. As a result, Butzin stated, "the actual residents of District 4 are given almost twice as much political clout as people elsewhere in the county."</p> <p>Incarcerated people do not reside in these districts in any meaningful way. Recent research has also indicated that in states like Rhode Island, people stay incarcerated for an average of 100 days, which would otherwise not be considered a change in residency, but for the individual's imprisonment this is a double standard.</p> <p>The Census Bureau's rules concentrate 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.</p>

	<p>This flawed demographic makeup disproportionately affects minorities. Prisons are typically located in rural, white districts, whereas incarcerated populations are disproportionately African American or Hispanic from urban areas - a reflection generally of disparities in the correction system's treatment between whites and people of color. For incarcerated peoples, this means that voters in their current districts do not reflect their demographics or interests.</p> <p>While many states believe prison-based gerrymandering is a very important issue and have taken measures to stop it, it is challenging without the assistance of the Federal Census Bureau. New York, for example, implemented a law to stop prison-based gerrymandering but faced numerous technical challenges, partisan opposition, and extreme delays in receiving data. Massachusetts tried to implement similar reforms, but found that they were prohibited from creating rules that were inconsistent with those of the Federal Bureau by their state constitution.</p> <p>As Allegra Chapman, Common Cause's Director of Voting and Elections, commented, "The reality is that most states adopt the Bureau's definition of "residence" when allocating individuals for redistricting purposes. An ad-hoc approach on how to apportion incarcerated persons is neither efficient nor fair; votes across districts, and across the country, should hold the same weight."</p> <p>Ending prison-based gerrymandering is vital to our democracy.</p>
c00077	<p>Please stop counting prison inmates as residents of the locality in which they are incarcerated.</p> <p>According to Pennsylvania law:</p> <p>for the purpose of determining residence, an inmate in a penal institution is deemed to reside where the individual was last registered to vote before being confined in the penal institution; or If the inmate was not registered to vote prior to confinement, the individual is deemed to reside at the last known address before confinement; or A new residence established while confined (for example, if the inmate's spouse establishes a new residence in which the inmate intends to reside upon his/her release from confinement).</p> <p>Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote.</p> <p>It also violates the one person, one vote requirement of the U.S. Constitution's Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>Miscounting of urban prisoners in the rural districts where most PA prisons are located swells the population base of those districts. It</p>

	enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration. The practice distorts our democratic process and undermines government of, by and for the people.
c00078	<p>I am writing to provide comment and support for U.S. Census Bureau’s proposed “2020 Census Residence Rule and Residence Situations”.</p> <p>On behalf of the Christian County community, I show my support of the proposed new guidelines for counting of deployed military personnel in the upcoming 2020 Census. Under the proposal, U.S. military personnel who are deployed outside the U.S. on Census Day would be counted at the U.S. residence where they live and sleep most of the time. Counting deployed service members via this method will ensure that they are counted in the most advantageous and beneficial means for all communities.</p> <p>Military service members and their families are vital to the fabric of the communities in which they are stationed. Often, the communities surrounding a military installation work tirelessly to provide the best options, partnerships, and opportunities for their military neighbors. Our community here in Christian County, Kentucky, is no exception to that standard of excellence in service. In so many ways, Christian County has maintained a steadfast relationship—and partnership—with the Army, working to ensure our community is in tune with the quality of life needs and wishes of our soldiers and their families.</p> <p>The proposed method of counting service members who are deployed at the time of the 2020 Census will accurately show the economic impact that these service members have on the communities in which they work, play, and reside. Appropriate federal dollar funding can now be made available to these very communities, so that they may continue to provide quality of life services and opportunities.</p> <p>I pledge my continued support for economic prosperity and opportunities for the region in which Fort Campbell gains tremendous support. I thank you for your consideration of enacting what is best for our country’s military personnel, their families, and the communities that they call home.</p>
c00079	I urge the Census Bureau to reconsider the ruling about counting incarcerated persons as residents of their prison locations rather than of their home communities. PA law states, "the individual is deemed to reside at the last known address before confinement."
c00080	I understand that the U.S. Census Bureau has decided that it will continue to count prison inmates as residents of particular prison locations, rather than residents of the communities where they'd be living if they weren't in prison. While this may *sound* commonsensical, it has serious problems. Generally, prisoners don't live in a prison *forever*, and prison isn't a *home* in any meaningful sense of the word, so calling a prisoner a "resident" of a prison is much different than, say, calling college students residents of the town in which they're attending school. Also, two U.S. district judges have lately ruled that counting prisoners in this manner violates the 14th Amendment of the U.S. Constitution, because it forces folks from one Congressional district into another, and thus unfairly dilutes those districts' (and thus their citizens') political power. In states where felons can't vote, of course, this method of counting makes the problem even worse. On balance I disapprove of initiatives that heap additional punishments upon citizens, when their sentences are supposed to be their punishments, and I believe counting prisoners in this manner does that. Thank you for your time and attention.
c00081	I represent the _____ of Georgia and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at

	<p>the particular facility that they happen to be located at on Census Day ignores the reality of incarceration: prisons are not a "usual residence".</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population.</p> <p>The reality is that when my constituents are incarcerated, they are often sent to prisons outside my district, but they still rely on me for representation. Over the course of their incarceration, the prison administration may move them between different prisons, located in many of the colleagues' districts, but they remain my constituents. Their home in my district remains their only stable, permanent, "usual" residence. Counting them as if they were residents of the facility where they happen to be held on Census day doesn't reflect the modern lived reality of our communities.</p> <p>I note that your proposed method of counting the incarcerated population is inconsistent with how you count other groups that eat and sleep in a location that is not their usual residence. For example, I note that your proposed rules will count boarding school students at their home address even if they spend most of their time at school. The same approach should be taken when counting incarcerated people.</p> <p>I am also concerned about the impact of your residence rules on racial justice in my state. Our state disproportionately incarcerates African-American or Latino people so when you count them in the wrong location, and that data is used for redistricting, it further undermines the political power of minority communities.</p> <p>Thank you for this opportunity to comment of the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. I believe that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00082	<p>I wish to submit the following comment on the US Census Bureau's Residence Rule:</p> <p>The Census Bureau is wrong to consider incarcerated people as residents of the correctional facility because the effect of this policy is to strengthen the representative power of the locality in which the prison is located and decrease the representation of the home communities of those incarcerated. Since a disproportionate share of the prison population consists of people of color, this perpetuates a system of disenfranchisement of people of color. It artificially decreases the counted population of the home communities and shifts power away from these areas to the (usually rural, more white) areas where correctional facilities are often located. The effect is racist and plainly wrong.</p>
c00083	<p>Californians United for a Responsible Budget submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p>

	<p>CURB is a statewide coalition of more than 70 grassroots organizations working to stop prison and jail expansion, decrease incarceration, and invest in the social safety net in California. As advocates for decarceration, state spending on prisons and jails, and uplifting those affected by incarceration, we oppose prison gerrymandering.</p> <p>Counting incarcerated people as if they were residents of the facility where they happen to be located on Census day doesn't reflect the lived reality of our communities. The Bureau already counts students in boarding schools at their home address even if they spend most of their time at the school. The same approach should be taken when counting incarcerated people.</p> <p>The Census Bureau should honor the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96 percent of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of modern incarceration, deserves far more consideration than it was given.</p> <p>As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. The country's exploding prison population requires the Bureau to adapt once again.</p> <p>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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting, it artificially inflates the political power of the areas where the prisons are located and dilutes the political power of all other urban and rural areas without large prisons.</p> <p>Four states and over 200 individual counties and municipalities adjust Census population data to avoid prison gerrymandering when drawing their districts. Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable. Massachusetts legislators, for example, have already expressed concerns about that state's ability to use alternative data in their 2015 comment to the Bureau (comment numbered c0161).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. CURB believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00084	<p>The Campaign Legal Center and the Voting Rights Institute welcome the opportunity to submit this comment in response to the Census Bureau's federal register notice regarding the proposed 2020 Census Residence Rule and Residence Situations, 81 Fed. Reg. 42577 (June 30, 2016). The Campaign Legal Center and the Voting Rights Institute are disappointed that the Census Bureau has proposed to continue counting incarcerated people at the particular facility they happen to be located on Census Day, despite overwhelming consensus among</p>

public comments urging the Census Bureau to change course and count incarcerated people in their home communities. The proposed rule, if made final, discredits the Census as an accurate snapshot of our nation and limits its functionality as a tool to assess local demographics. Most importantly, it perpetuates distortions in our representative democracy, inflates the voting power of the few at the expense of the many, and imposes disproportionate representational harms on minority communities. The Campaign Legal Center and Voting Rights Institute urge the Census Bureau to reverse course, rescind the proposed rule, and count incarcerated people where they resided prior to their incarceration.

The Campaign Legal Center is a nonpartisan, nonprofit legal organization committed to improving our representative democracy and protecting the fundamental right of all Americans to participate in the political process. Through its redistricting and voting rights programs, CLC participates in state and federal litigation to ensure that all communities, and particularly minority communities, are afforded equal access to our democratic system. The Voting Rights Institute is a project of the American Constitution Society, Campaign Legal Center, and Georgetown University Law Center. It was founded in 2013 to protect the fundamental right to vote by training the next generation of voting rights attorneys and experts. Since 2013, it has held trainings in over a dozen cities nationwide for over 700 attorneys and law students. It also maintains a website that contains information about protecting the right to vote and a database of legal documents for approved voting rights attorneys.

At the center of the missions of both the Campaign Legal Center and the Voting Rights Institute is the right of all Americans to equal representation. The Supreme Court has long recognized this central premise of our democracy through its one-person, one-vote doctrine, which mandates that electoral districts have roughly equal population. The current proposal by the Census Bureau to count incarcerated people as artificial residents in the prison facility where they happen to be incarcerated on Census day rather in their home communities flies in the face of these basic democratic principles that our Constitution envisions.

1. The proposed rule erodes equality of representation for prisoners and other residents alike and allots unfair influence to a random assortment of constituents that live adjacent to prison facilities.

Every decade, state and local governments redraw thousands of state and local legislative districts in order to ensure that each legislative district contains the same total population and thus affords each member of the community equal representation. States almost exclusively rely on Census data in order to perform this vital democratic task.^{1/} For that reason and others, as the Census Bureau itself has explained, “it is crucial that people are counted in the right place.”^{2/} As the Supreme Court recently reaffirmed, this task of equalizing districts seeks to protect voters from unfair dilution of their vote *and* ensure equality of representation.^{3/} However, the Census Bureau’s practice of counting prisoners in the facility where they happen to be incarcerated on Census Day, rather than where they resided immediately prior to their incarceration, impedes both of these goals.

Since prisoners are ordinarily barred from voting^{4/}—and where they are permitted to vote do so in their home communities^{5/}—counting large prison populations in their adjacent districts, which are often in rural areas,^{6/} greatly inflates the power of the relatively small number eligible voters in those districts at the expense of *all other voters* in the state. The consequences are particularly stark at the local level

where districts are small and the incarcerated population sometimes accounts for more than half of the total population.^{7/} For example, after the 2000 Census, Lake County, Tennessee, drew a district “where 88% of the population [of the district] was not local residents, but incarcerated people” and therefore “every group of 3 residents in [the district had] as much say in county affairs as 25 residents in other districts.”^{8/} This simply does not accord with basic principles of fairness, equality of representation, or the constitutional demand of one-person, one-vote.

Prisoners are simply not members of the residential communities surrounding the facilities where they happened to be incarcerated on Census day. They are physically prohibited from interacting with the community, using the community’s public transportation, parks, libraries, and other public spaces and services, voting or even participating in public debates and forums. They are ordinarily not affected by local regulations or changes in policy. They do not choose to live in that community, build no enduring ties to the community and, in fact, can and often do move from facility to facility at the discretion of prison officials during their term of confinement. Members of the relevant communities do not consider the prisoners confined in adjacent facilities to be their “neighbors.” Unsurprisingly, for all of these reasons, officials representing these communities do not substantively represent these temporary visitors in their districts. When an Iowa city councilman, representing a district whose population was 96% inmates, was asked whether he considered those incarcerated individuals to be his constituents, he answered, “not really.”^{9/}

But this does not mean that prisoners do not have any community whatsoever. As a former Census Bureau Director Kenneth Prewitt has explained, the current policy of counting prisoners in the facilities they happen to be assigned to on Census Day “ignore[s] the reality of prison life. Incarcerated people have virtually no contact with the community surrounding the prison. Upon release the vast majority return to the community in which they lived prior to incarceration.”^{10/} Prisoners continue to be meaningful members of their home communities and are entitled to equal representation there. They have children, spouses, families, and homes where they resided prior to their confinement and where they are almost certain to return after their confinement. Recognizing this reality, nearly every state has a constitutional provision or statute providing that an individual’s legal residence does not change as a result of incarceration.^{11/} Prisoners who are eligible to vote do so in their home communities.^{12/} Even as nonvoters, they “have an important stake in many policy debates”^{13/} in their home communities and counting them there will ensure their “equitable and effective representation.”^{14/} Counting them elsewhere deprives them individually and their communities of adequate representation.

2. The proposed rule’s democratic harms fall heavily and unevenly on minority communities.

While the distortions of prison gerrymandering were relatively minor when our prison population was small, drastic changes in the incarceration population in the United States in the past forty years have severely magnified the democratic harms it imposes. Over that time period, the incarceration population has increased by 500%.^{15/} Today, there are 2.2 million people in our nation’s prisons and jails.^{16/}

Moreover, the drastic increase in incarceration is not evenly distributed across our communities. Our prison and jail population is overwhelmingly black and brown. While people of color make up only 37% of our nation’s population, they comprise 67% of our prison

population.^{17/} Black men are six times more likely to be incarcerated as white men and Hispanic men are more than twice as likely to be incarcerated as non-Hispanic white men.^{18/} As a result of these disparities, the home communities of prisoners are typically urban minority communities.^{19/} However, prisons are disproportionately located in rural, primarily white, communities.^{20/} In 2010, by counting prisoners as residents of their prison cells, the Census displaced a population that is disproportionately male, urban, and Black or Latino and concentrated them into just 5,393 census blocks far from their homes, both physically and demographically.^{21/} For example, in Illinois, sixty percent of incarcerated people are from Chicago but 99% of those individuals were counted outside of Cook County (Chicago).^{22/} This pattern holds throughout much of the nation. The upshot is that the Census Bureau's rule of counting prisoners where they are confined on Census day systematically diminishes the political representation of urban minority communities and unjustifiably shifts that political power to rural white communities.^{23/}

3. The proposed rule diminishes the Census's usefulness as a demographic tool.

The Census provides some of the most reliable demographic data about our nation available. Researchers, policy makers, and analysts rely on this data to provide easily accessible and accurate information about our states and localities. But the Census's continued choice to count prisoners in the wrong place distorts its data and provides an inaccurate picture of many of our communities. It suggests that many otherwise homogenous counties and localities with a prison facility are far more racially and ethnically diverse than they actually are. In 2010, there were 161 counties where incarcerated Black individuals outnumbered non-incarcerated Black individuals.^{24/} The distorted picture created by counting prisoners in the wrong places causes an informational harm that is unnecessary and problematic for all those who seek to rely on Census data to understand local community dynamics.

4. The concept of "usual residence" does not demand this illogical and unjust rule.

In response to the Census Bureau's request for public comment on its residence rules last year, 96 percent of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address for all of the reasons stated above. Nonetheless, the proposed rule is to maintain the Bureau's misguided practice of counting prisoners in the wrong place on the basis of the concept of "usual residence." The Bureau's response states: "[U]sual residence is defined as the place where a person lives and sleeps most of the time, which is not always the same as their legal residence, voting residence, or where they prefer to be counted. Therefore, counting prisoners anywhere other than the facility would violate the concept of usual residence, since the majority of people in prisons live and sleep most of the time at the prison."^{25/}

However, it is simply not true that the amorphous concept of "usual residence" requires this harmful result. First, there is nothing "usual" about the inherently time-limited period an incarcerated individual spends confined in a government facility. Except for the fact of their incarceration, which disrupts their "usual" lives, most prisoners live and sleep in their home communities.

The Census Bureau's determination that the prison facility an individual is confined in on Census day best represents where incarcerated individuals live and sleep "most of the time" ignores many key considerations. First, the rule broadly covers short and long-term

incarcerated individuals alike. The rule covers local jails where the average length of stay nationwide is well under thirty days^{26/} and many in the confinement population stay less than forty-eight hours. Even for those in state and federal prisons, the median length of stay in prison is approximately sixteen months,^{27/} far less than the ten years that the Census will count that individual as being away from his home. Of course, many prisoners only spend a few months in prison and yet will be miscounted for the rest of the decade. In Rhode Island, for example, the majority of prisoners spend less than 100 days in a correctional facility. If these prisoners were spending this time at a summer residence rather than a correctional facility, they would be counted at their regular home address. There is no reason why the Census should treat them unequally because they happen to be in prison. Second, even for those prisoners who spend long periods of time in correctional facilities, there is no guarantee those prisoners will live in any particular facility throughout that time period. Many prisoners will be moved among facilities throughout their period of confinement. Therefore, the only stable long-term address where prisoners will definitely spend most of their time living and sleeping is their home address where they will live and sleep before and after their period of confinement (which will ordinarily be shorter than the decennial census period).

Finally, the Census Bureau has also deviated from the “usual residence” rule in other circumstances where it does not appropriately reflect an individual’s community. Most notably, the Census already counts boarding school students living away from their parental home while attending boarding school below college level at their parental home rather than their boarding school. Boarding school students interact with their surrounding community at boarding school far more than prisoners interact with the surrounding community of their confinement facility. Boarding school students are also likely to reside at the same school for far longer than the average prisoner at any given correctional facility. Yet the Census counts students at their parental home because of “the likelihood that they would return to their parents’ residence when they are not attending their boarding school (*e.g.*, weekends, summer/winter breaks, and when they stop attending the school.)”^{28/} The reasons for this departure in the boarding school context apply with far greater force in the prisoner context, especially given the democratic and equality costs the current rule exacts. Therefore, to the extent that counting prisoners at their homes occasionally requires a departure from the “usual residence” rule, the precedent of the Census’s counting of boarding school students allows for such a minor departure in order to more accurately reflect the location of prisoners’ community ties and long-term residential patterns.

5. The Census Bureau’s alternative proposal to provide states and localities with alternative data is insufficient to remedy these harms.

Rather than simply counting prisoners in their home communities, the Census Bureau has proposed that it will provide the necessary data to states that wish “to ‘move’ their prisoner population back to the prisoners’ pre-incarceration addresses for redistricting and other purposes.”^{29/} However, this proposal is insufficient to remedy the democratic harms the current proposed rule imposes.

First, the Census Bureau’s decision to continue counting prisoners in the facility they are confined in on Census Day suggests to states and localities that this is a proper accounting of those prisoners’ residences, when it assuredly is not. Given the close tie between the Census, apportionment, and redistricting, the proposed rule undoubtedly reinforces the false perception that it is proper and acceptable to count prisoners in this manner for the purposes of redistricting despite the violence it does to the one-person, one-vote principle and the

fundamental concept of equal representation. This not only perpetuates the democratic harms described above; it also exposes states and localities to potential legal liability. There have already been successful Equal Protection challenges to prison gerrymandering in federal district courts in Jefferson County, Florida and Cranston, Rhode Island.^{30/}

The suggestion that some states might want “to ‘move’ their prison population” and the Census Bureau will aid them in doing so itself suggests that states and localities counting prisoners in their home communities are the outlier actors. And indeed, they are. While four states and more than 200 localities have taken the commendable affirmative step of ensuring that prisoners are counted in the right place,^{31/} most states and localities do not. Moreover, some states legally cannot make these changes without a change to the underlying flawed Census data. The State of Massachusetts has informed the Census Bureau that its state constitution does not allow it to adjust the Census data in order to count prisoners in the right place and thus urged the Census to make this commonsense change.^{32/} Finally, the proposed rule also unnecessarily places additional burdens on states seeking to count prisoners in the right place. This burden is exacerbated in those states whose laws require them to redistrict in odd-numbered years and therefore must redistrict immediately after the Census is released. The burden, in any event, should be on the Census Bureau to provide accurate data in the first instance about the nation’s residents.

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, it must afford prisoners the same right to be counted in their communities as it does other individuals who happen to be away from their homes on Census Day. In order to ensure a just and accurate 2020 Census, the Campaign Legal Center and the Voting Rights Institute strongly urge you to reverse course and count incarcerated people at home.

1/ See *Evenwel v. Abbott*, No. 14-940, 578 U.S. ___, slip op. at 4 (Apr. 4, 2016).

2/ 81 Fed. Reg. 42577 (June 30, 2016).

3/ *Evenwel*, slip op. at 16.

4/ See Sentencing Project, *Felony Disenfranchisement: A Primer* (May 10, 2016), <http://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>

5/ Dale E. Ho, *Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle*, 22 *Stan. L. & Pol’y Rev.* 355, 366 (2011).

6/ *Id.* at 362 (noting that “[r]ural communities make up only about 20% of the U.S. population, but an estimated 40% of all incarcerated persons are held in facilities located in rural areas”).

7/ See Peter Wagner, *Breaking the Census: Redistricting in an Era of Mass Incarceration*, 38 *William Mitchell L. Rev.* 1241, 1245-46.

8/ *Id.* at 1245 (quoting Peter Wagner & Aleks Kajstura, *Prison-Based Gerrymandering in Tennessee Counties*, *Prison Pol’y Initiative* (Sept. 26, 2011)).

9/ Sam Roberst, *Census Bureau’s Counting of Prisoners Benefits Some Rural Voting Districts*, *N.Y. Times*, Oct. 23, 2008, http://www.nytimes.com/2008/10/24/us/politics/24census.html?_r=0.

10/ Kenneth Prewitt, *Forward to Patricia Allard & Kristen D. Levingston, Accuracy Counts: Incarcerated People and the Census i* (2004), *available at* http://www.brennancenter.org/sites/default/files/legacy/d/RV4_AccuracyCounts.pdf

11/ Ho, *supra* note 5, at 364.

12/ *Id.* at 366.

13/ *Evenwel*, slip op. at 18.

14/ *Id.* at 19.

	<p>15/ Sentencing Project, Fact Sheet: Trends in U.S. Corrections (2015), http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf.</p> <p>16/ <i>Id.</i></p> <p>17/ <i>Id.</i></p> <p>18/ Sentencing Project, Criminal Justice Facts, http://www.sentencingproject.org/criminal-justice-facts/.</p> <p>19/ Ho, <i>supra</i> note 5, at 361-62.</p> <p>20/ <i>Id.</i></p> <p>21/ Prison Pol’y Initiative, Detailed demographics of correctional populations now available for nation (Sept. 13, 2011), http://www.prisonersofthecensus.org/news/2011/09/13/sf1/.</p> <p>22/ Rose Heyer & Peter Wagner, Too Big to Ignore: How Counting People in Prisons Distorted Census 2000 (Apr. 2004), http://www.prisonersofthecensus.org/toobig/.</p> <p>23/ See Lani Guinier & Gerald Torres, <i>The Miner’s Canary: Enlisting Race, Resisting Power, and Transforming Democracy</i> 189-190 (2002) (“The strategic placement of prisons in predominantly white rural districts often means that these districts gain more political representation based on the disenfranchised people in prison, while the inner-city communities these prisoners come from suffer a proportionate loss of political power and representation.”).</p> <p>24/ Prison Pol’y Initiative, <i>The Racial Geography of Mass Incarceration</i>, http://www.prisonpolicy.org/racialgeography/report.html.</p> <p>25/ 81 Fed. Reg. 42578. 26 See Vera Inst. for Justice, <i>Incarceration’s Front Door: The Misuse of Jails in America</i> at 10 (2015) http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf.</p> <p>26 See Vera Inst. for Justice, <i>Incarceration’s Front Door: The Misuse of Jails in America</i> at 10 (2015) http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf.</p> <p>27 Catie Clark, et al., Fla. Dep’t of Corrections & Fla. State Univ. College of Criminology & Crim. Justice, <i>Assessing the Impact of Post-Release Community Supervision on Post-Release Recidivism and Employment</i> (2015), https://www.ncjrs.gov/pdffiles1/nij/grants/249844.pdf (noting that in 2009 the median time served in prison for all offenses in the United States was 16 months); see also Ho, <i>supra</i> note 5, at 373 (noting that the median time served in prison in 2002 was 17 months).</p> <p>28 81 Fed. Reg. 42580.</p> <p>29 81 Fed. Reg. 24578.</p> <p>30 See <i>Calvin v. Jefferson County Board of Commissioners</i>, No. 4:15-cv-131 (N.D. Fla. Mar. 19, 2016); <i>Davidson v. City of Cranston</i>, No. 14-91L (D. R.I. May 24, 2016).</p> <p>31 Prison Pol’y Initiative, <i>Prison Gerrymandering Project: Solutions</i>, http://www.prisonersofthecensus.org/solutions.html.</p> <p>32 See Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014, and the House of Representatives on August 14, 2014).</p>
c00085	<p>As _____ the City of Jacksonville, North Carolina, I am writing to support the proposed rule change regarding the census count of military personnel who are deployed. The City of Jacksonville is the home of Camp Lejeune and New River Air Station with an active duty military population of over 50,000 personnel. As you can appreciate, troops are deployed in various numbers and for various lengths of service.</p> <p>The proposed rule of interest is relative to counting of these deployed military personnel. It states:</p>

	<p>U.S. Military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a military installation outside the U.S. on Census Day shall be counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense.</p> <p>The City of Jacksonville supports this proposed rule change. Undercounting military personnel due to deployment has resulted in the loss of substantial revenue from federal and state sources to the City of Jacksonville. I believe that this proposed rule will correct that error.</p> <p>Thank you for your consideration.</p>
c00086	<p>Commenting in response to the Census Bureau’s Federal Register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016).</p> <p>The Bureau’s proposal to continue counting incarcerated people at the facility in which they are housed on Census Day ignores the transient and temporary nature of incarceration. It also is inconsistent with other changes included in the same set of proposed residence criteria for the 2020 Census. If made final, this proposal will lead to another decade of vital policy decisions based on a census that counts incarcerated people in the wrong place. Therefore, I urge you to count incarcerated people as members of the community from which they come and not as members of the community in which they are incarcerated on Census Day.</p> <p>American demographics and living situations have changed dramatically over the more than two centuries since the first census in 1790. Census methods and operations have evolved in response to many of these changes, in order to continue to provide an accurate portrait of the nation, its people, and its communities. But despite significant changes in the location and composition of the incarcerated population, especially over the last several decades, the policy governing the enumeration of incarcerated persons has not similarly evolved to reflect these consequential shifts in the relationship between the location of incarcerated persons on Census Day and their “usual residence.”</p> <p>The Census Bureau’s decision to maintain the status quo ignores overwhelming public comments in favor of an updated policy that recognizes the temporal nature of most incarcerations. Moreover, the proposed method of counting the incarcerated population is inconsistent with how the Census Bureau counts other groups that eat and sleep in a location that is not their usual residence. Finally, the policy that the Census Bureau is proposing to retain will result in census counts that skew the distribution of political representation and our very understanding of the composition and well-being of communities across America, for an entire decade following the census.</p> <p>The Census Bureau’s Proposal is against the Weight of Public Consensus</p> <p>The Census Bureau blatantly ignored the overwhelming consensus urging a change in the census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96 percent of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of an incarceration system that regularly shuffles incarcerated people between facilities, deserves far more consideration than it was given.</p>

The Census Bureau’s Proposal Treats Similarly-Situated Populations Inconsistently and Fails to Recognize the Range of Factors that Often Influence the Criteria Governing Different Situations

It is important to recognize and acknowledge that the concept of “usual residence” established by the Census Act of 1790 has not been consistently applied, through time and across living situations. While the Census Bureau notes in its proposed 2020 Census Residence Criteria that usual residence “is not necessarily the same as a person’s voting residence or legal residence,” former Census Director John G. Keane, in testimony before Congress in 1988, added that it is also not necessarily “where a person is found on Census Day” (emphasis added).I/

Equally important is the concept of “enduring ties,” which the U.S. Supreme Court referenced in its opinion in *Franklin v. Massachusetts II/*, a case that unsuccessfully challenged the Census Bureau’s decision to count military personnel serving overseas in the 1990 Census for purposes of congressional apportionment. The majority opinion in *Franklin* noted that the concept of usual residence “has been used broadly enough to include some element of allegiance or enduring tie to a place.”

The Census Bureau’s decision with respect to incarcerated persons is especially troubling in light of its concurrent decision to change the rule governing where it will count deployed military personnel who are stationed or assigned to a U.S. base. Under the Bureau’s proposal, deployed service members will be counted at their home address (usual residence) in the U.S., even if they live and sleep elsewhere for most of the time at the time the census is conducted. Like most incarcerated persons, these service members are away from their homes temporarily; the average length of deployments can vary greatly from decade to decade, depending on U.S. engagement in theaters of military conflict overseas. In its summary of comments on the proposed Residence Criteria for the military overseas, the Census Bureau cites concerns about the need for accurate data to support funding, planning, and services in military communities, but is dismissive of similar arguments regarding an accurate portrait of communities that most incarcerated persons consider to be their usual home and to which most will return following their temporary confinement.

Changing one policy, but not the other, illuminates a glaring inconsistency in the proposed 2020 Census Residence Rules that the Census Bureau has not adequately explained.

The Census Bureau’s Proposal Will Reduce the Accuracy of Data and Result in Vote Dilution

Failure to count incarcerated persons at their home address preserves an unacceptably discriminatory census result that deprives underserved urban neighborhoods of fair representation, while shifting political power to communities that do not represent the interests of incarcerated persons or their families. Because African-Americans and Latinos are disproportionately incarcerated, III/ counting

	<p>incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. Thus, predominantly African American and Latino communities will continue to be hit especially hard by an outdated policy that renders so many of their young men invisible for all statistical purposes.</p> <p>The proposed counting rules will perpetuate the distortion of democracy that results from padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else. This vote dilution is particularly extreme for urban communities and communities of color that have disproportionately high rates of incarceration.</p> <p>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, to reflect enormous demographic shifts, changes in the prison infrastructure, and the urgent needs of communities.</p> <hr/> <p>I/ Testimony of Dr. John G. Keane, Director, Bureau of the Census, before the House Subcommittee on Census and Population, “Census Residence Rules: Military Personnel Abroad,” April 18, 1988 (Serial No. 100-49). II/ 505 U.S. 788 (1992). III/ According to Prison Policy Initiative’s analysis of 2010 Census data, Blacks are incarcerated at 5 times the rate of non-Hispanic Whites, and Latinos are incarcerated at a rate almost two times higher than non-Hispanic Whites. Comments of Prison Policy Initiative, regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015), dated July 20, 2015.</p>
c00087	<p>Introduction</p> <p>During the 2010 Census deployed military were counted at their home of record rather than from the bases and host communities where they lived. Family members were to be counted at their homes on or in the communities around the bases, but many families incorrectly assumed the guidance applied also to them, and did not complete Census documents reflecting their status.</p> <p>For the State of North Carolina, thousands of service members were enumerated at locations that had little to do with them, and for the host communities around the bases, the loss of an accurate count resulted in perceptions of a poor economy, reduced revenues based on population and a much reduced base count on which a decade of estimates are now based.</p> <p>The City participated in discussions with Census officials, worked with the State Census Liaison and let others know of the impact to the City. On June 30, 2016, a notice of proposed rulemaking was issued with a request for comments that would count deployed military at their usual US residence.</p> <p>The City of Jacksonville welcomes this proposed rule and applauds those involved with the proposal. The impact could return thousands of troops to the count and will allow the host communities to be more accurately represented in the Census.</p> <p>However, because of the confusion by family members and their status, the City believes that Census outreach should help inform family members of those deployed about the count, and that they should complete Census forms when presented to them.</p>

Proposed Rule of Interest to Our Community

The City of Jacksonville is particularly interested in the proposed rule below:

(f) U.S. military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a military installation outside the U.S. on Census Day—Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense.

<http://www.federalregister.gov/a/2016-15372/p-127>

Response

The 2010 Census did not count persons deployed as being within the communities where their families were. The City of Jacksonville believes the proposed rule will largely solve this problem. Officials who have worked with the Department of Defense data in the past

have indicated to the City that this task can be accomplished in a fashion that will match the regular count of troops assigned aboard the bases around Jacksonville.

We believe that this rule is consistent with the application of the “business traveler” rule as the military are still assigned to bases, but are temporarily working in another area.

Concern

While the City praises this action, we ask that the Census outreach programs around communities that have deployed military, include specific instructions to family members about their count in the Census. During 2010, the Complete Count Committee heard many family members indicate they believed their guidance to not count their deployed member, applied to them. Further, they were even more confused believing that completing the Census document would affect a residency status that they used for their tax status. Many military service members maintain a residency through the Sailors and Soldiers act that they use to select the state to which they want to pay taxes.

During the 2010 Census, the City helped to pay for billboards and publications that targeted family members to ask them to fill out the Census forms. This specific population is difficult to communicate with outside of the official military commands and our efforts were not as effective as we desired. In that the proposed rule would engage administrators within the Department of Defense, persons who were counted using this provision could have communication made to their families that they should fill out their own Census documents. For the Marine Corps, some of the most effective communication to this group is through the Family Readiness Officers who work with the families of deployed persons.

Thank You

The City of Jacksonville applauds this proposed rule and encourages its adoption.

c00088	<p>I represent the residents of _____ in the New York State _____ and submit this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 81FR 42577 (June 30, 2016). The Bureau’s proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census Day ignores the reality of incarceration: prisons are not a “usual residence”.</p> <p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation’s population. I hope that the Census Bureau will reconsider its proposal and give consideration to the comments that were submitted, including mine, in response to your federal register notice about the 2010 Census residence rule and situations last year.</p> <p>The reality is that when my constituents are incarcerated, they are often sent to prisons outside my district, but they still rely on me for representation. Over the course of their incarceration, the prison administration may move them between different prisons, located in many of my colleagues’ districts, but they remain my constituents. Their home in my district remains their only stable, permanent, “usual” residence. Counting them as if they were residents of the facility where they happen to be held on Census day doesn’t reflect the modern lived reality of our communities.</p> <p>Fortunately, in 2010 we passed the New York Prison Gerrymandering Bill which allows for the use of Department of Corrections data to identify the home addresses of incarcerated people to correct Census data and requires state and county governments to count incarcerated people at their home addresses when drawing legislature districts. While I am proud to be part of the handful of states leading the way to end prison gerrymandering, I also understand that it is still necessary to change the way the Census Bureau counts incarcerated individuals. We currently must take extra measures to ensure fair political representation in our state and it would be helpful if the Bureau counted incarcerated people at their homes to begin with.</p> <p>I note that your proposed method of counting the incarcerated population is inconsistent with how you count other groups that eat and sleep in a location that is not their usual residence. For example, I note that your proposed rules will count boarding school students at their home address even if they spend most of their time at the school. The same approach should be taken when counting incarcerated people.</p> <p>I am also concerned about the impact of your residence rules on racial justice in my state. Our state disproportionately incarcerates African-American or Latino people so when you count them in the wrong location, and that data is used for redistricting, it further undermines the political power of minority communities.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. I believe that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00089	<p>American Friends Service Committee- Arizona (AFSC Arizona) respectfully submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). This proposal to continue to</p>

incorrectly count all incarcerated people as permanent residents of a correctional facility is not only discriminatory but also creates unequal representation.

AFSC Arizona, a non-profit organization working for justice and human rights, has been central to promoting a reconciliation and healing approach to criminal justice issues. The leading organization in Arizona on criminal justice issues, AFSC combines advocacy for incarcerated people and their families with statewide policy change to document and improve prison conditions while working to reduce the number of people incarcerated in Arizona. In short, because of our strong commitment to change conditions for incarcerated people, their families, and their communities, we stand in strong opposition to the Bureau's proposal.

AFSC Arizona believes the proposal is discriminatory.

According to the definition of "usual residence," the Census Bureau claims a person resides where he/she "eats and sleeps most of the time." The average length of stay for an inmate in Arizona is 25 months¹. Twenty-five months does not necessarily equal a permanent residence. In those same 25 months, a student might be eating and sleeping at an out-of-state university. A member of the military could also be eating and sleeping on a military base. A young person participating in civil service projects might be eating and sleeping in various states throughout the country. However, these specific situations allow for certain persons to claim their home as their "usual residence" for the Census.

We believe a person in a correctional facility should also be allowed to follow that rule. If the purpose of a Census is to collect accurate data, we must allow *everyone* to use their regular home address, regardless of where they are staying, on Census Day.

This proposal is also discriminatory because it reduces the accuracy of the data about communities of color. As of 2010, the majority of all prisoners in Arizona's correctional facilities are Latino² and African-Americans make up the majority of persons in all areas of the criminal justice system in Arizona³. Statistics show that African-American and Latinos are disproportionately incarcerated, so inaccurately counting them at a correctional facility as their "usual residence," is a disservice to African-American and Latino communities.

AFSC Arizona believes the proposal creates unequal representation.

Arizona has the 6th highest incarceration rate in the nation. Here, the majority of correctional facilities, 13 of 16, are located in rural communities. However, 60 percent of people admitted to prison in Arizona live in the Phoenix-Mesa area⁴. Rural communities suffer under the current counting rules because local districting plans were distorted by incarcerated populations that have no real nexus to the locations where they are counted as residents.

	<p>This, in effect, is population distortion and prison-based gerrymandering. While the practice of political gerrymandering is frowned upon because of its possible violations of the Constitution and, to a lesser extent, the Voting Rights Act, the practice of prison based gerrymandering is often overlooked. An equal representation of population is one of the criterion state use to draw their political boundaries. However, for those districts with an unusually high prison population, this process does not allow for equal representation of thousands of citizens who are inaccurately counted.</p> <p>Prison-based gerrymandering allows for a misrepresentation of a state or local government’s true constituency. The principle of “one person, one vote” is severely skewed when states and municipalities are forced to use census data. We diminish our ideal of representative democracy when we count thousands of mostly urban, minority people in correctional facilities that is not their primary residence.</p> <p>Both of these issues are prevalent in one Arizona county where the majority of correctional facilities exist: Pinal County. A largely rural county south of the Phoenix metro area and north of the Tucson metro area, Pinal County has become a haven for both state and federal, public and private institutions. According to the Census Bureau, Pinal County’s population as of July 1, 2015 was 375,770⁵. With 6.7% of that population categorized as “population in correctional facilities for adults⁵.”</p> <p>¹ https://csgjusticecenter.org/wp-content/uploads/2012/12/Arizona_1-pager_v4.pdf ² http://www.prisonpolicy.org/profiles/AZ.html ³ http://www.prisonpolicy.org/profiles/AZ.html ⁴ https://csgjusticecenter.org/wp-content/uploads/2012/12/Arizona_1-pager_v4.pdf ⁵ http://www.census.gov/quickfacts/table/PST045215/04021 ⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF2_PCO3&prodType=table</p>
c00090	<p>Current census practice counts 1400 Hawaii prisoners as Arizona residents affecting resources and voting district calculations for our communities.</p> <p>These Hawaii prisoners are in another state not at all of their own choosing. When their terms have been served, these people will return to Hawaii, where their communities need to be equipped to serve them.</p> <p>To be fair, to support equal representation in the democratic process, and to support prisoner rehabilitation and re-entry to their communities, I sincerely ask you to Revise the Residence Rule to count incarcerated people as residents of their last home address before incarceration.</p> <p>I trust you to do the right thing - not just the easiest thing.</p>
c00091	<p>Legal Services for Prisoners with Children submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (J u ne 30, 2016). We strongly oppose the decision to count incarcerated people in the prison town instead of their home towns. The census is not just an accounting of people with no purpose or use for those numbers; academics, policy makers, the government, business owners, community organizers and others use these numbers as proxies to</p>

determine how many resources to allocate to certain areas, the types of development needed, and the economic viability of certain enterprises to be used. By counting people who can not leave the prison and who continue to rely on the resources and support of their families in their home cities, as being in the prison-town, the census will be inaccurate for the actual goals it seeks to meet. This failure has racial and economic implications for low income communities of color that disproportionately support incarcerated family members without the added resources or recognition from the census upon which the government allocations of money and electoral **power are based.**

Founded in 1978, LSPC enjoys a long history advocating for the civil and human rights of people in prison, their loved ones, and the broader community. We believe that the escalation of tough-on-crime policies over the past three decades has not made us safer. We believe that in order to build truly safe and healthy communities we must ensure that all people have access to adequate housing, quality health care and education, healthy food, meaningful work, and the ability to fully participate in the democratic process, regard less of their involvement with the criminal justice system.

Incarcerated people are not isolated individuals. They come from families-- they are mothers, fathers, sons and daughters. They have sisters and brothers. Their incarceration impacts their families. These relationships influence their lives while inside as well as their success upon release. Maintaining strong family relationships during incarceration benefits everyone. When a person is incarcerated, the family pays for the additional care and support that the incarcerated person needs. They buy the stamps, extra paper, and care packages in their communities to be mailed to the prison. Just like parents of a child in boarding school or the family of a deployed soldier. The economic benefits; use of governmental resources such as schools, libraries, or roads; and community connections are all in that person's home town, not in the prison-town.

The town where the prison is does not supply those resources. Incarcerated people are not driving on the roads, going to the movies, or using local services or programs. They are trapped in a prison 24 hours a day. They are not a part of that community. Counting people away from their families because of prison makes the same amount of sense as counting people away from their families because of military deployment: none.

Counting incarcerated people as if they were residents of the facility where they happen to be located on Census day doesn't reflect the lived reality of our communities. The vast majority of prisons in California are in rural, primarily white areas of the state; however, most incarcerated people are from diverse, coastal, urban areas of the state. Their families remain in those cities. Their families' support and efforts to care for them remain in those cities. The economic and civic engagement that the census counts only happens in the home communities, not in the prison **town.**

The Bureau already counts students in boarding schools at their home address even if they spend most of their time at the school. The same approach should be taken when counting incarcerated people. The Census Bureau should honor the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96% of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address,

	<p>which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of modern incarceration, deserves far more consideration than it was given.</p> <p>As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. The country's exploding prison population requires the Bureau to adapt once again, because while this was a small problem before, it is now a much larger problem with much wider implications.</p> <p>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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting or governmental allocations, it artificially inflates the electoral power of the areas where the prisons are located and dilutes that of all other urban and rural areas without large prisons, particularly those communities where people are disproportionately .</p> <p>Four states and over 200 individual counties and municipalities adjust Census population data to avoid prison gerrymandering when drawing their districts. Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable. Massachusetts legislators, for example, have already expressed concerns about that state's ability to use alternative data in their 2015 comment to the Bureau (comment numbered c0161).</p> <p>The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. LSPC believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00092	<p>The Southern Center for Human Rights (SCHR) submits this comment in response to the Census Bureau's Federal Register Notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016).</p> <p>The Southern Center for Human Rights (SCHR) is a nonprofit law firm based in Atlanta, Georgia, dedicated to providing legal representation to people facing the death penalty, challenging human rights violations in prisons and jails, seeking through litigation and advocacy to improve legal representation for poor people accused of crimes, and advocating for criminal justice reform on behalf of those affected by the system in the Southern United States.</p>

	<p>In the course of carrying out our work, it has become increasingly clear that it is imperative to end prison gerrymandering so that we may ensure equal representation throughout Georgia. SCHR urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.</p> <p>According to the Georgia Department of Corrections, the average person in the state prison system has been transferred 4 times and the median time they spent at the current facility is just 9 months.¹ The data makes it clear that the most prison populations are transient. After being shuffled throughout a number of facilities over the course of their incarceration, people return to the communities where they have enduring ties, and that's where they should be counted--at home.</p> <p>The Bureau's failure to update its rules regarding incarcerated persons is particularly troubling given that the Bureau has decided that other populations--deployed overseas military and juveniles staying in residential treatment centers -- should be counted in their home location. Georgia has one of the highest incarceration rates in the United States, currently imprisoning more than 1 person for each group of 200 people. Counting them in the wrong place is not an error that can be overlooked. There are significant differences between the places that most incarcerated individuals come from and the places where they are imprisoned. For example, an analysis by the Department of Corrections found more people in Georgia prisons come from Atlanta zip code 30318 than any other of the 965 zip codes in state. The Census refusal to count our residents at home negatively impacts our communities.</p> <p>Thank you for this opportunity to comment on the proposed Residence Rule and Residence Situations. We urge the Bureau to acknowledge the transient nature of modern incarceration and to count incarcerated people as residents of their home address.</p> <p>¹ <i>Inmate Statistical Profile</i>, pages 35 and 39, Georgia Department of Corrections, (July 1, 2016), available at http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_all_inmates_2016_06.pdf</p>
c00093	Same content as comment c00005
c00094	Same content as comment c00005
c00095	Same content as comment c00005
c00096	Same content as comment c00005
c00097	Same content as comment c00005
c00098	<p>The National Community Development Association (NCDA) is pleased to submit comments on the above referenced document. NCDA represents over 400 local governments consisting of a wide range of communities – small, mid-sized, and large jurisdictions – which administer federal community development, economic development, and affordable housing programs, most important among them, the Community Development Block Grant (CDBG) Program which relies on a fair and sound Census count to ensure an accurate population total. Population is one of the key formula factors used by HUD to allocate CDBG funding nationally, so it is crucial that the 2020 Census count <i>all</i> people. For the low-income people served by the CDBG program, it is important that where people are counted aligns with where they will need to receive services so that resources can be targeted to where the service impacts will occur.</p>

	<p>With that being said, NCDA agrees with the definition of “usual residence” outlined in the Residence Rule as the place where a person lives and sleeps most of the time. We also agree with how the Census Bureau has applied the Residence Rule to the 19 designated categories listed in Section D of the above referenced document. We also agree with the decision in the Resident Rule that people who do not have a usual residence, or who cannot determine a usual residence, are counted where they are on Census Day and further concur that people in certain types of group facilities on Census Day are counted at the group facility.</p> <p>Along with a clear definition of the Residence Rule and residence situations, it is of utmost importance for the Census Bureau to ensure a full count of the Nation’s population. While this may be beyond the scope of the purpose of the above referenced document, NCDA and its members urge the Census Bureau to take the necessary steps to develop a robust Census that captures everyone and to design a campaign that focuses additional outreach efforts on non-English speaking neighborhoods and communities. Some suggestions include working with local government and community leaders to reach these populations, mounting a strong advertising effort using local non-English speaking media outlets, and hiring additional Census workers to canvass these neighborhoods (working in conjunction with local community organizations, religious institutions, and leaders). NCDA would be happy to work with the Census Bureau to develop efforts to reach non-English speaking populations.</p> <p>Thank you for the opportunity to comment on this document.</p>
c00099	<p>Franciscan Action Network (FAN) submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). Your proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the overwhelming public input on the need to change how incarcerated persons will be counted. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p> <p>FAN is very devoted to racial and ethnic justice. During the 2010 Census, the policy of counting incarcerated people at prison facilities disproportionately concentrated African-American and Latino urban men into just 5,393 Census blocks located far from their actual residences simply because of their incarcerated status on a single date of the year.</p> <p>The Census Bureau defines “usual residence” as the place where a person “eats and sleeps most of the time”, but fails to follow that rule when counting incarcerated people. The majority of people incarcerated in Rhode Island, for example, spend less than 100 days in the state’s correctional facilities. If the same people were instead spending 100 days in their summer residence, the Bureau would count them at their regular home address. Even students in boarding schools get counted at their home address whether or not they eat and sleep there most of the time. The Census Bureau continues to carve out an unexplained exception for incarcerated people in order to count them in the wrong place.</p> <p>The Bureau’s failure to update its rules regarding incarcerated persons is particularly misguided given that the Bureau decided that other populations – deployed overseas military, and juveniles staying in residential treatment centers – should be counted in their home location</p>

even if they are sleeping elsewhere on Census Day. It made these changes even though there were far fewer public comments identifying these issues as causing the magnitude of problems that the public commentary on the prison miscount highlighted.

The Census Bureau blatantly ignored the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96% of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. The Census Bureau has simply disregarded the public input through its proposal to count incarcerated people as if they were residents of correctional facilities.

As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation.

The Census Bureau's practice of counting incarcerated people in the wrong place had relatively little impact on the overall accuracy of the Census while prison populations remained relatively low, but the growth in the prison population over the last few decades urgently requires the Census to update its methodology. The incarcerated population has more than quadrupled since the 1970's, and the manner in which this population is counted now has huge implications for the accuracy of the Census.

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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting, it artificially inflates the political power of the areas where the prisons are located and dilutes the political power of all other urban and rural areas without large prisons. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable. Massachusetts legislators, for example, have already expressed concerns about that state's ability to use alternative data in their 2015 comment to the Bureau (comment numbered c0161).

Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. My organization believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.

c00100

Same content as comment c00005

c00101	<p>International Citizens United for Rehabilitation of Errants (CURE) and its state and issue chapters submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). We find the Bureau 's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day at odds with the transient and temporary nature of incarceration. We write to share some of our experiences as an organization that has both incarcerated and formerly incarcerated members to better illustrate how incorrect it is to conclude that an incarcerated person resides at the facility they happen to be at on Census day.</p> <p>International CURE is a grassroots organization dedicated to the reduction of crime through the reform of the criminal justice system (especially prison reform). Although we are now an international organization, we were founded in Texas in 1972 and our U.S. National and state chapters remain at the core of our mission. We've been doing prison organizing for over 40 years, and as part of that work we send out two mailings a year. And every time we get a lot of the letters back as undeliverable--the person has been moved since the last mailing.</p> <p>Every single one of these letters is tangible proof of the unpredictable and constant shuffle that incarcerated people experience at the mercy of the prison administrators. You see, a prison is much like Grand Central Station. Sure, at any given time there are a lot of people there, but every single one of them has just pulled in or is on their way home.</p> <p>While people on the outside may move from time to time, they tend to stay long enough in a place to put down some roots and call it home. But when someone goes to prison, there isn't really a specific facility that becomes someone's new home. Your home is always the place you left and will soon return to. Your home remains the place where your family, your friends, and your community are. To say that someone resides at the facility where they happen to be located on Census day flagrantly ignores the realities of prison life.</p> <p>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. We write to you in earnest on behalf of and in conjunction with our chapters because we are concerned about the U.S. Census Bureau 's role, however unintentional it might be, in tilting the U.S. electoral system in favor of those who support mass incarceration and against those who seek a just criminal justice system. We urge you to count incarcerated people as residents of their home address in the decennial census.</p>
c00102	<p>Thank you for this opportunity to respond to the Census Bureau's Notice seeking comments on the Bureau's proposed 2020 Census Residence Rule and Residence Situations (81 FR 42577, June 30, 2016). I urge the Bureau to change the method it uses to count the prison population due to the impact it has on voter representation and on the mission to protect voting rights, ensure fair and equal representation, and promote accurate redistricting.</p> <p>In 2015, in response to the Census Bureau's request for comments on its interpretation of its "usual residence" rule, the Bureau received 156 comments, asking the Bureau to change its interpretation of how the residence rule applies to prisoners and to count them at their home or pre-incarceration</p>

addresses. Six comments opposed changing the rule. It is difficult to understand why the great weight of those comments in favor of changing the rule did not persuade the Bureau to change its approach with respect to prisoner counts.

The Bureau created the “usual residence” rule through administrative interpretation of the Census Act of 1790. While a few changes have been made to those rules since that time in order to keep up with the changing demographics of America, the rule to count prisoners where they are incarcerated, not at their home residences, has remained unchanged over the last centuries.

Doubtless in 1790 when citizens were less mobile, these terms in the statute, “usual place of abode,” “settled place of residence ...in any family,” and “every person occasionally absent at the time of the enumeration, as belonging to that place in which he usually resides in the United States,” meant one’s home location. Back in 1790, this rule made sense because there were few prisoners and they were imprisoned and punished in their home locations. Since 1980, however, the prison population has quadrupled and, prisoners are now typically incarcerated in rural areas far from home. This change in circumstances and failure to change the residence rule in the context of today’s imprisonment practices results in prison gerrymandering, granting greater representation to rural areas that contain prisons and, hence, unequal representation for residents in districts that contain no prisons (both urban and rural). It is time for the Census Bureau to update its interpretation of the people in prison on Census day.

In this proposed rule, when the Bureau does make a change in its interpretation of the “usual residence” rules, it appears to lean heavily on how long individuals are away from home. For example, military now *deployed* overseas will be counted at their home addresses. Other military *stationed or assigned* overseas will be counted as previously in their “home of record” state for apportionment purposes only. Residents of juvenile group homes are counted at the group home location because they are there for long periods of time while juveniles in residential treatment centers will be counted at their home locations because the Census Bureau believes individual stays are relatively short.

A factual survey about prisoner time served at each prison nationwide might reveal that vast numbers of prisoners serve two years or less. In Virginia, the median time served in state prison for someone released in 2014 was 19.5 months. But even while they were in state custody they were likely to have been moved between different facilities, making the time spent at any given facility much shorter. We don’t have that data available for Virginia, but in New York, for example, the median length of stay in any given facility is about seven months and in Rhode Island it is under 100 days. Length of stay does not appear to support the Bureau’s reasoning for continuing to count prisoners at their prison locations where typical prisoner time served can be shorter than deployments overseas.

Also of concern in this proposed rule is that the Census Bureau leaves it up to the states individually to decide whether to include their own prisoner population counts when they redistrict. If states decide they want to exclude prisoner counts when they redistrict, states must either do the calculations themselves or submit a data file to the Census Bureau (indicating where each prisoner is incarcerated on Census Day and their pre-incarceration address) in a specified format. The Census Bureau will review the submitted file and then, if it includes the necessary data, provide a product that contains supplemental information the state can use to construct alternative, within-state tabulations for its own purposes. But even with this proposed solution states still cannot, as a practical matter, account for all of their residents who may be in other states' prisons or in a federal facility. It is not clear why the Census Bureau does not use its statutory authority (to collect accurate census data) to ask states simply to do that.

Some localities in Virginia at town, city, and county levels have chosen to exclude their prisoner counts on occasion when making redistricting decisions. Six counties have adjusted their Census data and did not include prisoner counts when drawing their supervisors' districts. Eighteen other counties in Virginia used Census data and included prison populations when drawing their supervisors' districts. Such individual decision-making only adds to a lack of uniformity within states and among states, leading to inaccuracy in the way prisoners are treated for redistricting purposes.

This is a problem in rural communities that contain large prisons because it seriously distorts redistricting at the local level (county commissions, city councils, and school boards). The Constitutional principle of one person, one vote should not be a county by county or state by state issue. It is a federal issue about representational equality.

Already four states (Maryland, New York, California and Delaware) now count prisoners at their home locations for redistricting purposes; other states do not. Two recent court decisions in Rhode Island and Florida have held that counting prisoners at prisons in districts for local redistricting purposes as if those prisoners are eligible voters violates the Constitution's one person, one vote principle. Here are links to the two decisions: http://www.prisonersofthecensus.org/Calvin_v_Jefferson-Order.pdf; <http://riaclu.org/images/uploads/Davidson.v.Cranston.decision.pdf>. Cranston is now on appeal. These cases make it more likely that other challenges to using Census data will follow if the Bureau does not change the way it counts incarcerated people. The Bureau's proposed rules lead to greater uncertainty as states redistrict in 2021.

Under its statutory authority to collect accurate census data, the Census Bureau can ask states and the

	<p>federal Bureau of Prisons to submit a data file, indicating where each prisoner is incarcerated on Census Day and prisoner’s pre-incarceration address. I ask the Census Bureau to exercise that authority in order to conduct an accurate Census.</p> <p>Continuing to count prisoners at their places of incarceration makes it more likely than not that states will continue to count prisoners in districts where they should not be counted, resulting in impermissibly unequal representation in districts that do not contain prisons. Failing to interpret “usual residence” to reflect today’s vastly changed circumstances promotes the likelihood that more federal courts will hold that the Bureau’s failure to update its residence rules results in state redistricting plans that violate the Constitution.</p> <p>Therefore, I urge the Census Bureau to change the “usual residence” rules for the 2020 Census so that prisoners are counted at their pre-arrest home jurisdiction. Fairness in voting power will result and will prevent constitutional violations of the one person, one vote requirement.</p>
c00103	<p>I believe it is inaccurate to count prison inmates as residents of the community where the prison is located. The prison towns that support many of the prisons should not be given undue power by means of artificially increasing their populations by counting prisoners. This skews the apportionment of House of Representative seats so that tiny communities are overrepresented.</p>
c00104	<p>Section D.15, D.16 and D.17 should be changed so that in some or all cases people in correctional institutions and halfway houses be counted as at their residence outside of those facilities. This prevents prison gerrymandering, is logical, is the international standard and is more fair.</p> <p>OECD guidelines recommend that people in correctional institutions be counted at the facility only if they are scheduled to be there for a long duration, which is defined as at least 12 months. See: http://www.oecd.org/statistics/OECD-Guidelines-for-Micro-Statistics-on-Household-Wealth-AnnexE.pdf . Canada, opting for a shorter deadline, chooses six months: http://www.census.gc.ca/ccr16g/ccr16g_000-eng.html . Choosing an international standard would help with comparisons with other countries.</p> <p>Someone who spends two days in jail, because they can't post bail, and 363 days at home should not be counted at the jail for census purposes. Such a reading is arbitrary and capricious, and disproportionately affects people with low income and low access to and knowledge of the criminal justice system, which also means it disproportionately affects minorities, which could be a violation of civil rights legislation including the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Highland Springs, Virginia has about 3 black adult men for every 5 adult women because such a large portion of the black male population is serving short sentences in jails outside the area.</p>
c00105	<p>The proposal to count incarcerated people in the district of their incarceration, and not their original district of residency, is profoundly unjust. This counting location would multiply the social, economic, and political inequalities of the US criminal justice system and violate the principle of equal representation.</p>

	<p>Incarcerated people leave a gaping economic and social void in the community from which they are taken, often leaving behind family members and other dependents, as well as the marginal municipal and county costs of infrastructure that do not decline when individuals vanish. Conversely, the district to which the incarcerated person is transferred does not incur any marginal costs, and in fact often enjoys (and lobbies for) the payroll, vendor, and other revenues associated with prisons. Transferring the effective, Census-counted location of an incarcerated person exacerbates this economic and social injustice.</p> <p>Moreover, the political preferences and interests of the districts with the highest rate of arrest and incarceration are often diametrically opposed to those of districts with prisons. Therefore, counting the incarcerated persons in the prison's district unjustly transfers political power to the latter district. The injustice is magnified by the inability of the incarcerated person to actually vote, an arrangement that recalls the sordid original counting arrangements of American democracy, in which non-voters could be counted for the political benefit of their owners.</p>
c00106	<p>The Maryland State Conference of NAACP Branches, the Somerset County Branch of the NAACP (together, “the NAACP”) and the American Civil Liberties Union of Maryland (“the ACLU-MD”) submit this comment in response to the Census Bureau’s Federal Register notice regarding the Residence Rule and Specific Residence Situations, 81 FR 42577 (June 30, 2016). We reiterate our concerns, first expressed last year in a July 17, 2015 submission, over the Census Bureau’s proposal to continue counting people at their place of incarceration instead of their last place of residence.</p> <p>Counting incarcerated people at the facility where they happen to be imprisoned on Census day ignores the temporary nature of incarceration. Every year, approximately 636,000 inmates leave prison and 11 million inmates leaves jails to return to their homes to become ordinary citizens of their communities.^{1/} Moreover, with the recent focus by states on prison reform, new legislation will likely lead to even shorter incarceration periods. For example, in Maryland, the passage of the Justice Reinvestment Act eliminates mandatory minimum sentences for many offenses and limits the incarceration periods for many technical violations.^{2/} In light of the temporary nature of incarceration, the Census Bureau’s proposed rule fails to follow the definition of “usual residence” as the place where a person “eats and sleeps most of the time.” Children at boarding school, soldiers deployed overseas, and juveniles in treatment centers are all counted at their permanent addresses, not the place that they are located on Census day. There is no reason why prison inmates should be the exception to this general rule and the existence of such an exception without an explanation is extremely troubling.</p> <p>Our experience with this issue in Maryland is a testament to the detrimental effect that the current proposed rule can have in undermining equal representation for minority residents. The NAACP and the ACLU-MD are committed to preserving all citizens’ right to be equally represented in the electoral system, and we have worked to make that promise a reality in our own state. Somerset County, on Maryland’s Eastern Shore, has long been one of the state’s most racially-divided communities, with a sad history that includes lynchings, formal opposition to school integration through the 1960s, and court-ordered reforms to racially discriminatory election and employment practices into the 1980s and 1990s.^{3/}</p>

At the time of the last U.S. Census, Somerset County was 42 percent African American—the highest ratio of blacks to whites in any Eastern Shore County.^{4/} Yet, despite Somerset’s demographic diversity, blacks have historically been left virtually unrepresented in County government.^{5/} Indeed, until 2010, no black person had ever been elected or appointed—in all of the County’s 350-year history—to any top County office, including County Commissioner, County Administrator, Sheriff, Detention Center Warden, Judge, State’s Attorney, State Delegate, County Treasurer, County Finance Director, County Attorney, County Personnel Director, County Planning Director, County Fire Marshall, County Emergency Management Director or County Elections Administrator, among others.^{6/} The situation persisted even though the historically black University of Maryland, Eastern Shore (“UMES”), located within the county, graduates many candidates qualified for government jobs and offices.

In 2008 and 2009, the NAACP and ACLU-MD began to understand that part of the reason African Americans had remained shut out of Somerset government for so long related to what is now known as “prison-based gerrymandering.” Because the County is rural and relatively sparsely populated, the inclusion for redistricting purposes of the large prison population temporarily at Eastern Correctional Institution (“ECI”) severely undermined the racial fairness of the local election system.

Due to a Voting Rights Act challenge to the County’s at-large election system in the mid-1980s, the County switched to a system of five single-member districts to elect its County Commission. The County planned one district as a remedial district with a majority black population, but by the time that district was established, ECI had opened. ECI’s mostly minority inmates were counted as residents of the so-called remedial district, even though they were ineligible to vote in Somerset elections. The prison’s inclusion distorted the district’s voting power, because only a small share of those counted in the district were actually eligible to vote, and an even smaller share of those eligible to vote were African American. As such, the district could not and did not function as a true remedial district, and for two decades consistently elected white officials to represent the “minority” district. Moreover, because inmates significantly outnumbered other district residents, their inclusion in the redistricting database led to over-representation of non-prison residents within that district, as compared to residents in other districts that did not include a prison.

In 2009 and 2010, the NAACP and ACLU-MD partnered with community leaders to challenge this system. Together, they advocated with local Somerset officials, the Maryland Attorney General, and the Maryland General Assembly for exclusion of the prison population from the redistricting database. In 2010, as a result of this advocacy, the Maryland legislature became the first in the nation to adopt a law mandating that prisoners be counted at their place of last residence, rather than their place of incarceration.^{7/} This simple change finally gave meaning to the voting rights remedy put in place by Somerset County in 1986 and paved the way for greater participation by minorities in Somerset County’s local government. In fact, the County’s first black County Commissioner, Rev. Craig Mathies, was elected shortly after the law was enacted. Furthermore, Somerset’s 2012 redistricting plan includes two districts with majority minority populations, better reflecting the demographics of the community and enhancing minority electoral opportunities within the County.

The story of Somerset County illustrates one adverse collateral consequence that can follow from the dramatic growth of our nation’s prison population over the past few decades: a reduction in the suitability of current Census counts for use in redistricting. As recently as

the 1980s, the incarcerated population in the U.S. totaled less than half a million.^{8/} But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars.^{9/} This change implicates a need for corresponding change in application of the Census’s “usual residence” rule with respect to incarcerated persons, to ensure that redistricting decisions and remedies count populations accurately and promote electoral fairness for all.

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 located far from the actual homes of incarcerated people.^{10/} Although Maryland (along with California, Delaware, New York, and over 200 counties and municipalities) has approved a measure to adjust the Census’ population totals to count incarcerated people at home, this *ad hoc* approach is neither efficient nor universally feasible. For example, the Massachusetts state legislature concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses.^{11/}

Thank you for this opportunity to comment on the Residence Rule and Specific Residence Situations. Given that prison is merely a temporary form of shelter, and from our experiences in Somerset County, the Maryland State Conference of NAACP Branches, the Somerset County Branch of the NAACP and the ACLU of Maryland reiterate our deep concern about the proposed regulation and urge the U.S. Census Bureau to count incarcerated people as residents of their last home addresses in order to produce a fair and accurate 2020 Census.

1/ Prison Policy Initiative, “Mass Incarceration: The Whole Pie 2016” (Mar. 14, 2016), available at <http://www.prisonpolicy.org/reports/pie2016.html>.

2/ General Assembly of Maryland, “Justice Reinvestment Act” (June 3, 2016), available at <http://mgaleg.maryland.gov/webmga/frnMain.aspx?id=sb1005&stab=01&pid=billpage&tab=subject3&ys=2016rs>

3/ See ACLU of Maryland and Somerset County NAACP, “Semper Eadem—‘Always the Same’?” at 5 (2009), available at http://www.aclumd.org/uploaded_files/0000/0348/finalreportwapp.pdf [hereafter “Report”].

4/ See U.S. CENSUS, “2010 Census Interactive Population Map,” available at <http://www.census.gov/2010census/popmap/>. According to the 2010 U.S. Census, Somerset County is 53.53% white and 42.28% black; the only parts of Maryland with a higher percentage of black residents are Prince George’s County and Baltimore City.

5/ See Report, *supra* note 1, at 4. At the time of the Report, African Americans represented 35 percent of Somerset County’s available labor force, but only 12.6 percent of County employees.

6/ See *id.* at 2–3. Indeed, according to EEO filings at that time, not a single African American was employed by the County in a professional capacity. The County employed 46 people full or part time that year in official, professional, technical or paraprofessional positions, but none was African American.

7/ Md. Code, State Gov’t § 2–2A–01 (2015).

8/ See U.S. Department of Justice, Bureau of Justice Statistics, “Historical Corrections Statistics in the United States, 1850–1984” at Table 4–1 (December 1986), available at <http://www.bjs.gov/content/pub/pdf/hcsus5084.pdf>.

9/ See U.S. Department of Justice, Bureau of Justice Statistics, “Correctional Populations in the United States, 2012” at Table 2 (December 2013), available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>.

	<p>10/ See Prisoners of the Census, "Detailed demographics of correctional populations now available for nation" (Sept. 13, 2011), available at http://www.prisonersofthecensus.org/news/2011/09/13/sf1/.</p> <p>11/ See The Massachusetts General Court Resolution "Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote'" (adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).</p>
c00107	<p>I disagree with this proposed residence rule. These people will tell you first hand that prison is not their home! These inmates are transported from prison to prison. I myself was incarcerated for 10 months and moved to 2 prisons within that time. This is injustice at it's greatest. The American government is pure foolishness!</p>
c00108	<p>Legally, counting inmates as residents of prisons and detention centers violates the one person, one vote requirement of the U.S. Constitution's Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County (United States District Court for the Northern District of Florida) and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston (United States District Court for the District of Rhode Island).</p> <p>Practically, in Pennsylvania approximately 50% of the state prisoner population is from Philadelphia County, while almost all of the 25 state prisons are located in rural counties. Many of those prisons were located in those rural counties due to efforts by local politicians to create jobs for their constituents. Counting those prisoners in the rural districts where most Pennsylvania prisons are located swells the population base of those districts. It enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration.</p> <p>Prisoners should be counted as residents of their home communities, not where they are imprisoned.</p>
c00109	<p>I was shocked and horrified to learn that states have counted incarcerated individuals as residents in their current locations when drawing district lines for state and congressional representation.</p> <p>This practice violates common sense, basic fairness, and Pennsylvania state law. PA law states that jail inmates are required to vote in their home districts - not in districts in which they are currently being held.</p> <p>PA law also states that incarcerated individuals "shall be deemed to reside at the last known address before confinement." (Pennsylvania Election Code (25 Pa.C.S. §1302(3)))</p> <p>Counting inmates in districts where they are incarcerated gives disproportionate political power to rural, under-populated, areas, where prisons are located, at the expense of urban, densely populated areas, where the majority of prisoners formerly resided.</p> <p>The concept of equal protection of the laws is enshrined in the U.S. Constitution in the 14th amendment. The concept of "one person one vote" has been consistently upheld by the U.S. Supreme Court. The practice of prison gerrymandering is anathema to the equitable exercise of the franchise - a citizen's most basic right.</p> <p>The Census Bureau has the opportunity to right this wrong in 2020. In the name of the American values of justice and equality, I</p>

	urge the Bureau to end prison gerrymandering.
c00110	<p>Miscounting prisoners distorts democracy. Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote.</p> <p>It also violates the one person, one vote requirement of the U.S. Constitutions Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>Miscounting of urban prisoners in the rural districts where most PA prisons are located swells the population base of those districts. It enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration. The practice distorts our democratic process and undermines government of, by and for the people. Even providing alternative information to states allows the party in power to ignore this alternative information and use the main census data to their advantage.</p>
c00111	<p>PA is so unfairly gerrymandered that more Pennsylvanians voted for Obama 2012 than Romney, yet we sent an twice as many Republicans than Democratic ones as U.S. representatives to Congress. What's wrong with this picture?</p> <p>Rural districts have far too much power over urban districts. This is just one immoral expression of our ugly racist legacy.</p> <p>One problem is the way we count prisoners. Since many prisons are in rural areas, the prisoners inside them are counted as rural citizens, yet, because of our unjust system that puts away more people of color than white people, the prisoners are from urban areas.</p> <p>This is injustice on top of injustice. Besides, prisoners don't even vote, do they?</p>
c00112	I am writing with concern and regard to Jacksonville, NC's population count. It appears we are not counting all of our locally stationed Marines/Service Members and their dependents. Do you have more information and/or can we get this changed to properly reflect our true population numbers?
c00113	Counting inmates housed at a correctional facility is insane. They don't have voting privileges to begin with and with the federal system, that I retired from, most inmates don't stay at the same facility for over 5 years. The other reason this is wrong at this time, the Bureau of Prisons release policy states "Inmates must be released to the same district they were sentenced in". Which is another aspect that should be changed; because we're sending these felons back to the same place they committed their crimes, same environment.
c00114	I request you do count those incarcerated as being prison residents. These are human beings who had lives at their

	last known address. Use that address for census purposes. They being warehoused is just temporary.
c00115	<ul style="list-style-type: none"> • The Census Bureau is wrong to consider incarcerated people as residents of the correctional facility because these rules punish a prisoner for all time. When a prisoner has done their time and leaves the prison which is not their home, it will be stated in the census for all time that they (lived) in prison. This is punitive forever punishment. • My husband is in prison in a rural part of Washington state. There are 2500 other prisoners in this prison. The census will incorrectly put them as residents. They are not willingly there. They do not live there. They are transient. Mass incarceration will make the census incorrect as it has been for many decades. This needs to stop. Our democracy demands it. • Thank you for your time on this matter.
c00116	<p>I would like to make the following suggestion re the 2020 US Census population rule-count: As a former prisoner of the federal BOP from 1990-to-2010, I was incarcerated in over a dozen different prisons in seven different states. All of these sites were chosen by the prison system, not myself. They were always determined by the prison AND THE LOCAL COMMUNITIES as temporary residences.</p> <p>By my own intention as well as the determination of the prison administration, my prison file always contained a MANDATORY LISTING OF MY HOME ADDRESS (from which I was initially incarcerated and to which I was expected to return). In fact, that home address determines how far a prisoner can be incarcerated from his/her home.</p> <p>Even if I wished to relocate to the communities in which I am incarcerated, they virtually all have local ordinances forbidding a prisoner remain more than a set limit--say, 2-hrs--from which we are required to depart under penalty of arrest and prosecution.</p> <p>I have always been an active political individual in my local community affairs. Counting me as a residence in another Congressional District both improperly enhances representation in that temporary area and DEPRIVES MY HOME AREA OF ITS PROPER REPRESENTATION.</p> <p>Please count prisoners, like out-of-area students and other travelers, from their home residence, NOT THEIR TEMPORARY ONE. Thank you for your consideration.</p>
c00117	In regards to proposed 2020 census rules, I am writing in hopes that you'll consider my concerns as a resident of the state of South Carolina. As you may know, South Carolina does not prohibit prison gerrymandering specifically, although several counties do. I work for a municipal courthouse and I see how the effects of political decisions hurt some of the most impoverished members of our community. The ability for incarcerated persons to be accurately represented by their home district (preincarceration

	address) is paramount. As a voter, resident, and judicial employee, I would strongly support that residents of my county, who are currently incarcerated and temporarily housed elsewhere in the state, be counted in my voting district as residents. This upholds the sanctity of one-person one-vote, which is crucial to the strength of our democracy. Thanks for taking the time to hear my thoughts, please feel free to contact me at any time.
c00118	<p>The Census Bureau cited the importance of using one's "usual residence" in their decision to continue to count prisoners in the cells they currently serve their time when the 2020 Census is administered. Yet, if the Census Bureau is truly interested in recording inmates at their "usual residence" (defined as where they "live and sleep most of the time") prisons, and certainly jails, are NOT where prisoners spend most of their time (time being the 10 years for which their body count in the Census affects policy). Although "the average length of time served by federal inmates more than doubled from 1988 to 2012, rising from 17.9 to 37.5 months" that still means that the average felon served only slightly over three years in prison (less than a third of the time that the Census, with its decade long influence, would have inmates counting the prison as their usual residence). "Prison Time Surges for Federal Inmates November, 18 2015 Public Safety Performance project PEW Charitable Trusts http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/prison-time-surges-for-federal-inmates And ALL jailed inmates serve <i>less an a year</i> (that is less than a tenth of the time the Census would record them living their if they choose to continue counting prisoners as residents of the communities outside the prison walls which prisoners have no stake in). I hope that this comment and others like it will have a real impact on the Census Bureau's decision. Although, I am skeptical, considering that the Census Bureau elected to disregard the vast majority of comments on the 2010 Census's recording methods regarding prisoners who argued for their residencies to be marked in their home communities. "Of the 162 comments pertaining to prisoners, 156 suggested that prisoners should be counted at their home or pre-incarceration address," leaving only 6 individuals who disagreed. Ironically, it is this very disproportionate sway of the few over the many which counting prisoners as residents of the jails and prisons they temporarily reside in ensures. For instance, because the state of Rhode Island had only one prison located in Cranston's Ward 6, "Every seven voters in Ward 6 [Cranston, RI] had the same political power as 10 voters in the city's other wards." "The Wrong Way to count Prisoners" 7/15/16 NY Times http://www.nytimes.com/2016/07/16/opinion/the-wrong-way-to-count-prisoners.html?_r=2 This violates the US constitutional commitment to one person, one vote for which we fought a Revolution! It is not, as opposition argued, giving undue advantage to correctly count prisoners in the place they have the greatest stake and will likely spend the most time in the ten years for which the Census holds influence it is in fact the other way around, counting prisoners as residents of communities they can not participate in and do not likely have family living in gives undue political power to those communities that house prisons.</p>
c00119	<p>Don't count prisoners in prisons, count them in their real homes! Rural areas have far too much power in our government already, and it's subverting our democracy!!</p>
c00120	<p>Pennsylvania is already badly gerrymandered. We're 52% Democrat with a heavily Republican legislature on account of the gerrymandering. Counting prisoners in the rural Republican districts of the prison rather than their natural addresses worsens a bad situation. Please consider counting prisoners at their home addresses where they are actually likely to be registered to vote.</p>
c00121	<p>I am disgusted and embarrassed that Pennsylvania is one of the most gerrymandered states in the country! Counting inmates in prisons only exacerbates the problem! DON'T LET THIS PRACTICE CONTINUE!</p>
c00122	<p>Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote.</p>

	<p>It also violates the one person, one vote requirement of the U.S. Constitution's Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>Miscounting of urban prisoners in the rural districts where most PA prisons are located swells the population base of those districts. It enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration. The practice distorts our democratic process and undermines government of, by and for the people.</p>
c00123	<p>I just wanted to add my voice to those calling for prisoners to be counted at their voting address for the census rather than at the location where they are incarcerated. It's inconsistent to say they live at the prison for the purposes of creating voting districts, but not for the purposes of actually voting. Either change the law to allow them to vote at their prison address, or count them as voters in the district where they are actually eligible to vote.</p> <p>Thank you for your time.</p>
c00124	<p>If the courts have stated that prisoners cannot be counted for the county their prison is in or not counted at all while they are in prison, abide by their rules because that is what the constitution states.</p>
c00125	<p>If prisoners are counted where they are, they should have the right to vote where they are. All people paroled or on probation should have the right to vote, not under state law, but under federal law.</p>
c00126	<p>I write to express my firm opposition to counting incarcerated people as residents of the place where they are incarcerated. The most basic definition of residency hinges on an intent to be someplace. No prisoner intends to be where they are incarcerated. They intend to be where they're from. It's why they leave when they're released. They have NEVER intended to reside at a facility they were assigned to without volition or input.</p> <p>I wish we lived in a society where this was a tiny insignificant rounding error. But it's not. It's millions of displaced people further traumatized and disempowered by counting their voices as supporting their captors.</p> <p>Prison gerrymandering is offensive precisely because it expropriates the power of the most voiceless and defenseless in our society, and arrogates that power to their captors.</p> <p>That's just fundamentally un-American.</p>
c00127	<p>My PhD and advocacy work around prison politics leads me to conclude that prisoners should not be counted based on imprisonment. It is not uncommon for prisoners to be transferred multiple times without knowledge to the Census Bureau. This leads to inaccurate counting of prisoners. What's more, prison privatization often results in prisoners being transferred out of their original residential state for a temporary period of time. These prisoners remain residents of the state from which they were transferred from and should be counted as residents of that state—not the state to which they are temporarily transferred. Counting prisoners as residents in prisons produces inaccurate data, and in turn, ineffective</p>

	<p>policy and practices.</p>
c00128	<p>I am writing to persuade you and the Bureau of the Census to change its current practice and reconsider the ways and means by which incarcerated citizens are counted in the 2020 census.</p> <p>As your own mission statement declares:</p> <p style="padding-left: 40px;">“The Census Bureau's <i>mission</i> is to serve as the leading source of quality data about the nation's people and economy. We honor privacy, protect confidentiality, share our expertise globally, and conduct our work openly.”</p> <p>To support my request I strongly suggest that it is incorrect to count people as residents of the prison in which they are incarcerated. Neither these individuals nor their families regard their cell or the facility as their home. They are there because of a conviction and sentencing, but they have not elected it as their residence. Incarcerated citizens counted as such, is not quality data.</p> <p>Why is this important? The incorrect allocation of their residence has a very tangible impact upon all of the resources that rely on the accuracy of the census to determine a host of allocations. This data, as you well understand, has an impact upon the lives of many. To eliminate these citizens from the more accurate placement of their residence shifts the power dynamics of all forms of representation.</p> <p>I am asking that you count the incarcerated at their home address, which is almost always their legal address. To count the incarcerated otherwise is falsely increasing the population counts of all those communities with prisons. This practice benefits some but it distorts the greater picture and this lens, once inaccurate in its true measure, reverberates with less than beneficial consequence to the majority.</p> <p>I applaud your decision to extend the deadline for residence rule comments and hope that common sense prevails in reaching your decision to sustain a process that will provide quality data in the 2020 census. I strongly urge you to not count the incarcerated as residents of the community in which they have been imprisoned.</p> <p>Thank you for your consideration.</p>
c00129	<p>Jacksonville, N.C., is home to one of the largest Marine Corps Installation in the world. Moreover, it houses detachments from other military branches. In all, there are nearly 50,000 military personnel, not counting associated contract personnel from out-of-area locations, transiting to and from Jacksonville throughout the year.</p> <p>Though the base has substantial housing, hundreds of military personnel and their family members live off base. Consequently, all the military personnel and their families, both on and off base, are living and moving about the city of Jacksonville on a daily basis - year around. This constitutes a total of over 175,000 people living and working in Onslow County not being counted in the census.</p>

	<p>This, quite obviously, taxes the city's municipal resources; such as the need for more police and fire protection, street repair, utilities and utilities maintenance, trash collection, etc.</p> <p>While the base is self-sustaining with federal funds, the city of Jacksonville receives little or no outside funding to offset the base's impact on the city and county. Consequently, the burden of the costs are on the shoulders of the "permanent" residents.</p> <p>Therefore, it is believed the Rule of Interest is both fair and equitable.</p>
c00130	<p>Please change the current residence rule that specifies that prisoners should be counted as residents of the prison in which they find themselves, however far that is from their home.</p> <p>Since prisoners are not allowed to vote it seems obvious they should not be counted in the town in which the prison lies. Any town with a prison in it gets an unfair census advantage, and gives the residents of that town more power at the ballot box.</p> <p>I hope that you will correct this undemocratic practice for the 2020 census,</p>
c00131	<p>I submit this comment on the Census Bureaus' proposed rule for the 2020 Census which would continue the practice of counting incarcerated individuals as residents of the municipality/district where they reside while incarcerated, rather than their home community.</p> <p>When the prison population was small, this practice created little real world impact. Today, however, U.S. Census data counts more than <i>2 million people</i> as though they were residents of places where they have no community ties. Not inconsequentially, the locales where they are so-called "legal residents" have no ties to them, other than benefiting from the additional political clout their incarceration provides.</p> <p>In 2014, with pending legislation in the state of New Jersey, the Unitarian Universalist Legislative Ministry of NJ developed a Fact Sheet for its members and allies. It's Task Force on Criminal Justice Reform looked at a real world example of how this Census Bureau practice unfairly advantages districts where prisons exist, and disadvantages the districts which the majority of those inmates call home.</p> <p>Maurice River Township (Cumberland County) is home to Southern State Prison. The Township 2010 Census population was 7,976. However, 2,040 of these individuals are inmates of the prison-- representing 25% of the Township's population. Only 63 of Southern's inmates are actually residents of Cumberland County, while the remaining 1,977 come from other NJ counties (half come from just five counties- Atlantic, Camden, Essex, Hudson and Union). Maurice River Township's.</p>

	<p>If one looks at urban, heavily minority counties in NJ, such as Mercer (Trenton), Essex (Newark), and Camden (Camden City), the situation is reversed. Essex County is considered to be "home" for approximately 2,360 male offenders in the state. However, only 490 of these offenders are incarcerated in Essex County (Northern State Prison). This results in a loss of some 1,870 individuals who are counted as residents of the counties where they are incarcerated, rather than Essex County.</p> <p>These artificially deflated population counts hold true for all of the urban counties in the state. For example, 100% of Camden County's male offenders are incarcerated in counties other than Camden because Camden County does not have any State correctional facilities. This results in a population loss, for purposes of representation at the state and federal level, of close to 1,700 citizens.</p> <p>Prison-based gerrymandering:</p> <ul style="list-style-type: none"> ▪ artificially inflates the population of areas where prisons are located; artificially deflates the population of the communities that are the inmates' true "home;" ▪ increases political representation in communities where prison populations lead to additional voting districts (this despite the fact that those very inmates cannot vote while they are "residing" in prison); decreases political representation in the communities that inmates called "home" prior to their incarceration, thus effectively disenfranchising these largely lower-income, urban communities of color. ▪ overstates key indicators of "need" -- e.g., poverty-- in communities where prisons are located, giving them an artificial advantage in accessing need-based state and federal resources; understates those very same indicators of need in the inmates' home communities, thus artificially reducing their ability to access those same resources; <p>The Census Bureau's practice of counting incarcerated individuals as residents of the area in which the prison is located as long been a tool for unfair advantage to certain communities, and unfair disadvantage to (primarily) urban areas. It is way past time to end this practice, and count incarcerated individuals as residents of the municipality where they had their last legal address prior to incarceration.</p>
c00132	<p>Please consider the following arguments in making this decision:</p> <ul style="list-style-type: none"> • The Census Bureau is wrong to consider incarcerated people as residents of the correctional facility because this constitutes gerrymandering and further disenfranchises poor voters. In Oregon, incarcerated individuals cannot vote and

	<p>are concentrated into 15 facilities in 12 legislative districts. This non-voting population artificially inflates the relative strength of people living near the prison, while decreasing the relative strength of their community of origin.</p> <ul style="list-style-type: none"> • The Census Bureau has chosen to continue counting people in the wrong place, ensuring an inaccurate 2020 Census. This practice weakens the vote of people from districts where the inmates have been subtracted from the count. When added to the fact the inmates are not allowed to vote this issue of gerrymandering is compounded. <p>Please put a stop to this corrupt political practice.</p>
c00133	i dont agree that you count inmates as residents of where they reside when they cannot vote and it is just so they politicians in that area can gain from the count.
c00134	I dont agree with counting inmates as residence of the area in which they are HOUSED some are sent to different areas all the time and some dont live where they were incarcerated so how can you count them as residences. It makes no sense only that people use these figures to their advantage.
c00135	Every citizen needs to be counted!
c00136	Counting ex-prisoners as residents of the prison locale rather than their current place of residence is pure gerrymandering. Its as bad as the N.C. legislature's (visiting us from the 18th century) gerrymandering of districts in order to ensure that only Republicans were elected and that their party held sway in the legislature. A Federal Judge held held that it was wrong, as is counting ex-inmates as if they were still incarcerated.
c00137	Prisoners should not be counted in the place of their incarceration, they should be counted in their homes. Counting them at the prisons gives to much voting power to underpopulated prison towns. The prisoners interest is not represnted by the town that has no connection to them. They do not take part in town functions, schools, commerce etc. Even their use of roads are limited. Prisons get separate funding from the state to support the prison itself, and then in many places are unequally given additional support from the state because ti seems that they are larger not to mention they have unbalanced power int he legislature. IT also sends a message to people in prison, most of whom will be released before the next census, that the country only considers them as prisoners, without any autonomy, without any future. Feeling empowered is a huge part of successful rehabilitation and to not even allow someone to identify their home, regardless of where they have to live is sad. They have futures in their homes, not in the prisons and they should be allowed to assert that- even if it werent for the effects of vote dilution on the rest of us. Please reconsider this rule and count prisoners where we all belong, in their true homes.
c00138	Penal institutions should not be counted as prisoner residences. It distorts the meaningful residential information gained from these counts.
c00139	<p>Please change the practice of counting prisoners in the census based on where they are imprisoned. this is unfair both to their home districts and to the communities where prisons have been built.</p> <p>nb:</p>

	<p>In the past 30 years many new prisons were built in rural areas of the country and those prisons have been identified, in past censuses as the “home” of the people imprisoned there. For example, a total of 3,500 women are currently incarcerated in Vandalia and Chillicothe MO. An additional 26,500 men are imprisoned in a variety of MO rural prisons including Bonne Terre, Pacific MO, etc.</p> <p>Representation in the House of Representatives is based on the census numbers. In terms of gerrymandering, this means that those rural areas are allotted more representation in the MO House of Representatives than they deserve and the major cities (St. Louis, Kansas City, Springfield, etc.) where a large percentage of those men and women actually live are allotted less representation than they deserve.</p> <p>Another problem with designating a prison, instead of an actual home, as a person’s residence is that it makes it impossible for researchers to understand the demographics of local communities. So subsequent policies, usually based on research, are inadequate.</p>
c00140	<p>Thanks for the opportunity, for the 2020 census, to suggest changes in the designated residence of people who are incarcerated. It is important that prisons and other detention facilities are not identified as the “home” or “residence” of men, women and children who are incarcerated there.</p> <p>Approximately 3,500 women are incarcerated in Vandalia MO and Chillicothe MO. About 26,500 men are incarcerated in rural area prisons in other parts of MO. To designate these rural areas as their homes inflates the number of representatives in Congress that these rural areas are allotted and deflates the number of representatives allotted to the major cities in MO where the majority of the prisoners live.</p> <p>Additionally, it distorts the demographics collected by researchers, thus negatively influencing city and state policies and practices.</p>
c00141	<p>This is in regard to the 2020 Population Census and Prison population. As an example, Chillicothe has 3500 inmates many from Kansas City and Saint Louis.</p> <p>There is an unfair distribution as those rural areas are allotted more representation in the MO House of Representatives than they deserve and the major cities (St. Louis, Kansas City, Springfield, etc.) where a large percentage of those men and women actually live are allotted less representation than they deserve.</p> <p>Another problem with designating a prison, instead of an actual home, as a person’s residence is that it distorts and makes it impossible for researchers to understand the demographics of local communities. So subsequent policies, usually based on research, are inadequate.</p> <p>Please take these issues into consideration in preparing for the 2020 census.</p>
c00142	<p>I am suggesting a change in census 2020 which will designate the real home – not a prison – as the residence of men and women who are incarcerated.</p>

	<p>In the past 30 years many new prisons were built in rural areas of the country and those prisons have been identified, in past censuses as the “home” of the people imprisoned there. For example, a total of 3,500 women are currently incarcerated in Vandalia and Chillicothe MO. An additional 26,500 men are imprisoned in a variety of MO rural prisons including Bonne Terre, Pacific MO, etc.</p> <p>Representation in the House of Representatives is based on the census numbers. This means that those rural areas are allotted more representation in the MO House of Representatives than they deserve and the major cities (St. Louis, Kansas City, Springfield, etc.) where a large percentage of those men and women actually live are allotted less representation than they deserve.</p> <p>Another problem with designating a prison, instead of an actual home, as a person’s residence is that it distorts and makes it impossible for researchers to understand the demographics of local communities. So subsequent policies, usually based on research, are inadequate.</p>
c00143	<p>I believe that incarcerated individuals should not be counted in the census as residents of a prison facility. Prisoners have no choice of where they are placed, and they can also be involuntarily transferred at any time, so their prison location does not represent their residence. In addition, it is not right for a Congressional district or other jurisdiction to benefit from the population increase of their presence, and the prisoner him/herself is also not benefitting from the resultant representation; moreover, with the exception of Maine, Vermont and Puerto Rico, the prisoner has no ability to elect the political representatives and the politician cannot be held responsible by these disenfranchised “residents” of their jurisdiction. (If incarcerated people did not lose their right to vote, then it could make some sense to count them in the census as a resident of a prison facility).</p> <p>Prisoners could be counted in the census as living at their last address in the community, where many of them may have family still living, even though they themselves are no longer located there. Or there should be a special census category of incarcerated individuals. I don’t know if there is a special census category for Americans living outside the country, but it would make sense to have such a category both for them and for people who are living in a prison facility.</p>
c00144	<p>As the _____ of the Havelock Chamber of Commerce in North Carolina, I am writing to support the proposed rule change regarding the census count of deployed military personnel. We in Havelock are honored to be the home of Marine Corps Air Station Cherry Point, with an active duty military population of over 9,000 personnel. While these Marines and Sailors are deployed during various times, accurately counting their population is vital to the public and economic needs of our community.</p> <p>We support the Proposed 2020 Census Residency Rule and Residency Situation:</p> <p><i>"U.S. military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a Military installation outside the U.S. on Census Day shall be counted at the U.S. residence where they live sleep most of the time, using administrative data provided by the Department of Defense"</i></p>

	<p>The Havelock Chamber of Commerce supports this proposed rule change and thanks the U.S. Census Bureau for conducting an efficient review. Undercounting military personnel due to deployment has resulted in a loss of revenue from federal and state sources. This proposed rule change will improve the quality of life for those who serve and support our nation.</p>
c00145	<p>To whom it may concern: it is a matter of Justice that people be counted where they are from rather than where they are incarcerated! Not counting people where they live gives more weight to the vote of those who live in the municipality where the prison, jail or other type facility is located. Very often the demographics of the municipality where the prison is located doesn't reflect the demographics of those who are imprisoned there! A person who is incarcerated, his or her family and friends are represented by the elected officials where he or she from! Accordingly, when the census is taken he or she should be counted as a member of their hometown community. Please end the distortion of the democratic principle of one man one vote. COUNT PEOPLE WHERE THEY ARE FROM!!!!</p>
c00146	<p>Accurate Census data is vital to the public and economic needs of all communities in the nation. We appreciate the dedication and effort the U.S. Census Bureau has invested in publically reviewing its residency rules for the 2020 Census.</p> <p>Our staff and I have read the Proposed 2020 Census Residency Criteria and Residency Situations Federal Register notice of June 30, 2016. I commend the Census Bureau staff for meeting with our staff and representatives of the military communities in North Carolina, reviewing processes and investigating our recommendations for counting deployed military at their usual place of residence.</p> <p>North Carolina is honored to be the home of several of our nation's significant military bases including Fort Bragg with a population of over 238,000 (the largest military base by population in the world) and Camp Lejeune, the US Marine Corps' Home of Expeditionary Forces in Readiness, with a population over 131,000. Accurately counting these populations at their usual residence in the Census is vital to serving and supporting those who serve our nation. North Carolina is committed to supporting that purpose.</p> <p>We agree with the Census Bureau's assessment that there is a residence difference between military personnel deployed to overseas installations for extended assignments and those detailed for short-term roles. The deployed military personnel usually reside in their military communities. The proposed change is consistent with Census procedures that count persons who are away from their usual place of residence on Census Day such as individuals who are on vacation, on business trips as well as truck drivers or traveling salespeople. We support the following Proposed 2020 Census Residency Rule and Residency Situation:</p> <p>13. U.S. MILITARY PERSONNEL</p> <p>(f) U.S. military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a military installation outside the U.S. on Census Day - Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense.</p> <p>The proposed change is consistent with Census Bureau policies, provides a more accurate Census count of the usual population of military communities, and better informs planning, services, and funding tied to Census data.</p>

	<p>The existing and proposed Census residency rules for counting deployed military personnel use administrative data provided by the U.S. Department of Defense. The proposed residency rules do not specify whether the administrative data source for the existing residency rules is to be used for the proposed residency rules, or whether a new data source would be used. We look forward to clarification of which Department of Defense administrative data source will be used and would be pleased to work with the Census Bureau to test and verify the quality of the administrative data.</p> <p>We thank the Census Bureau for the efficient and transparent way it conducted this review and we encourage the implementation of Proposed Residency Rule 13(f). Reliable Census Bureau data is essential to our service to the people of North Carolina. We remain committed to working with the Census Bureau to improve the quality of this invaluable process.</p>
c00147	<p>I am prompted to write in response to the news that the Census Bureau recently announced it may continue counting incarcerated people inaccurately as “<i>residents</i>” of prisons locations for the 2020 Census.</p> <p>This is WRONG. One example: People who live in New York City can end up incarcerated in Dannemora, New York State. I was one such person. From your Census count of 2010, as you now count it, we know Dannemora had 3,936 residents. But, at least 2,800 of those ‘<i>residents</i>’ were incarcerated men in the Clinton Correctional Facility in Dannemora.</p> <p>This is a count inaccuracy of over 70%.</p> <p>Which means the areas where we incarcerated individuals lived before we were incarcerated have been deprived of that political representation. - And I am sure the people living in catchment areas neighboring Clinton C.F. were not too happy either.</p> <p>I offer one tiny example of how this skewing of the count looks in reality.</p> <p>My spouse lived, voted, and paid her taxes in New York City when I was incarcerated in Dannemora in the Clinton Correctional Facility.</p> <p>One weekend when visiting me, she was walking back from the facility to her overnight accommodation. She put some candy wrapper she had in a garbage can and walked on. She heard someone shouting, but thought nothing of it. The shouting continued and continued. She finally looked about and realized the shouting was indeed directed at her. It was a prison guard on duty in the high tower on the prison wall. He told her to take her garbage out of the garbage bin because it was a private garbage bin and not for public use. My wife excused herself and did so, and then asked the man where she might find a public garbage bin. The</p>

	<p>man said there were no garbage bins for public use in Dannemora. She asked what she should do with her used candy wrapper as she had come NYC for the weekend. The prison officer thought for a moment, and then he replied <i>'Take it back to New York City with you'</i>.</p> <p>My access to political representation or public services while I was incarcerated in Dannemora did not reach to include the availability of one garbage bin on the street for use by my loved ones when they were visiting me in what you inaccurately describe as my <i>'residence'</i> in Dannemora.</p> <p>Ms.Humes, every weekend at least 100 people from NYC alone visit loved ones in Dannamora. The economy of Dannemora and surrounds receives millions yearly as a result us being incarcerated there. Yet neither myself, nor any of my peers who had previously lived elsewhere in the U.S. ever felt we were democratically represented by political representatives from that region.</p> <p>Most respectfully, one does not need to be a social nor political scientist to see this is not fair representation.</p> <p>P.S. Ms. Humes, would you accept in your office, information from other U.S. goverment agencies, where the information contained inaccuracies of up to 70%?</p>
c00148	<p>Partnership for Safety and Justice (PSJ) submits this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). We would strongly recommend that incarcerated people be recorded by the Bureau as residing in their home communities – not as residents of the locations where they are imprisoned. If made final, the Bureau's current proposal will mean another decade of decisions based on Census results that count incarcerated people in the wrong place and in a manner that negatively impacts crime victims, people convicted of crime, and the families and communities of both.</p> <p>As an organization, in large part, dedicated to supporting services and programs for victims of crime, we find the current proposal to be problematic for at least two reasons. First, we are very concerned that individuals and communities with high crime rates are being doubly victimized (a) by the person who harmed them and (b) by the current census methodology, which fails to include individuals, frequently from their own community, who are sent to another location to serve a term of incarceration.</p> <p>Second, as an organization likewise dedicated to ensuring the ability of formerly incarcerated people to be fully counted in and participate in civic and economic life, PSJ also believes that people held accountable for crime should be tallied in their home communities. Counting incarcerated people as residing where their prison is located, rather than their home communities, skews the census result by failing to count residents who were transported involuntarily from their home community and, in the majority of instances, will return to that home</p>

	<p>community long before the next census. The current method also dilutes the local census in terms of accurately counting residents who are people of color – a population disparately removed from their home communities and placed in state and federal prison.</p> <p>Crime victims and people who commit crimes almost invariably come from the same communities. Undercounting the residents of these communities – and, worse, inaccurately counting them as the residents of communities where they are imprisoned – harms crime victims, people convicted of crime, their families and community alike. We urge the Bureau to count people as residing in their home communities, not where they are incarcerated.</p> <p>Thank you for this opportunity to comment on the proposed Residence Rule and Residence Situations.</p>
c00149	<p>I understand that in 2020 the U.S. Census Bureau will once again consider counting people who are incarcerated in prison as ‘residents’ in that prison rather than as residents of the place they lived before they were incarcerated.</p> <p>May I say most respectfully, that is not good.</p> <p>My son _____ spent 24 years, four months and five days in prison for a crime he did not commit. Before he was incarcerated he lived in upper Manhattan. I tried to get help to clear his name from all the elected officials in his area. But as you know elected public representatives have enough to do without trying to help people they do not represent. And because the U.S. Census did not count my son as living in Manhattan he was no longer one of their constituents. And what of support from elected representatives in all the different catchment areas where my son was incarcerated? The truth is, they are not there for us. From what I could see, prisons in their areas meant they got more money for schools and roads, and so on, so they looked very good indeed. But I regret to say, from my experience, the elected officials in those areas did not really want to have anything to do with the problems of the people incarcerated in the prisons there.</p> <p>This is one of many reasons, that people in prison should NOT be counted as residing in prison on the U.S. Census, but as residing at the addresses they lived in before they went to prison.</p>
c00150	<p>Gerrymandering has long been a controversial activity, which continues to create difficult situations for common citizens and lucrative means for the politicians who promote it.</p> <p>For this reason the Census Bureau is wrong to consider incarcerated people as residents of any correctional facility, because they are not <i>willing</i> to be there and do not consider themselves residents. Additionally, many are not allowed to vote by the reasoning that they are not really citizens. Counting them as such continues to make a farce of the democracy we claim to uphold.</p>

	Gerrymandering is not about fairness or equity. Please do not consider this a viable means for counting the prison populations in any census.
c00151	<p>I am writing to you to ask that the U.S. Census count incarcerated people in the districts they consider home, rather than in the arbitrary location where they are incarcerated. I have read a lot about prison gerrymandering and understand that by counting incarcerated people as residents where they are incarcerated, despite their inability to vote in these districts, we are taking away representation from the districts where the incarcerated people lived prior to incarceration - and thus, the communities studies have demonstrated they will most likely return to. The communities most hurt by this policy tend to be black, Hispanic, and poor, meaning their ability to advocate for their needs is already severely hampered; we make it worse by taking away members of their community and the proportional representation those members would have added.</p> <p>Please change the way the Census counts incarcerated people this year - to one of self-designation or the incarcerated person's last known address.</p>
c00152	<p>As a coalition of groups involved with the 2011 Massachusetts Redistricting process, we submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p> <p>The need for change in the "usual residence" rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census and for the voting strength of certain communities.</p> <p>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, which are located far from the actual homes of incarcerated people. Just two examples of specific impacts in Massachusetts include:</p> <ul style="list-style-type: none"> • Without using prison populations as padding, 5 Massachusetts House districts drawn after the 2000 Census did not meet constitutional population requirements. For example, while each House district in Massachusetts should have had 39,682 residents, the 3rd Suffolk District, which claimed the population of the Suffolk County House of Corrections, had only 36,428 actual residents. This means that the actual population of the district was 8.2% smaller than the average district in the state. • When the city of Gardner last updated their districts in 2001, they were faced with the prospect of giving the residents on the eastern side of the city, near the state prison, extra influence over city affairs, or rejecting the flawed Census counts. The City Council ruled to reject the Census counts because doing otherwise would have given each group of 8 people who live near the prison as much say over city affairs as every group of 10 residents elsewhere in the city.

	<p>In 2011, advocates like us asked the Massachusetts Joint Committee on Redistricting to reverse the “usual residence” policy like Gardner did and to count persons at their legal address prior to incarceration, rather than in prison for state districts. The Committee agreed with us that the way prisoners are counted does a disservice to the state and should be changed. However, the Committee and legal counsel thought that the Massachusetts state Constitution, which dictates that the federal census be the basis for determining the representative, senatorial, and councillor districts, would prevent Massachusetts from unilaterally changing this rule for these districts. Instead, the Committee recommended to the General Court that it adopt a resolution calling for such a change to send to Congress and to the Census Bureau. Such a resolution was passed on August 14, 2014 (attached).</p> <p>In fact, currently four states (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts. But as we have seen, this is not an approach that is unilaterally applicable.</p> <p>For these reasons, we urge you to change Census Bureau policy to count incarcerated people as residents of their home address, rather than at the place of their incarceration. Thank you for this opportunity to comment on the Residence Rule and Residence Situations.</p>
c00153	<p>As a Pennsylvania State Legislator, I am concerned that the Census Bureau has decided to continue to consider incarcerated people as residents of the correctional facility in which they are imprisoned. This practice is in violation of Pennsylvania rules <u>Pennnsylvania Brochure for Incarcerated Persons</u> which state that a prison cannot be used as a voting address. Prisoners are instructed to use a pre-incarceration home address, their last registered address or even a new residence in which the prisoner may plan to live in once outside of the correctional facility.</p> <p>A correctional facility does not qualify as a residence because it is involuntary and temporary.</p> <p>If the Census Bureau continues to count people in the wrong place – the correctional facility – we will again have an inaccurate 2020 Census. In Pennsylvania, roughly 40% of the state’s prisoners are from urban Philadelphia while many of our state correctional institutions are in rural areas. The impact in our communities is that we are drawing congressional districts based on inaccurate census data. This is a problem in a state that is included in every article decrying congressional gerrymandering. With Pennsylvania congressional districts as pterodactyls and other strangely shaped districts, we need to a better job. To do that we need accurate census data.</p> <p>Thank you for your consideration of my comments as you move forward to finalize the 2020 Census Residency Rules.</p>
c00154	<p>I represent _____ in the State of Texas and submit this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census Day ignores the reality of incarceration: prisons are not a "usual residence."</p>

	<p>As an elected representative, I am keenly aware that democracy, at its core, rests on equal representation. And equal representation, in turn, rests on an accurate count of the nation's population. Dallas County alone has over 16,500 incarcerated inmates in the Texas Prison system.</p> <p>The reality is that when my constituents are incarcerated, they are sent to prisons outside my district, but they and just as importantly, their families, still rely on me for representation. Over the course of their incarceration, the prison administration may move them between different prisons, located in many of my colleagues' districts, but they remain my constituents. Their home in my district remains their only stable, permanent, "usual" residence. Counting them as if they were residents of the facility where they happen to be held on Census day doesn't reflect the modern lived reality of our communities. Further when released they are sent back here for reintegration.</p> <p>I note that your proposed method of counting the incarcerated population is inconsistent with how you count other groups that eat and sleep in a location that is not their usual residence. For example, I note that your proposed rules will count boarding school students at their home address even if they spend most of their time at the school. The same approach should be taken when counting incarcerated people.</p> <p>I am also concerned about the impact of your residence rules on racial justice in my state. Our state disproportionately incarcerates African-American and Latino people so when you count them in the wrong location, and that data is used for redistricting, it further undermines the political power of minority communities.</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. I believe that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00155	<p>I am writing to provide comments on the Proposal 2020 Census Residence Rule, as outlined in the Federal Register on June 30, 2016.</p> <ol style="list-style-type: none"> 1. I agree with the Census Bureau's decision to count prisoners at the facilities where they live and sleep most of the time. I am familiar with the arguments to the contrary. I'd like to make the following points: <ol style="list-style-type: none"> a. Residence is residence. Incarcerated persons clearly live at the facility in which they are incarcerated. b. It would be an unreasonable burden on the census process to collect putative "home addresses" for the incarcerated population. It would consume considerable time both on the part of the census enumerators who collect data from the facilities and on the facility administrators who would have to research and provide the information. c. It is not the bureau's responsibility to facilitate states' redistricting activities beyond the activities already proposed, including the redistricting data summary file itself, the identification of group quarters counts at the block level on that file, and the proposed option to geocode prisoner home addresses if provided by the states to the bureau. 2. I do not support the decision to count deployed military and government civilian population at their "home" addresses. Doing so

	<p>weakens the argument made by advocates of enumerating prisoners at “home.” The only difference is procedural, in that the bureau can use a single file provided by the DOD, rather than many files provided by the states, to geocode this population. The bureau needs to make a better case for distinguishing between these two large populations.</p> <p>3. I have no problem with the proposed changes for crews of maritime/merchant vessels, residential treatment centers for juveniles, or religious group quarters.</p> <p>4. The proposed rule does not provide sufficient clarity for people with multiple residences. The problem here, especially relevant for Michigan, is <i>snowbirds</i> – people whose permanent residence is in one place but who live part of the year in a clearly designated housing unit – one that appears on the MAF and will receive a census form – in another place. What is the plan for instruction to these respondents, to provide guidance on how they shall be counted once, only once, and in the right place? I suggest that better criteria for these situations be included in the Residence Rule.</p> <p>I hope that this response is helpful. I am happy to answer any questions or to discuss this further as appropriate.</p>
c00156	<p>Thank you for the opportunity to comment.</p> <p>We believe that the residency rules should also specifically address people living in memory care centers (aka Alzheimer’s care or Dementia care centers). Because of the nature of Alzheimer’s disease and Dementia we believe that the use of administrative records may be required to get accurate responses on the 2020 census questionnaire.</p> <p>At times the definition of a memory care facility may appear to overlap with nursing facilities, but they are most often distinct with different staffing and treatment requirements. Without calling out memory care centers here and in future federal registers related to group quarters, there may be the expectation that those who reside there answer their own census forms, and could be incorrectly counted at a residence from the individual’s past. Nursing facilities/skilled-nursing facilities are specifically called out in section 11d. We feel that memory care centers should be added to this section as well as to footnote number 8.</p>
c00157	<p>Papa Ola Lokahi (POL) thanks the U.S. Census Bureau for an opportunity to provide comments regarding the Residence Rule for consideration and decision-making toward the 2020 Census process.</p> <p>1. Federally Affiliated Overseas (a) Military and Civilian Employees of the U.S. Government Who Are Deployed Overseas</p> <p>Census Bureau proposed 2020 change: ... seeks to count deployed personnel in a way that is more consistent with the concept of usual residence, based on the short duration of most deployments and the fact that the personnel will return to their usual residence where they are stationed or assigned in the U.S. after their temporary deployment ends.</p>

POL comment: POL agrees with the proposed change and rationale. All branches of the U.S. military occupy lands, bases, residential units, and training facilities within Hawaii's coastal borders. It is essential that military personnel that are assigned to any military branch and based in Hawaii, whether personnel or family members are within base quarters or off-base in residential units, be counted in Hawaii.

With Hawaii's estimated population at 1,431,603 (source: U .S. Census Bureau, ACS 2015 1 year, QuickFacts), compared to the Active Duty Military (all branches) population at 40,034 in Hawaii as recent as May 31, 2016 (source: [http : www.governing.com/gov-data/military-civilian-active-duty-employee-workforce-numbers-by-state.html](http://www.governing.com/gov-data/military-civilian-active-duty-employee-workforce-numbers-by-state.html)), not counting Reserve Forces Military in Hawaii at an additional 9,313 (ibid); it is clear that the military population in Hawaii contributes to its population diversity, local fabric, and economic factors. Hawaii ranks #8 among all states in Total Active Duty (ibid) population, compared to CA #1, TX, NC, VA, GA FL, and #7 WA. Hawaii depends on federal funding based on its decennial census response rate to provide the infrastructure and maintenance for public infrastructure.

Hawaii Revised Statutes, §HRS 1 1-13(6) that states: *No member of the armed forces of the United States, the member's spouse or the member's dependent is a resident of this State solely by reason of being stationed in the State.*

The purpose of the decennial census is to count people in place, in time, legal or illegal, without proof of address, citizenship, occupation or loyalty. It is consistent to count all Military personnel who are based in Hawaii and plan to return to Hawaii after deployment.

Infrastructure and services that are provided through funding mechanisms based on census data need to be in place upon return to Hawaii.

(b) Military and Civilian Employees of the U.S. government Who Are Non-Citizens and Are Deployed or Stationed/Assigned Overseas
Census Bureau proposed change:

... military and civilian employees of the U.S. Government who are deployed or stationed/assigned overseas and are not U.S. Citizens (but must be legal U.S. residents to meet the requirements for federal employment) would be included in the Federally Affiliated Overseas County (which would follow the guidelines for deployed and stationed/assigned military personnel that are described in section C.1.a. of this document).

POL comment: POL supports the proposed change in language consistent with rationales used for the federally affiliated overseas population in the decennial census. That military and civilian employees of the U.S. Government should be included in the Federally Affiliated Overseas Count, by virtue of qualifying for and meeting the requirements of federal employment, having pledged by oath loyalty and other sustaining virtues to serve our country.

POL also applies Hawaii Revised Statutes, §HRS 11-13(5) states that: A person does not gain or lose a residence solely by reason of the person 's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison.

We further recognize that citizenship is not a requirement to determine residency in Hawaii.

2. Crews of U.S. Flag Maritime/Merchant Vessels

No change to 2020 Census how the Census Bureau counts crews of U.S. flag maritime/merchant vessels that are docked in a U.S. port, sailing from one U.S. port to another U.S. port, sailing from one foreign port to another foreign port, or docked in foreign port.

POL comment: POL supports the current language (without change) to the paragraph above and agrees with the Census Bureau.

Census Bureau proposed change:

...seeks to count crews of U.S. flag maritime/merchant vessels in a way that is more consistent with the concept of usual residence, based on the fact that mariners sailing between U.S. and foreign ports typically have the same pattern of usual residence as mariners sailing between two U.S. ports (i.e., they retain an onshore residence in the United States where they live and sleep most of the time).

POL comment: POL supports the proposed change based on a more consistent concept of usual residence. POL cites Hawaii Revised Statutes, §HRS 11-13(1) that states that: *The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return.* In other words, a person has the intention to return (home) where the person maintains an address and sleeps.

3. Residential Treatment Centers for Juveniles

The Census Bureau proposes to count people in residential treatment centers for juveniles at the residence where they live and sleep most of the time.

Juvenile residential treatment centers allow for several unique situations, whereas, in the case where weekend passes are allowed and the juvenile returns home, or a place where the juvenile is preparing to return to, should be able to be counted at their "usual residence" with family members or foster home and not at the treatment center because that residence is not "usual" nor permanent.

POL comment: POL recommends the application of §HRS 11-13(5) states that: *A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison*

4. Religious Group Quarters

The 2020 Census proposal is to count all people staying in religious group quarters at the facility on Census Day.

POL comments: Agrees with the change for 2020 Census to count people at religious group quarters at the facility. Most religious group quarters are longer term residence where the "usual residence" is an accurate description.

POL provides comments for the following "2020 Census Residence Rule and Residence Situations":

1. People Away from Their Usual Residence on Census Day - a. Agree
2. Visitors on Census Day - a. Agree
3. Foreign Citizens In The U.S. - a. Agree; b. Agree; c. Agree
4. People Living Outside The U.S. - a. Agree; b. Agree; c. Agree
5. People Who Live Or Stay In More Than One Place - a. Agree; b. Agree; c. Agree
6. People Moving Into Or Out Of A Residence Around Census Day - a. Agree; b. Agree; c. Agree
7. People Who Are Born Or Who Die Around Census Day - a. Agree; b. Agree; c. Agree; d. Agree
8. Relatives and Nonrelatives - a. Agree; b. Agree; c. Agree; d. Agree; e. Agree; f. Agree; g. Agree; h. Agree; i. Agree.
9. People in Residential School-Related Facilities - a. Agree, especially important to count tribal school children at the residence of their parents or guardians if they board away from home; b. Agree; c. Agree.
10. College Students (and Staff Living in College Housing) - a. Agree; b. Agree; c. Agree; . Agree.
11. People In Health Care Facilities - a. Agree; b. Agree; c. Agree; d. Agree; e. Agree.
12. People In Housing For Older Adults - a. Agree.
13. U.S. Military Personnel - a. Agree; b. Agree; c. Agree; d. Agree; e. Agree; f. Agree; g. Agree; h. Agree.
14. Merchant Marin Personnel on U.S. Flag Maritime/Merchant Vessels - a. Agree; b. Agree; c. Agree.
15. People In Correctional Facilities For Adults - a. Disagree as the rule is applied to prisoners only and cite Hawaii Revised Statutes §HRS 11-13(5) states that: *A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;* b. disagree as the rule applies to prisoners only and cite Hawaii Revised Statutes §HRS 11-13(5); c. disagree as the rule is applied to prisoners only and cite Hawaii Revised Statutes §HRS 11-13(5); d. disagree as the rule is applied to prisoners only and cite Hawaii Revised Statutes §HRS 11-13(5).

	<p>16. People in Group Homes and Residential Treatment Centers for Adults - a. Disagree as it relates to the patients only at the facility and cite Hawaii Revised Statutes §HRS 11-13(5); b. disagree as the rule is applied to people in residential treatment centers for adults (non-correctional) and cites Hawaii Revised Statutes §HRS 11-13(5).</p> <p>17. People In Juvenile Facilities - a. Disagree as it relates to the juveniles in correctional facilities and cite Hawaii Revised Statutes §HRS 11-13(5); b. disagree as it relates to juveniles in group homes and cite Hawaii Revised Statutes §HRS 11-13(5); c. Disagree as it relates to juveniles in treatment centers and cite Hawaii Revised Statutes §HRS 11-13(5).</p> <p>18. People In Transitory Locations - a. Agree.</p> <p>19. People In Workers' Residential Facilities - a. Agree.</p> <p>20. People In Religious-Related Residential Facilities - a. Agree.</p> <p>21. People In Shelters and People Experiencing Homelessness - a. Disagree as it relates to people (clients) in domestic violence shelters on Census Day and cite the temporary nature of such a stay and the confidentiality of that location, therefore, they should be allowed to use the last residence address prior to the shelter, where they slept; b. Agree; c. Agree; d. Agree; e. Agree; f. Agree.</p>
c00158	<p>As _____ the City of Goldsboro, North Carolina, I am writing in support of the proposed rule change regarding the census count of military personnel who are deployed. The City of Goldsboro is the home of Seymour Johnson Air Force Base with an active duty military population of over 4,500 personnel. As you can appreciate, airmen are deployed in various numbers and for various lengths of time.</p> <p>The proposed rule of interest is relative to counting of these deployed military personnel. Rule 13 (f) states:</p> <p style="padding-left: 40px;">U.S. Military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a military installation outside the U.S. on Census Day-- shall be counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense.</p> <p>The City of Goldsboro supports this proposed rule change. Undercounting military personnel due to deployment has resulted in the loss of substantial revenue from federal and state sources to the City of Goldsboro. I believe that this proposed rule will correct that error. Thank you for your consideration.</p>
c00159	<p>I am submitting this comment in response to the Census Bureau's federal register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). The Bureau's proposal to continue counting incarcerated people at the particular facility that they happen to be located at on Census day ignores the transient and temporary nature of incarceration. If made final, this proposal will mean another decade of decisions based on a Census that counts incarcerated people in the wrong place.</p>

I am _____ the _____ School of Medicine in Chicago, Illinois. I have studied criminal justice issues for over twenty-five years. The question of prison gerrymander is critically important. The resolution of this issue will reflect directly on the state of democracy in the United States.

The Census Bureau defines "usual residence" as the place where a person "eats and sleeps most of the time", but fails to follow that rule when counting incarcerated people. The majority of people incarcerated in Rhode Island, for example, spend less than 100 days in the state's correctional facilities. If the same people were instead spending 100 days in their summer residence, the Bureau would count them at their regular home address. Even students in boarding schools get counted at their home address whether or not they eat and sleep there most of the time. The Census Bureau continues to carve out an unexplained exception for incarcerated people in order to count them in the wrong place.

The Bureau's failure to update its rules regarding incarcerated persons is particularly troubling given that the Bureau decided that other populations -- deployed overseas military, and juveniles staying in residential treatment centers -- should be counted in their home location even if they are sleeping elsewhere on Census Day. It made these changes even though there were far fewer public comments identifying these issues as causing the magnitude of problems that the public commentary on the prison miscount highlighted.

The Census Bureau should honor the overwhelming consensus urging a change in the Census count for incarcerated persons. When the Bureau asked for public comment on its residence rules last year, 96% of the comments regarding residence rules for incarcerated persons urged the Bureau to count incarcerated persons at their home address, which is almost always their legal address. This level of consensus among stakeholders, which is based on a thorough understanding of the realities of modern incarceration, deserves far more consideration than it was given. As you know, American demographics and living situations have changed drastically in the two centuries since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation.

The Census Bureau's practice of counting incarcerated people in the wrong place had relatively little impact on the overall accuracy of the Census while prison populations remained relatively low, but the growth in the prison population over the last few decades urgently requires the Census to update its methodology. The incarcerated population has more than quadrupled since the 1970's, and the manner in which this population is counted now has huge implications for the accuracy of the Census.

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 a few thousand Census blocks that are located far from the actual homes of incarcerated people. When this data is used for redistricting, it artificially inflates the political power of the areas where the prisons are located and dilutes the political power of all other urban and rural areas without large prisons. In New York after the 2000 Census, for example, seven state senate districts only met population requirements because the Census counted incarcerated people as if they were upstate residents. For this reason, New York State passed legislation to adjust the population data after the 2010 Census to count incarcerated people at home for redistricting purposes. Three other states (California, Delaware, and Maryland) are taking a similar state-wide approach, and over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

	<p>Acknowledging the need to correct its own data to avoid prison gerrymandering, the Bureau has proposed to help states with the population adjustment. But this ad hoc approach is neither efficient nor universally implementable. Massachusetts legislators, for example, have already expressed concerns about that state's ability to use alternative data in their 2015 comment to the Bureau (comment numbered cl61).</p> <p>Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to follow the residence rule to count everyone in the right place. My organization believes that in order to produce an accurate 2020 Census, the Bureau must count incarcerated people at home.</p>
c00160	Same content as comment c00005
c00161	<p>I would hope the upcoming census would include inmates in prison and jails. There are thousands (10's of 1000's) of inmates that could affect the services to the City, County, State in which they are going to be release.</p> <p>It would be easy to identify their original home or conviction zip code. Dept. of Corrections in every State has that information.</p>
c00162	<p>In June the US Census Bureau released proposed rules for the 2020 Census. Despite significant public input asking for change, the Bureau announced it would continue past practice of counting incarcerated persons as residents of prison locations rather than of their home communities.</p> <p>Counting inmates as residents of prisons and detention centers violates Pennsylvania law, which states: A penal institution (including a halfway house) cannot be a residence address for registering to vote.</p> <p>It also violates the one person, one vote requirement of the U.S. Constitutions Fourteenth Amendment as was made clear this year by U.S. District Judge Mark E. Walker in Calvin et al. v. Jefferson County and by U.S. District Judge Ronald Lagueux in Davidson vs. City of Cranston.</p> <p>Miscounting of urban prisoners in the rural districts where most PA prisons are located swells the population base of those districts. It enhances the political clout of politicians who have strong incentive to support prison expansion and to enact policies that ensure continued mass incarceration. The practice distorts our democratic process and undermines government of, by and for the people.</p>
c00163	Stop the political gerrymandering! Incarcerated citizens need to be counted in their home communities. The prison is not their home, it is where they are now. This practice takes away the power of their vote-even incarcerated people deserve representation in the United States of America!
c00164	Please stop the practice of counting incarcerated citizens of The United States in the places of incarceration rather than their permanent home address. This creates a bias in the election and representation Systems that is unequal, inaccurate and is flawed with contempt, prejudice and corruption.

	<p>Stop years of a flawed document process and Do The Right Thing and stop lying to The American People, You know....Us the ones who pay your salary.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00165	<p>This is about people being counted by the census at a temporary address, rather than at a permanent address.</p> <p>My understanding is that you want to identify people's permanent address for census purposes, not where they happen to be on April 1st.</p> <p>You don't census motorists based on being on the road.</p> <p>You don't census people based on what hotel room they are in for their vacations, or business trips.</p> <p>You ask on the forms for the person's permanent address.</p> <p>I urge you to make this consistent. Prisons are not permanent addresses; they are temporary.</p> <p>Census prisoners based on their permanent address, not their temporary location.</p>
c00166	<p>If they can't vote you should not count them as residents of where the prisons are</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00167	<p>All of these people are citizens of this country and should, therefore, have the inalienable right to vote from prison....Just as is allowed in Europe, where its more sane .</p>
c00168	<p>Prison gerrymandering robs communitites, especially the most vulnerable ones, of vital political energy. Please end the practice.</p>
c00169	<p>I strongly urge the Census Bureau to change its ruling so that incarcerated people will be allowed to vote in elections from their permanent place of residence rather then from the prison address where they are temporarily housed but otherwise have no civic connection as a US citizen. By the same token, if I were recovering from a serious injury housed in a medical facility considerably distant from my place of residence, I would want to participate in an important election, but using an absentee ballot from my permanent place of residence, not from another part of the country where I have no connection. Absentee balloting has long been an important privilege for US citizens. I was not aware that incarcerated people were denied that privilege.</p>

c00170	Counting prisoners as living in the census tracts where they're imprisoned injects a systemic error of about 1% into the Census's results. By my reading this violates at least the spirit of Article 1 section 2 and Amendment 14 section 2 of the US Constitution. Your attention to the matter is appreciated.
c00171	<p>Addressing the U.S Census Bureau regarding the Census count of prisoners—</p> <p>I urge you to change the practice of counting prisoners as "residents" at the prison location, rather than at their local, permanent addresses. It is unfair to the original "home" communities of the prisoners to leave the prison population out of the home communities' census. It leads to an inflated census in largely rural areas and decreased census in more urban areas, thus affecting proportional representation.</p> <p>Thank you for your consideration of this important census issue.</p>
c00172	<p>This seems ridiculously simple - prison isn't "home", and for most prisoners isn't permanent. This is a case of 'use your common sense' - or corruption. How you decide will tell us which of those two options you are operating under.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00173	Regardless of where they are held, prisoners retain important connections to their original communities, and it furthers the interests of both to preserve these connections. It is here that they must live when discharged; it is here that they can best hope for rehabilitation; and it is this environment in which they have the best chance of finding the support and motivation essential to making the transition that faces them. Further, displacing them unfairly penalizes these communities of the political representation entitled by that relationship. Rebalancing that relationship is ultimately positive for both the original communities and those housing the incarcerated. All parties stand to benefit from this re-apportionment of prison representation.
c00174	Please change the way you count prisoners and count them in their home districts. It is important to safeguard realistic proportional representation in these communities.
c00175	A whole generation has been lost due to the failed war on drugs. Violent chronic offenders need to be in prison, but nonviolent ones will be released and should be integrated into society.
c00176	<p>I'm writing today to express displeasure with the practice of counting incarcerated people where they confined at the time of the census, rather than their permanent address.</p> <p>The practice of gerrymandering to occur in any place when possible is being used with this census tool. This should not be a tool that is allowed. Instead, they should be counted at their permanent address in the community they will return to after their period of incarceration ends.</p> <p>I urge you to reconsider the method of calculation used to record incarcerated people.</p>

c00177	<p>I am writing today to express disapproval of the practice of counting incarcerated people where they are confined at the time of the census, rather than their permanent address. This statistical sleight-of-hand undermines democratic representation by inflating population counts in areas in which prisoners have no connection to the community in which they are. Instead, they should be counted at their permanent address, in the community they will return to after their period of incarceration ends.</p> <p>Most prisoners serve terms shorter than the duration of the census, and during their incarceration are they often moved to multiple facilities. Thus, the reality of where people are and will be for the period between census counts becomes distorted.</p> <p>I urge you to reconsider the method of calculation used to record incarcerated people.</p>
c00178	<p>"Prison gerrymandering," i.e., counting prisoners as residents of the communities where prisons are located, gives undue representation to those communities and under-representation to places where prisoners come from and to which they will return.</p> <p>It's like counting all New Yorkers as residents of Rhode Island, thereby handing over all of NY's congressional seats and Federal assistance to RI.</p> <p>It's also inadvertently racist. For example, since blacks and Latinos are jailed for crack cocaine exponentially more often than whites are for cocaine, minority communities are far more likely to lose representation than are white communities.</p> <p>Please adjust your methods before the next Census.</p>
c00179	<p>In the past 30 years many new prisons were built in rural areas of the country and those prisons have been identified, in past censuses as the "home" of the people imprisoned there.</p> <p>Representation in the House of Representatives is based on the census numbers, therefore, those rural areas are allotted more representation in the House of Representatives than they deserve and major cities where a large percentage of those men and women actually live are allotted less representation than they deserve.</p> <p>Another problem with designating a prison, instead of an actual home, as a person's residence is that it makes it impossible for researchers to understand the demographics of local communities. So subsequent policies, usually based on research, are inadequate.</p> <p>I urge you to work towards changing the Census for 2020 so that a home, not a prison, is designated as the residence of</p>

	women and men who are incarcerated.
c00180	<p>I feel strongly that incarcerated people should be counted in the decennial census at their permanent address.</p> <p>Counting prison inmates as local residents in the community where the prison they didn't choose is located deprives them of their preferred address, and privileges prison counties for census-related funds and other benefits.</p> <p>Since incarcerated people are disproportionately people of color and poor people, the prison districts effectively acquire representation which is taken away from already marginalized communities.</p> <p>Please do the right thing.</p>
c00181	<p>Current practices that count prisoners at incarceration facilities is inaccurate and damaging. State and local officials should not be able to use the Census Bureau's prison count to manipulate funding & voting districts.</p> <p>For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities.</p> <p>This practice is also harmful to rural communities containing large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census in the interest of accurate representation.</p>
c00182	<p>This is about democracy, not funding. States are acting against this practice and are adopting, have adopted, or attempted to adopt legislation across the country--including New York, Maryland, Delaware and California.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p>

	<p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00183	<p>As you consider the 2020 Census, I express my concern regarding how those incarcerated are accounted for. When they are considered "residence" of the prison where they presently reside, it gives an imbalance number of representatives for particular areas, and an overwhelming unfair calculation for areas that do not house prisoners. I believe these individuals should be counted in the area where they resided prior to going to prison. I request that you take this into serious consideration when you prepare the 2020 Census.</p>
c00184	<p>We have to begin to treat people that are serving time in a manner that encourages them to be a part of their communities when they are released. If a person feel like they can make a difference, even in some small way, it gives them a start in making changes in bigger ways.</p> <p>Counting prisoners at incarceration facilities pads the population counts of those communities with prisons. Many folks serving time have wives, husbands, children, parents or friends that have burning issues in their own communities. Unless someone is serving life without parole, the census should count them as living in the district they are from.. the same district they will be a part of when released. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00185	<p>I taught at _____ many years ago. I became aware of too many policies and Executive Orders which ran the gamut from silly to shockingly inhumane. Counting incarcerated people in the facility of detainment at the time of the Census creates an inaccurate data set for the ten years between census and therefore distorts democracy and representation.</p>

	<p>Most of the federal prisoners serve less than five years. In states across the country, most prisoners serve short sentences--averaging three years--and are moved around often during that time. In Rhode Island, the average is 100 days. In Georgia, the average prisoner is transferred four times. In New York, the median average for time in a facility is seven months.</p> <p>By counting incarcerated people in any of these temporary facilities instead of their permanent addresses, the Census is providing an inaccurate count that will have longstanding implications for the communities being misrepresented.</p> <p>I urge you to reconsider data collection methods and count incarcerated people at their permanent address which is often required by correctional facilities.</p>
c00186	<p>Do I understand correctly that for purposes of determining Congressional representation and similar purposes, incarcerated prisoners are counted as residing where the state has chosen to house them? And, therefore, the district of the prison gets "credit" for them as residents... even though almost certainly they can't vote?</p> <p>If so: stunning and atrocious. Count them where THEY consider their permanent residence to be, not where the state has housed them.</p>
c00187	<p>I was deeply disappointed to learn that the Census Bureau plans to count incarcerated people in the wrong place again in 2020. Despite public input to the contrary and that supported a change in how incarcerated people are counted by the Census, the Bureau will maintain its outdated and inaccurate practice--what a shame.</p> <p>This will mean that nearly 2 million people will be counted in the wrong place on Census day. This will mean another decade of prison gerrymandering.</p> <p>This miscount not only hurts incarcerated people, their families, and communities, it also hurts researchers, policy makers, and government officials trying their best to draw districts that ensure a sound democratic process.</p> <p>Additionally, in an era where States are doing their part to decrease prison populations and are rolling back draconian criminal justice policies like mandatory minimum sentencing, it seems even more nonsensical to incentivize incarceration by padding out the districts of legislators with large prisons.</p> <p>I hope you my concerns and those of many others to heart.</p> <p>Please count incarcerated people in their home district.</p>
c00188	<p>On June 30, 2016, the U.S. Census Bureau provided notification and requested comment on the proposed "2020 Census Residence Rule and Residence Situations."</p>

	<p>As _____ Surf City, North Carolina, I am writing in support of the proposed rule change regarding the census count of military personnel who are deployed. The Town of Surf City is very close to Camp Lejeune and New River Air Station that has a very large active military population of which there are various number of troops deployed for various length of time. Many military families and active duty personnel call the Town of Surf City home and should be counted as such in the Census.</p> <p>The residence situation for deployed military and how the criteria are applied is specified in Section 13 (f) as follows:</p> <p>"U.S. military personnel who are deployed outside the U.S. (while stationed in the U.S.) and are living on or off a military installation outside the U.S. on Census Day-Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense."</p> <p>The Town of Surf City, its elected officials and I _____ support the "2020 Census Residence Rule and Residence Situations" rule change. Undercounting military personnel during deployments has and could in the future result in loss of federal and state revenues. The changes proposed in these rules can help correct this problem.</p>
c00189	<p>I am concerned with the Census Bureau's proposed residence rule for incarcerated people.</p> <p>Representative democracy is rooted in the idea that equal numbers of people should have equal influence over the legislative process. Prison-based gerrymandering distorts the process and moves electoral power away from urban communities of color towards rural white communities.</p> <p>Some states, such as California, and municipalities like Calhoun County, GA have already taken steps to outlaw this harmful practice, creating an absurd dynamic where equal representation is only extended to those lucky enough to live in certain locations. The Census Bureau should take the steps necessary to end prison-based gerrymandering as a practice nationally and permanently.</p>
c00190	<p>I am shocked that the Census Bureau plans to continue the practice of counting incarcerated persons as "residents" of the prison location instead of their home communities, even after hearing from American's more on this issue than any other. Please listen to the citizens of this country, not politicians and private prison industries and do what is right.</p> <p>Prison gerrymandering is bad politics and a government agency should be above that. The results of this practice are a further silencing of marginalized communities, that quite frankly I didn't think we could possible marginalize any further. The fact that american citizens who are stripped of their right to vote are also then counted towards the population of the very people that profit off of their incarceration is just appalling.</p> <p>Eliminate prison gerrymandering and stand up for the people you so dutifully count.</p>
c00191	<p>I do not agree with the Census Bureau's proposed residence rule for incarcerated people.</p>

	<p>Adding the number of inmates to a given locale's population count is willful distortion of the census numbers. This dishonest manipulation of numbers benefits usually rural locales over urban locales. It's wrong and should be abolished.</p>
c00192	<p>Thank you for the opportunity to submit written comments in response to the United States Census Bureau's Federal Register notice regarding the Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016).</p> <p>Common Cause Hawaii, a chapter of the national Common Cause organization, is made up of citizens who value government that serves the common good, who encourage public participation in government, and who promote fair, honest, and transparent elections. We note that process-related issues and improvements have broad impacts, including impacts on our social and economic lives.</p> <p>The Supreme Court of the United States has recognized the right to vote as a "fundamental" right, and has recognized that, once that right "is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." <i>Bush v. Gore</i>, 531 U.S. 98, 104-05, 121 S. Ct. 525, 530 (2000) (quoting <i>Harper v. Va. Bd. of Elections</i>, 383 U.S. 663, 665, 86 S. Ct. 1079, 1081 (1966)).</p> <p>The Census Bureau's practice of tabulating prisoners based on where they are temporarily incarcerated rather than on where they actually reside has significant negative consequences for voters' rights, for the democratic process, and for voter confidence—concerns frequently raised with the Bureau. Use of the Census Bureau's prison-related data by state and local government effectively exaggerates representation for communities that host prisons, and dilutes representation for other communities.</p> <p>Hawaii is among the majority of states that explicitly provide that a person does not lose state residency upon incarceration: "A person does not gain or lose a residence solely by reason of the person's presence or absence . . . while confined in a prison." (Hawaii Revised Statutes § 11-13(5)). We appreciate the good work of the United States Census Bureau, and we trust that the Bureau will correct the distortion identified, to more accurately represent our communities by affirming the legal residency of incarcerated persons at their home address.</p>
c00193	<p>In the 2020 census, please identify incarcerated men, women and juveniles as residents of the city which, prior to imprisonment, they called home. This is important for districting and research.</p>
c00194	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census</p>

	<p>Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. If the incarcerated can not vote why count them at all. Depending on the State they may not be able to vote when they get out. Until they can vote again they should not be counted.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00195	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>Incarcerated people care about the communities where they are from and where they will return. Even if they cannot vote, make their existence count for true representation!</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00196	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census</p>

	<p>Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. Since the residence of the inmates is their home; the prison is an involuntary, usually temporary address; they should be counted at their home address.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00197	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>A person's temporary place (hotel room, prison cell, student dorm) is not a residence! prisoners should be counted in the census as being from their homes, not their cells.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00198	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they</p>

	<p>are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>It is utterly impossible for an incarcerated individual to vote!!!</p> <p>Kindly reverse this decision immediately.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00199	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>Either allow prisoners to cast an absentee ballot in their districts, or remove them from the in-residence count. Districts must not get the benefit of population that does not have a voice.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00200	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p>

	<p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. It may be necessary to collect data from the prisons, but the data should include the last place of residence of the prisoners so that their numbers can be allocated properly to their home districts. The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00201	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. It's hard to understand how this transparent misrepresentation gets started, but it surely need not persist!</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00202	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p>

	<p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. Please stop counting incarcerated people as living at prison for elections. Thankyou</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00203	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau is contributing to unfairness in the redistricting process. This is unacceptable. Please end this practice.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00204	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering." By designating a prison cell as a residence, the Census Bureau ensures that</p>

	<p>unfairness will define the redistricting process. This is unacceptable. The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison. The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00205	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. This is especially important in places like Baltimore!</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00206	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is not right. The Bureau now has the chance to correct this situation and thereby</p>

	<p>restore the sense of community that exists in the hearts and minds of the incarcerated. As someone who has studied the effects of policies surrounding incarceration, I can tell you that connection with one's home community is key to rehabilitation. On the other hand, depleting the communities of large numbers of minority residents skews the make-up of the communities to their detriment. This cannot be a good thing. Counting the incarcerated as being in the communities from which they come therefore corrects a number of imbalances affecting both the incarcerated as individuals and the communities from which they come.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00207	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. It is critical that these individuals be counted where they live, outside of the prison, not where the prison is located.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00208	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p>

	<p>Until incarcerated citizens can VOTE, use their HOME ADDRESS! Period. By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00209	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>It is another form of gerrymandering.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00210	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>This practice of treating cells as residences gives rural communities that have by virtue of state siting of prisons or development of a private prison industry greater power than other communities. Also, it creates</p>

	<p>incentives to increase the size of the private prison industry at a time when more and more people recognize the need to reduce prison populations..</p> <p>This is not acceptable.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00211	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>When will you stop screwing the public and America's voters? By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00212	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. As a former federal inmate, I can assure you that none of the places where I was held were near my home or near anywhere I will ever</p>

	<p>call home.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00213	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>This manipulation of the voting process is being overturned in states like North Carolina. It is important for a country representing the people to avoid misrepresenting the democratic process.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00214	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. The Census needs to account for incarcerated individuals who are unable to vote.</p>

	<p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00215	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>I am appalled that that the Census Bureau is proposing to designate a prison cell as a residence, this is flatly NOT acceptable. By doing this the Census Bureau ensures that unfairness, discrimination and imbalance will define the redistricting process. I am also urging the President, my State's Senators and my Congressman to do whatever they can to oppose and overturn this proposal.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00216	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>Please end this practice now. So long as incarcerated persons are not allowed to vote in elections, then these very same people shouldn't be</p>

	<p>counted for election purposes. That just makes no sense at all.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00217	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>With all due respect,</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable and Census Bureau must immediately eliminate this policy and stop its practice!</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00218	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau seems to be defeating virtually all the reasons a census is taken in that it fails to define the characteristics of an area, particularly when a prison sentence is short relative to the length of a census cycle. Not only does it distort the nature of an area with regard to the voter redistricting</p>

	<p>process but it would detach an inmate from his home district making any attempt to use the census to study imprisonment in an area impossible. I can think of no way in which it would make a census more meaningful.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00219	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>If the Census Bureau is a partisan organization that wants to increase rural representation in a sneaky and unethical fashion, then by all means, you should ignore this letter and continue your current practice. But please don't pretend that the current practice of designating a prison cell as a residence is anything other than unfair, illogical, and unacceptable.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00220	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable and yet another example of the "white privilege" that seems to be all around us.</p>

	<p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00221	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable. These people aren't legally entitled to vote. It should be illegal to pad the ballot box, if it isn't already. Another attempt by the Republicans to sway the election in their favor. Up to their usual shenanigans.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00222	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>

	<p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00223	<p>I am contacting you to express concern for the nationwide manipulation of elections in the United States that is made possible under the Census Bureau rules proposal related to "prison-based gerrymandering."</p> <p>The new proposal to continue this longstanding practice allows officials to count incarcerated persons as "residents" of the districts where they are imprisoned, though they are not allowed to actually vote while in prison.</p> <p>By designating a prison cell as a residence, the Census Bureau ensures that unfairness will define the redistricting process. This is unacceptable.</p> <p>This is not the only petition I've signed for this cause. We already have to deal with redistricting and unnecessary voter fraud laws. The international community has more diverse and functional elections than the United States. It will take some time to fix all of these problems, but this is a good place to start. Please count incarcerated people at their permanent addresses.</p> <p>The Census Bureau needs to update their rules to empower, not hurt minority communities unfairly over-represented in U.S. prisons.</p>
c00224	<p>Counting incarcerated people as "residents" of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>Prisoners should be counted in their home communities To which they will return.</p>
c00225	<p>I know this is being sponsored by a group active in many ways political. Still, there is something wrong with moving prisoners around for political body counts. If a person is serving a life term, he/she deservedly should be counted as being in that district. If, however, a person is serving a seven year term and has only a year left, he/she will be counted as living in that district for a protracted period of time, even though released to a home in another district.</p>

	<p>It seems to me that the Census Bureau has the authority to right some wrongs. I urge that it do so. Bureau of the United States of America—</p> <p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00226	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p> <p>They way in which people are counted also then not only takes away from the communities that formerly incarcerated people will be actually returning to and living in, but enhances the communities where the prisons are, which already get an awful lot of perks for the prison staff and surrounding areas - where prison staff spend their money.</p> <p>This way of counting disenfranchises people who are at risk even further and distorts democracy by not having an accurate count. Gerrymandering must stop.</p>
c00227	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p> <p>There are many incarcerated that are not guilty of the offense of which they are incarcerated. They are citizens who should have a voice in the democratic process,</p>

c00228	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00229	<p>Counting incarcerated people as “residents” of the correctional facility that are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities, unless serving a life sentence, to ensure democratic, proportional representation.</p>
c00230	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p> <p>I'm tired of all the tricks being used to ensure that African Americans are under represented in the electoral process. Let's end ALL of these roadblocks and distortions once and for all!</p>
c00231	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation. people should be counted in their homes not the jails.</p>
c00232	<p>I am writing to try to end prison gerrymandering. Counting incarcerated people as “residents” of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone.</p>

	<p>I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00233	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00234	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone. This includes:</p> <ul style="list-style-type: none"> - rural and urban communities; - incarcerated people and their families; - governmental authorities trying to draw accurate redistricting plans; and - researchers trying to understand the demographics of local communities. <p>I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00235	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation. Our country is so corrupt and people suffer. Gerrymandering is awful and whoever is doing this needs to be penalized.</p>
c00236	<p>Counting incarcerated people as “residents” of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a voter who has had the right to vote taken from me, I understand entirely how other people feel when it happens to them. If prisoners have the right to vote, they should not have their votes diluted or removed by gerrymandering Republicans.</p>

	<p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00237	<p>Counting incarcerated people as “residents” of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone: When redistricting, the prisoners are counted as living there and yet they can not vote. The Census should count the prisoners at their home address. At the same time, when redistricting is done, the home addresses should be used.</p> <p>Please reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00238	<p>PLEASE DO NOT WASTE MY TAX! FEDERAL, STATE AND LOCAL MONIES ARE ALLOCATED PROPERLY ONLY WITH THE USE OF AN ACCURATE CENSUS! OTHERWISE MONIES ARE WASTED AND PROGRAMS FAIL! IT ALSO DENIES "ONE MAN, ONE VOTE!" REGISTER PRISONERS AT THEIR PERMANENT ADDRESS!!!</p> <p>Counting incarcerated people as “residents” of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00239	<p>Counting incarcerated people as “residents” of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation. This needs to be corrected immediately, with an election only weeks away.</p>
c00240	<p>Counting incarcerated people as “residents” of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>

	<p>My husband and I work through our church with incarcerated people. From our personal experience, we have seen prisoners moved without notice within a short time for various reasons (as the stressed system tries to deal with overcrowding). It makes much more sense to count each person once in his/her home community, especially as that is where the person will need services once released.</p>
c00241	<p>Counting incarcerated people as "residents" of the correctional facility the are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p> <p>Gerrymandering of all kinds is causing our electoral system to be unconstitutional and besides, many states--especially Florida--are preventing hundreds of thousands if not more than a million ex-felons from their right--not privilege--of voting.</p>
c00242	<p>The provision that authorizes and directs the Census Bureau to count prisoners as "residents" of the correctional facility the are housed in at the time of the Census is deceptive and unjust.</p> <p>It is deceptive, unethical, unjust and criminal to count a population that has no constitutional right to vote, a population that is being forcibly housed in an facility that they did not self-select -- i.e., prisoners -- as "residents" of a community they are not free to roam, participate in, become gainfully employed in -- a community where they are not free to access all the resources that community has to offer precisely because they are prisoners. Prisoners are an unfree population -- an unfree community onto itself. Not "residents" of the area in which they are forcibly housed.</p> <p>Counting prisoners as "residents" makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00243	<p>We must take steps now to address the needs of convicted individuals who return to their communities. Concrete methods, such as counting these people as residents of the homes they come back to, is a step towards justice.</p>

	<p>Counting incarcerated people as “residents” of the correctional facility they are housed in at the time of the Census makes the Census less accurate for everyone: rural and urban communities; incarcerated people and their families; governmental authorities trying to draw accurate redistricting plans; researchers trying to understand the demographics of local communities.</p> <p>As a concerned citizen I urge you to reconsider your counting methods around prisoners and instead count them in their home communities to ensure democratic, proportional representation.</p>
c00244	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities, especially.</p> <p>Please adjust your methods before the next Census.</p>
c00245	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This is harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>

	<p>Thank you for your consideration on this important matter.</p>
<p>c00246</p>	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the "non-participating" prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face under-representation because of this misguided count.</p> <p>This is harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
<p>c00247</p>	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This is harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p> <p>AS a democracy we must be true to our Founders' goals and beliefs and do our best to make</p>

	<p>sure that all populations living in this country our accurately represented and counted.</p>
c00248	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This is harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p> <p>When soldiers are stationed overseas, they still vote from their place of residence. If they are stationed in another state, even for many years, they can vote from their original community of residence, unless they choose to change it. The census needs to apply the same rules for everyone.</p>
c00249	<p>GIVE CITIZENS A FAIR SHOT!</p> <p>Counting prisoners at incarceration facilities will DISTORT DEMOCRACY by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility REDUCES THE ACCURACY of the data about communities of color and UNDERCUTS the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>THIS IS HARMFUL to rural communities that contain large prisons, because it SERIOUSLY</p>

	<p>DISTORTS redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please ADJUST YOUR METHOD before the next Census.</p>
c00250	<p>As a social scientist whose work involves some demographic issues, I understand how complicated it can be to categorize different segments of the population for various purposes.</p> <p>Given that one of the fundamental uses of the census is to apportion representation in political terms, it is egregious to categorize prisoners on the basis of the place of their incarceration rather than their permanent residence outside the prison system.</p> <p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00251	<p>The prison population in the US has burgeoned in the past few decades. You know this. It's now to the point where counting prisoners as residents at the place of their incarceration will skew census statistics. You know this as well. Please fix it.</p> <p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p>

	<p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00252	<p>Communities represented in prison are predominantly lower income communities of minorities. To undercount them because the residents are temporarily incarcerated is an unfair practice.</p> <p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00253	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data</p>

	<p>about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards. One of the factors prior to WWII, that contributed to conflict significantly, was the disenfranchisement of minority voting groups. Any form of gerrymandering corrupts democracy. Voters should be selecting their candidates not candidates selecting their voters. Regardless of our individual political views, there is a price to pay for distorting the democratic process in any way. Do the right thing the right way and be objective. Personal bias corrupts and violates the trust that all citizens need to have in their political system.</p> <p>Please adjust your methods before the next Census.</p>
c00254	<p>I am highly concerned about the practice of counting prisoners at incarceration facilities because it will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00255	<p>Count their home location, not cell address. U.S. Census Bureau—</p> <p>Counting prisoners at incarceration facilities will distort democracy by padding the population</p>

	<p>counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00256	<p>I am writing to you to urge you to count incarcerated persons based on their home address, instead of the prison they are located in. When people are not counted in their home districts it skews the count of population for that district. The Census is important for this country. It impacts schools, infrastructure, medical facilities, first responders, spending ability for local and state governments and many other important aspects of managing the business of the many individual services citizens need and expect to receive from our governments.</p> <p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau’s prison count data attributing “residence” to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p>

	<p>Please adjust your methods before the next Census.</p>
c00257	<p>Counting prisoners at incarceration facilities will distort democracy by padding the population counts of communities with prisons. When state and local officials use the Census Bureau's prison count data attributing "residence" to the prison, they give extra representation to the communities that host the prisons and dilute the representation of everyone else.</p> <p>Counting incarcerated people at the location of the facility reduces the accuracy of the data about communities of color and undercuts the representation of these real communities. For example, because African-Americans and Latinos are disproportionately incarcerated, counting incarcerated people in the wrong location is particularly bad for proper representation of African-American and Latino communities. The communities they will return to face underrepresentation because of this misguided count.</p> <p>This practice is also harmful to rural communities that contain large prisons, because it seriously distorts redistricting at the local level of county commissions, city councils, and school boards.</p> <p>Please adjust your methods before the next Census.</p>
c00258	<p>I'm writing today to express displeasure with the practice of counting incarcerated people where they were confined at the time of the census, rather than their permanent address.</p> <p>This practice distorts our democracy by inflating population counts in areas where prisoners have no connection to the community they are counted in. Instead, they should be counted at their permanent address in the community they will return to after their period of incarceration ends.</p> <p>Most prisoners serve terms shorter than the duration of the census, and during their incarceration are often moved to multiple facilities. These facts create a real distortion of where people are and will be for the period between census counts.</p> <p>I urge you to reconsider the method of calculation used to record incarcerated people.</p>
c00259	<p>I am very unhappy with the practice of counting incarcerated people where they are confined at the time of the census, rather than at their legal permanent address.</p> <p>The current policy distorts our democracy by inflating population counts in areas where prisoners have no connection to the community. Instead, they should be counted at their permanent address in the community they will return to after their period of incarceration ends.</p>