

Clark Hamilton Bensen
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o Redistricting Litigation, (2000 census cycle cases in which reports or testimony were prepared or offered for submission): VIRGINIA LEGISLATIVE, (*West v. Gilmore*, August 2001): prepared for testimony relating to the data aspect of the partisan gerrymandering claim; the claim was dropped during the trial and testimony was not offered. TEXAS CONGRESSIONAL, (*Balderas vs. Texas*, October 2001): testified as an expert witness as to partisan fairness in the federal court action. TEXAS LEGISLATIVE, (November 2001): a similar fairness report was submitted for the proposed legislative lines but was rejected for timeliness. NEW MEXICO CONGRESSIONAL, (*Jepsen vs. Vigil*, December 2001): testified as an expert witness as to a Least Changes plan in the state court action; this was the congressional plan adopted by the Court. MARYLAND LEGISLATIVE, (*In the Matter of Legislative Redistricting*, May 2002): testified on behalf of Michael Steele, Chairman of Maryland Republican Party at the Special Master hearing; a new plan was ordered by the state Court of Appeals. OKLAHOMA CONGRESSIONAL, (*Alexander v. Taylor*, May 2002): testified as an expert witness as to partisan fairness in the state court action; the fairness analysis was cited by the Court. OHIO LEGISLATIVE, (*In re Legislative Apportionment Board*, October 2002): testified as an expert witness as to the suitability of data for racial bloc voting analysis. GEORGIA LEGISLATIVE AND CONGRESSIONAL, (*Georgia v. Ashcroft*, 2002, and *Larios v. Cox*, 2004): testified as expert witness as to population deviation in *Larios*. [Case styles may be working titles only.]

o Election Contests: actively worked with several election contest teams since 1980, including the 1980 Vermont U.S. Senate Recount, 1981 New Jersey Gubernatorial Recount, the 1982 Illinois Gubernatorial Recount, and the 2004 Washington Gubernatorial Recount.

o Election-related litigation: worked as a consultant to the litigation team in the Indiana voter identification (*Indiana Democratic Party v. Rokita*, S.D., Ind., 2006) and submitted an expert report.

o Redistricting Consulting (2000 census cycle): Redistricting projects for this cycle include several types of entities in at least the following states: Vermont, New Hampshire, Connecticut, New York, Pennsylvania, Ohio, Illinois, Wisconsin, Maryland, Virginia, South Carolina, Georgia, Florida, Tennessee, Oklahoma, Texas, New Mexico, Colorado, Nevada and California.

o Census Issues: Commented on several topics relating to the federal census and reapportionment and redistricting at numerous meetings over the past two decades, including panels at the National Conference of State Legislatures (NCSL)

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testimony before Congressional panels and comments as a speaker at other conferences. Worked as a consultant to the U.S. Census Monitoring Board, Congressional Members, periodically from 1995-2000.

- o Census Decennial Advisory Committee: Named to this federal panel by the Secretary of Commerce, August 2005. This panel of 20 organizations advises the Secretary and the Census Director on issues relating to the decennial census, including how the census affects the apportionment process and the districting phase thereof.

- o Election Assistance Commission: Part of a team that worked with the U.S. Election Assistance Commission to summarize the results of a nationwide survey of election-related information with respect to the 2006 General Elections. Status was as a subcontractor and the role was largely relating to the data conversion and/or preparation and formatting for reports. A follow-up contract was also involved for the preparation for the 2008 survey instrument.

CONGRESSIONAL COMMITTEES PROJECT: (1977-1989). Serving as Technical Consultant for the compilation of a database including, for every member, for every Congress since 1789, every assignment to Standing, Select and Special committees. This project continues under the direction of Professor Garrison Nelson, Ph.D., at the University of Vermont at Burlington. The end result is a multiple volume reference work published by Congressional Quarterly of Washington, DC. This project was the recipient of a grant from the National Science Foundation for the period of 1980 and 1981.

VERMONT POLIDATA: (1974 to 1989). This is an independent venture that had been a part-time activity for the past several years and is now a part of my full-time activity. This entails various projects which revolve around the political scene in Vermont and the political data relating thereto. For example, the study of legislative voting behavior results in annual summaries of voting record analyses for the participants, the aspirants, and the observers of the political scene. These studies range from the individual to the collective perspective, from a mere recitation of the member's record to a comparative analysis on a range of issues or a rating of the member's record from the viewpoint of the Chief Executive, or an interest group. The name was changed to Polidata during the 1990 redistricting cycle as more work was focused on states other than Vermont.

Other research studies include election analysis, historical trends in the state and the establishment of large data systems. For example, the establishment of a complete system

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for the efficient implementation of the election process for the office of the Secretary of State in Vermont (the Uniform System of Election Recording, or USER). Also, the creation of a reapportionment analysis system for the Vermont General Assembly.

VERMONT ELECTIONS PROJECT: (1972-1989). This project also involved large data systems and revolved around the computerization of town-level election data for the state of Vermont for the period from 1828 to date. Contemporary data have been published in the form of *Primary and General Elections, Vermont, (for 1978, 1980 and 1982)*, published with the cooperation of the Secretary of State. Assignment here was Analyst and Editor.

PUBLICATIONS:

POLIDATA ® DEMOGRAPHIC AND POLITICAL GUIDES:

POLIDATA publishes volumes for both national and state markets. A few state series have covered volumes for every state, a few have only seen volumes for a handful of states completed to date. Series and titles published include:

National Publications:

Election Reports:

PRESIDENTIAL RESULTS BY CONGRESSIONAL DISTRICT, 1992: 2 volumes; 1996: 1 volume; 2000: 1 volume; 2004: 1 volume

PRESIDENTIAL ELECTION, 1996: 3 volumes

PRESIDENTIAL ELECTION, 2000: 2 volumes

PRESIDENTIAL ELECTION, 2004: 2 volumes

CONGRESSIONAL VOTE, DISTRICTS BY COUNTY: 1992; 1996; 1 volume each

Demographic Reports:

DEMOGRAPHIC GUIDE TO THE U.S, STATES & COUNTIES, 2000 Census

DEMOGRAPHIC GUIDE TO THE U.S., DISTRICTS OF THE 108TH CONGRESS; updated for the 109th and the 110th Congresses

POPULATION ESTIMATES, STATES AND COUNTIES: annually from 1995 to 2006

DEMOGRAPHIC BASE MAPS, COUNTY-BASED REGIONS

Political Reports:

APPORTIONMENT IN 2000, NATIONAL SUMMARY: annually from 1998 to 2000

APPORTIONMENT IN 2010, NATIONAL SUMMARY: annually from 2003

State Publications:

DEMOGRAPHIC ATLASES: 25 states for the 1990 census

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DEMOGRAPHIC GUIDES: 25 states for the 1990 census; 50 for the 2000 census

DEMOGRAPHIC AND POLITICAL GUIDES: 3 states for the 1990 census

DEMOGRAPHIC ABSTRACTS: customized for a county for the 1990 census

POLITICAL GUIDES: 1 state

POLITICAL ATLASES: 1 state

ELECTION YEARBOOKS: 5 states through 1998

ELECTION HISTORIES: 48 states through 2003-2004

POLITICAL HANDBOOKS: 50 states for the 2000 census

POLIDATA ® POLITICAL DATA ANALYSIS:

During the period from 1989 to date, most papers have been prepared directly for clients. However, some material has been published via Press Releases or as part of Remarks, Testimony. A few examples of material publicly available are listed below. Many are available at the website www.polidata.org. A few are annual releases, notably relating to apportionment projections; see the News page for more information: www.polidata.org/news.htm.

February 1, 2006: *Jackson v. Perry et al., Amicus Brief in consolidated cases 05-204, 05-254, 05-276 and 05-439*. Submitted by Alan Heslop, Ph.D., et al. Coauthored brief for the U.S. Supreme Court in this case.

December 6, 2005: *The Impact of Citizen Apportionment*. Written testimony to accompany appearance as a witness before the U.S. House Committee on Government Reform. This was an exploratory hearing reviewing potential impacts of such a measure.

March 25, 2005: *Presidential Results by Congressional Districts, 2004. Preliminary Summary*. Published by Polidata. These results also published in the *Cook Political Report*, a national political newsletter and the *Almanac of American Politics*, published by National Journal.

December 10, 2004: "*Substantial Political Consequences, A Practitioner's Perspective on Redistricting*". An article published in *Extensions*, by the Carl Albert Center at the University of Oklahoma.

September 4, 2004: *The Constitution, The Census & Overseas Americans*. Written testimony prepared for the U.S. House Committee on Government Reform.

March 4, 2004: *Apportionment and Fair Representation, When Equal Population Isn't Fair or Equal*. Written comments prepared for the Bureau of the Census Symposium, America's

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Scorecard, The Historic Role of the Census in an Ever-Changing Nation, held March 4-5 in Washington, DC.

March 17, 2001: *Presidential Results by Congressional Districts, 2000. Preliminary Summary.* Published by Polidata. These results also published in the *Cook Political Report*, a national political newsletter.

March 4, 2001: *Electoral Votes by Congressional District, 1952-2000.* Paper made available on the internet for political observers.

December 28, 2000: *Apportionment Review, 2000.* Paper made available on the internet for political observers.

April 28, 2000: Selected papers presented to the Redistricting Conference of the Republican National Committee, held in Washington, DC.

January 5, 2000: *Shifts in Congressional Seats: Reapportionment and the 2000 Census.* Television show aired on C-SPAN, one of two guests discussing the Apportionment of Seats in the U.S. House following the 2000 Census.

December 29, 1999: *New Population Estimates Confirm Power Shift in U.S. House; Colorado picks up a seat; Illinois drops a seat; Georgia picks up two seats.* Press Release on Apportionment of the U.S. House following the 2000 Census, with 1999 Estimates and Projections for 2000 by POLIDATA.

October 15, 1999: *An Update on the Census Case; Commerce General Counsel Responds to Congress.* Press Release on the Census Case, an update on the letter from the General Counsel of the Department of Commerce.

October 1, 1999: *An Update on the Census Case; Census Monitoring Board Congressional Members Release Report.* Press Release on the new report analyzing statistical problems with the Bureau's methodology.

January 28, 1999: *Redistricting is An Apportionment Purpose: The Census Case.* Press Release on the impact of the Census Case.

January 26, 1999: *Congressional Reapportionment: Winners and Losers in 2000; New Set of Population Projections Adds Colorado as a Winner.* Press Release on the Apportionment of

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the the U.S. House following the 2000 Census, with 1998 Estimates and Projections for 2000 by POLIDATA. [Updated following the Census Case on January 25, 1999.]

January 21, 1999: *Congressional Reapportionment: Winners and Losers in 2000; New Set of Population Projections Adds Colorado as a Winner*. Press Release on the Apportionment of the the U.S. House following the 2000 Census, with 1998 Estimates and Projections for 2000 by POLIDATA.

December 31, 1998: *Congressional Reapportionment: Winners and Losers in 2000; Population Estimates for July 1998 Detail Seats Shifts; Adjustment Still an Issue*. Press Release on the Apportionment of the the U.S. House following the 2000 Census, with 1998 Estimates.

November 3, 1998: *Brief of Amicus Curiae in Support of Appellees, U.S. Department of Commerce v. U.S. House of Representatives*, U.S. Sup. Ct., No. 98-404. co-authored with Mark Braden and Suvarna Rajguru.

February 8, 1998: *Congressional Reapportionment: Winners and Losers in 2000; Latest Population Estimates Detail Seats Shifts; Adjustment Still an Issue*. Press Release on the Apportionment of the the U.S. House following the 2000 Census, with 1997 Estimates.

January 1998: *Vote Goals, Projections of Registration and Turnout for 1998: with selected examples*. Political Analysis Notes, 98-1, Polidata, Lake Ridge, VA. An occasional newsletter.

October 1997: *Vote Goals, How Many Votes Do You Need to Win? Steps in Projecting Your Votes for Your District*. Political Analysis Notes, 97-3, Polidata, Lake Ridge, VA. An occasional newsletter.

September 16, 1997: *Comments on Race and Hispanic Origin Questions for the Census 2000 Dress Rehearsal*. Comments submitted to the Department of Commerce for the record.

September 12, 1997: *Remarks; 2000 Census Advisory Committee*. Washington, DC. Remarks on census adjustment through sampling and estimation submitted for the record.

September 1997: *Basics of the Census: Adjustment, Apportionment and Redistricting; Why do we even bother to count every person in America?* Political Analysis Notes 97-2, Polidata, Lake Ridge, VA. An occasional newsletter.

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September 1997: *Was 1996 a Reprise of 1992? New Study Summarizes Results for States, Counties, Districts and Media Market*. Political Analysis Notes 97-1, Polidata, Lake Ridge, VA. An occasional newsletter.

August 7, 1997: *Remarks; Reapportionment Task Force, National Conference of State Legislatures*. Philadelphia, PA. Remarks on census adjustment through sampling and estimation submitted for the record.

September 26, 1997: *Remarks; 2000 Census Advisory Committee*. Washington, DC. Remarks on census adjustment through sampling and estimation submitted for the record.

September 5, 1996: *Confidence in Population Estimates from Sampling and Estimation Based upon the 1995 Test Census: A Preliminary Assessment*. Polidata, Lake Ridge, VA. An analysis of data from the 1995 Test Census and statistical error at various levels of census geography.

July 28, 1996: *Remarks; Reapportionment Task Force, National Conference of State Legislatures*. St. Louis, MO. Remarks on census adjustment through sampling and estimation submitted for the record.

??? 1994, Testimony before the Government Operations Committee, U.S. Senate, Washington, DC. Testimony on census adjustment and the Constitution.

October 5, 1992: *Jurisdictional Statement in Fund for Accurate and Informed Representation, Inc. (FAIR) v. Weprin*, U.S. Sup. Ct., No. 92-____. co-authored with Mark Braden.

POLITICS IN AMERICA, various volumes, Congressional Quarterly, Washington, DC. POLIDATA was the compiler of the Presidential Election Results by Congressional Districts (District Vote) which appear in selected editions of this biennial volume.

COMMITTEES IN THE U.S. CONGRESS, 1947-1992, VOLUMES 1 AND 2, with Garrison Nelson (as Technical Advisor), Congressional Quarterly, 1993 and 1994, Washington, DC.

PRE-1990 PUBLICATIONS:

"The 1986 Election in Vermont", with Frank M. Bryan, *Vermont History*, Fall 1988, Montpelier, Vt.

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"Congressional Seat Shifts in the 1990 Reapportionment" and "How Congressional Seats are Assigned to States", REDISTRICTING LINES Newsletter, Volume 2, Number 1, Spring 1988, REPUBLICAN NATIONAL COMMITTEE, Washington, DC.

REPUBLICAN ALMANAC SERIES, 1987-1988: series editor for a series including *Republican Almanac, 1987* (co-editor); and ELECTION SUMMARY, 1986-1987; Republican National Committee, Washington, DC.

STATE SUMMARY BOOKS, 1986, editor, Republican National Committee, Washington, DC.

"Impact of Gerrymandering on Marginal Elections", REPUBLICAN NATIONAL LAWYERS ASSOCIATION Newsletter, Volume 3, Number 1, Winter 1987, Washington, DC.

"Lawmakers Should Not Treat Election of Governor Too Lightly", Vermont Perspective editorial, *BURLINGTON (Vt.) FREE PRESS*, January 8, 1987, page 8A.

1984-1985 Election Summary, editor, Republican National Committee, Washington, DC.

"The 1984 Election in Vermont", with Frank M. Bryan, *Vermont History*, Fall 1985, Montpelier, Vt.

1985 Republican Almanac, editor, Republican National Committee, Washington, DC.

STATE SUMMARY BOOKS, 1984, editor, Republican National Committee, Washington, DC.

1984 Republican Almanac, co-editor, Republican National Committee, Washington, DC.

"The 1982 Election in Vermont", with Frank M. Bryan, *Vermont History*, Fall 1983, Montpelier, Vt.

Primary and General Elections, Vermont, 1982, editor, Vermont Secretary of State, Montpelier, Vt.

"The Luck of the Draw: The Classification of Senators from Vermont", *Vermont History*, Summer 1981, Montpelier, Vt.

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Primary and General Elections, Vermont, 1980, editor, Vermont Secretary of State,
Montpelier, Vt.

Primary and General Elections, Vermont, 1978, editor, Vermont Secretary of State,
Montpelier, Vt.

PROFESSIONAL AFFILIATIONS:

Vermont Bar Association.

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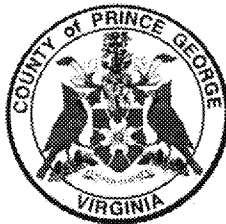
PERSONAL:

Born 1952; married; two children.

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COUNTY OF PRINCE GEORGE, VIRGINIA

Percy C. Ashcraft
County Administrator
Phone: (804) 722-8600
Facsimile: (804) 732-3604



BOARD OF SUPERVISORS
Alan R. Carmichael
Donald Hunter
William A. Robertson, Jr.
Jerry J. Skalsky
T. J. Webb

July 25, 2016

Ms. Karen Humes
Chief Population Division
U.S. Census Bureau
Room 6H174
Washington, DC 20233
BY U.S. MAIL AND E-MAIL TO POP.2020.Residence.Rule@census.gov

RE: Support for Inmate in Prison and Jails
Proposed 2020 Census Residence Rule
"Comment Submission"

Dear Ms. Humes:

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).

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).

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

P. O. Box 68, Prince George, Virginia 23875-0068 Phone (804) 722-8600/Fax (804) 732-3604
<http://www.princegeorgecountyva.gov>

Ms. Karen Humes

July 25, 2016

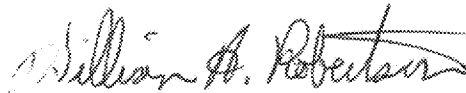
Page Two

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.

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.

Thank you for your consideration of the County's position in this matter.

Sincerely,



William A. Robertson, Chairman
Prince George County Board of Supervisors

WAR:cc

Enclosures

C: Board of Supervisors
Mr. Percy C. Ashcraft

Attachment A

WHEREAS, children who are kindergarten ready are more likely to make the most of their educational experience; and

WHEREAS, a successful kindergarten experience is the start to a successful completion of high school and preparation for a successful career.

NOW, THEREFORE, BE IT RESOLVED, that the County Board of Supervisors of Prince George recognizes the importance of early childhood education to children's future success in school and in life; and

THEREFORE, BE IT FURTHER RESOLVED, that the County Board of Prince George commends the teachers, volunteers, parents, community leaders and students involved in early childhood education for their contributions.

R-16-060B

C-4.

RESOLUTION; APPROPRIATION (\$443,996 MACHINERY AND TOOLS TAX REBATE)

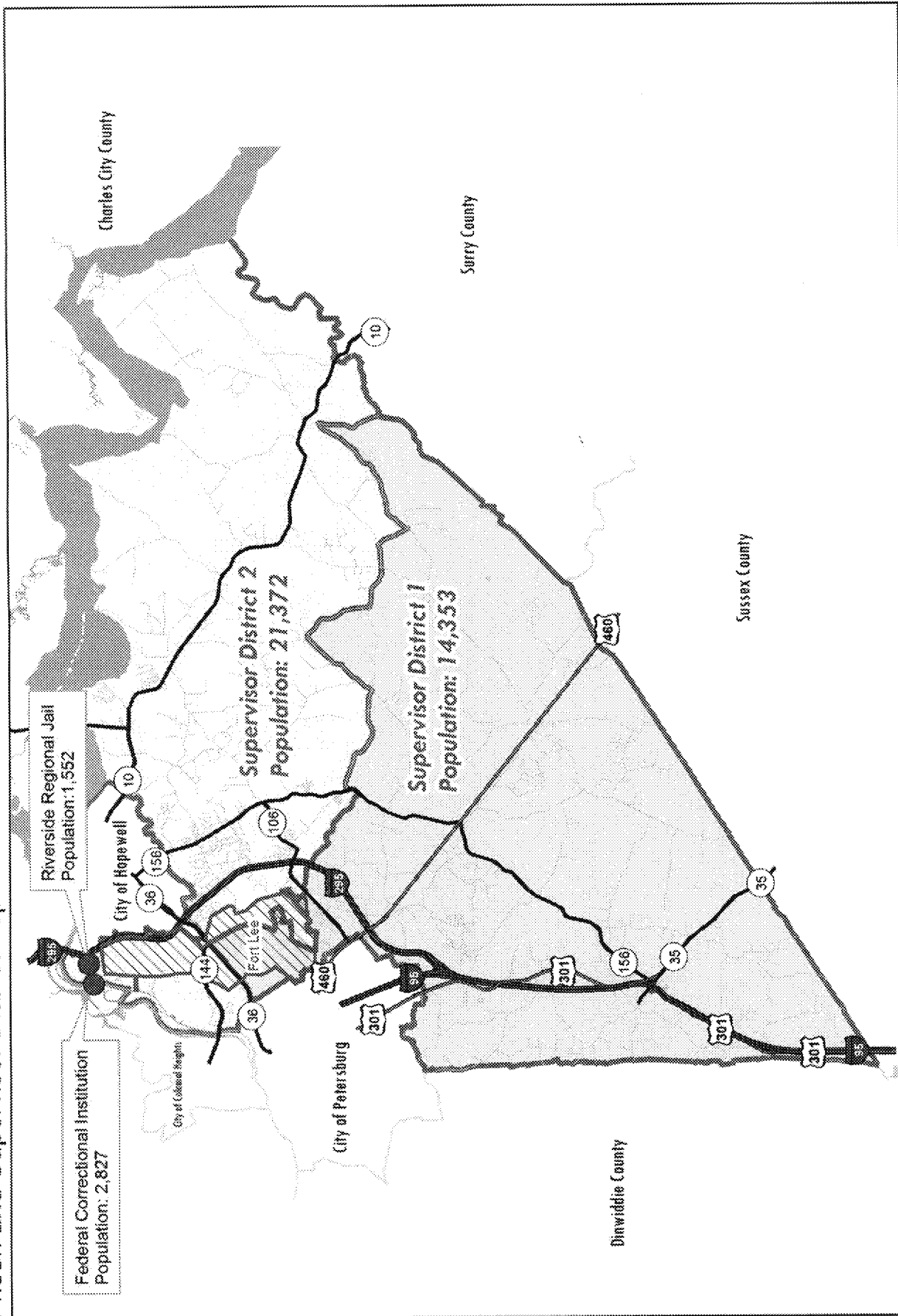
BE IT RESOLVED That the Board of Supervisors of the County of Prince George this 12th day of July, 2016, does hereby authorize the following increase of funds within the 2015-2016 Budget, such line items increased as follows, which monies to be expended in accordance with Section 2-2 (11) of the County Code for purposes authorized and approved by the Board of Supervisors of the County of Prince George:

<u>FUND/ORGANIZATION</u>		<u>AMOUNT</u>
<u>Expenditure:</u>		
0215-08-301-2151-45660	Economic Dev. Machinery & Tools Tax Rebate	\$443,996
<u>Revenue:</u>		
0100-10-501-8103-311401	General Fund: Machinery & Tools Tax	\$443,996

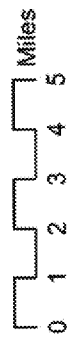
C-5. Consideration of Supporting the Census Bureau's Proposed Rule to Count Prisoners in Federal and Regional Correction Facilities as Prince George Residents in the 2020 Census. The Board agreed by consensus to support the Census Bureau's proposed rule to count prisoners in federal and regional correction facilities as Prince George County residents in the 2020 Census.

R-16-060C

Prison and Supervisor District Populations



July 8, 2016



American Counties By the Ratio of Incarcerated Black People Versus Non Incarcerated Black People

Ratio Category	# of Counties	# of States Containing Those Counties
0-1	15	8
1.01-5	194	26
5.01-10	55	23
More than 10	208	34

American Counties By the Ratio of Incarcerated Latino People Versus Non Incarcerated Latino People

Ratio Category	# of Counties	# of States Containing Those Counties
0-1	50	17
1.01-5	141	31
5.01-10	39	16
More than 10	41	16

PRISON POLICY INITIATIVE

PETER WAGNER

Executive Director

main: (413) 527-0845

direct: (413) 961-0002

pwagner@prisonpolicy.org

69 Garfield Ave, Floor 1
Easthampton, Mass. 01027

www.prisonpolicy.org

September 1, 2016

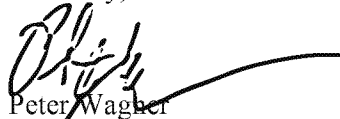
Karen Humes
Chief, Population Division
U.S. Census Bureau, Room 6H174
Washington, DC 20233

Via email at POP.2020.Residence.Rule@census.gov

Dear Ms. Humes,

Please find enclosed the Prison Policy Initiative's Comment on the Census Bureau's Proposed 2020 Residence Criteria and Residence Situations, 81 FR 42577 (June 30, 2016), consisting of a fact sheet summary and full comment letter. Thank you for your time and consideration.

Sincerely,



Peter Wagner
Executive Director

Counting Incarcerated People At Home in the Census

A Prison Policy Initiative fact sheet

PRISON
POLICY INITIATIVE
<http://www.prisonpolicy.org/>
(413) 527-0845

Misconceptions about the realities of modern mass incarceration permeate discussions about the usual residence of incarcerated people. While the Census Bureau proposes to continue to count incarcerated people at their correctional facility for purposes of the census, an analysis of the interplay of time served, prison locations, community ties, and the usual residence rule shows that incarcerated people should in fact be counted at their home addresses.

People who are incarcerated on Census day are at home most of the time:

- Many people in jails are away from home for a few days or less.
- People sentenced in Rhode Island to the state's correctional facilities generally serve only 99 days.
- Nationally, people incarcerated in state prisons have been away from home for two years.

Regardless of sentence length, **people in prisons don't reside (eat and sleep most of the time) at the particular correctional facility that they happen to be at on Census day:**

- 75% of people serve time in more than one prison facility.
- 12% of people serve time in at least 5 facilities before returning home.
- Most people incarcerated in New York State have only been at their current prison for 7 months. (Other states report similar figures.)

While they are being shuffled between facilities, incarcerated people maintain a usual residence elsewhere; **their home remains the only actual stable address.**

- Nearly all incarcerated people return home after release from correctional facilities.

For other groups who are away from home, the Bureau counts them at home because for those groups, the Bureau looks not just at time away from home, but at a person's ties to home when **determining their usual residence.**

- The Census Bureau relies on family and community ties to count other people at home (e.g., truck drivers, boarding school students, Congress, military personnel), even when they are away for long periods of time, but fails to apply the same rules to incarcerated people.

The Census Bureau must modernize its residence criteria and count incarcerated people at home in the 2020 Census.

Prison Policy Initiative & Dēmos Comment on the Census Bureau's Proposed 2020 Residence Criteria and Residence Situations, 81 FR 42577 (June 30, 2016)

Introduction

The Prison Policy Initiative and Dēmos appreciate this opportunity to respond to the Census Bureau's Proposed 2020 Census Residence Criteria and Residence Situations.¹ We acknowledge and thank the Census Bureau for its increased transparency and for the two technical improvements the Bureau is making to its data publication regime, but we must urge the Census Bureau to update the residence criteria and residence situations to count incarcerated people at home.

We believe that the Bureau's proposal to again count incarcerated people as residents of the correctional facilities undermines the accuracy of the decennial Census, and is in fact inconsistent with the Bureau's current and historical application of the residence rule. We hope that the facts we present in this letter will round out the Bureau's research on the matter and lead to a decision to enumerate incarcerated persons at their home addresses, which will result in a much more accurate Census.

Treating a prison as a "usual residence" reflects a fundamental misunderstanding of the nature of incarceration. The critical issue is that while a prison itself seems permanent, the people located there on any given day are not. We will discuss these facts in some depth and then contrast how the Census Bureau treats incarcerated people with other populations who may eat and sleep in one location but who are rightly considered residents of other locations. The Bureau's misapplication of the residence rule to incarcerated people skews our democracy through prison gerrymandering, disproportionately impacting our already-underserved minority communities and undermining the accuracy of the Census. The Prison Policy Initiative has been working to end this prison gerrymandering for 15 years. Based on the facts we present here, the Bureau should count incarcerated people at home in the 2020 Census.

¹ The Bureau has shifted from using the term "rule" to "criteria" between the time it published its 2015 and 2016 Federal Register notices regarding the rule/criteria for the 2020 Census; in this comment we use the terms interchangeably.

1. Most incarcerated people do not in fact eat and sleep “most of the time” at the correctional facility where they happen to be located on Census Day

The Census Bureau proposes to conclude that the prison cell where a person is located on Census Day is their usual residence, in other words, that is where they eat and sleep *most of the time*. But such a conclusion ignores the realities of incarceration in our country.

There are two principal groups of incarcerated people: people confined in local jails and people confined in state or federal prisons.

People in Jails

People confined in jails account for about a third² of incarcerated people. Most are awaiting trial; the rest are serving short sentences of typically no more than a year.

The average time served in local jails is 23 days.³ There is no national figure on the median time served in jails, but it is likely far shorter given that many people spend only hours or a few days in jail. County level data⁴ confirms this:

² For a helpful overview of the different types of correctional systems in this country along with their respective sizes, see Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2016*, Prison Policy Initiative at <http://www.prisonpolicy.org/reports/pie2016.html>

³ Vera Institute of Justice, p.10, “Incarceration’s Front Door: The Misuse of Jails in America” (2015), available at, <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america> and Bureau of Justice Statistics, Table 9, “Census of Jails: Population Changes, 1999 – 2013” (2015), available at, <http://www.bjs.gov/content/pub/pdf/cjpc9913.pdf>

⁴ Numbers are left blank for each specific calculation that is unavailable in the county’s data. Allegheny County, PA: The Allegheny County Department of Human Services, p.11, “Changing Trends: An Analysis of the Allegheny County Jail Population” (2014), available at <http://acdhs.barkandbyte.info/wp-content/uploads/2016/06/Changing-Trends-An-Analysis-of-theACJ-Population-FINAL.pdf>; Cook County, IL: p.7, “Population Dynamics and the Characteristics of Inmates in the Cook County Jail” (2012), available at http://ecommons.luc.edu/cgi/viewcontent.cgi?article=1000&context=criminaljustice_facpubs; Grafton County, NH: Policy Research Shop, Nelson A. Rockefeller Center at Dartmouth College, p.11, “PRS Policy Brief 1415-10, The Corrections System in New Hampshire: State and County Operations and Expenditures”, (2015) available at https://rockefeller.dartmouth.edu/sites/rockefeller.drupalmulti-prod.dartmouth.edu/files/prs_brief_1415-10.pdf; King County, WA: BERK, p.13, “Final Report: Analysis of Statewide Adult Correctional Needs and Costs” (2014), available at http://www.ofm.wa.gov/reports/Correctional_Needs_and_Costs_Study2014.pdf; Multnomah County, OR: Multnomah County Sheriff’s Office, p.12, “Monthly Jail Report, July 2016” (2016), available at https://www.mcso.us/profiles/pdf/jail_stats.pdf; New York City, NY, Kaba et al. p.1, “Disparities in Mental Health Referral and Diagnosis in the New York City Jail Mental Health Service”, *American Journal of Public Health*, (2015), available at <http://www.cochs.org/files/mental-health/menatl-health-disparities.pdf>.

County	Average (days)	Median (days)	Mode (days)
Allegheny County, PA	60	10	
Cook County, IL	54	12	
Grafton County, NH		6	
King County, WA	21	2	1
Multnomah County, OR		2	
New York City, NY		9	

Similarly, the American Jail Association asserts that “75% of people who come in the jails in this country are normally released within the first 72 hours.”⁵

According to John Clark, a jails expert at the Pretrial Justice Institute, there are two main causes of the difference in the length of stay reported by jails (for example, compare King and Allegheny in the chart above): 1) some of the variation among jails is the result of policing, judicial and correctional policy, and 2) some jails do not include people who spend only a few hours in the jail in their admission figures. But whether one uses the 23-day estimated average, or the more relevant ⁶ 2-12 day median figures, it is clear that a jail cell is not a usual residence.⁷

People in Prisons

The traditional line between prisons and jails is that prisons are for sentences of at least a year. But the reality of incarceration is that this population’s presence in particular prisons is often more temporary and transient than that official distinction with jails implies. First, the majority of people released from state prisons in 2014 served less than a year.⁸ And most people in state prisons do

⁵ Testimony of Vice President of the American Jail Association, Assistant Sheriff Mitch Lucas, Workshop of Reforming Inmate Calling Services Rates – July 10, 2013, video available at (statement is around the 3:53:40 mark):

https://www.youtube.com/watch?feature=player_detailpage&v=zBfIganIF1s - t=14020s

⁶ We note that Census Bureau staff at the July Quarterly Program Management Review repeatedly referred to statistics about time served in various kinds of correctional facilities in terms of averages. We believe that where available, the median is a more appropriate figure to use because it more accurately reflects the reality of the typical incarcerated person; averages are significantly distorted by the very small number of incarcerated people who are serving very long sentences.

⁷ This reality is no doubt why the Census Bureau intended to count the jail population at home in the 1990 Census. See Charles D. Jones, *Enumeration and Residence Rules for the 1990 Census*, 1990 Decennial Policy Memorandum No. 12, October 15, 1987 available at http://www.prisonpolicy.org/scans/Census_1990_Policy_Memo_No_12.pdf. We do not know why the Bureau reversed this decision before the 1990 Census.

⁸ Analysis by Peter Wagner of the National Corrections Reporting Program, DS3: Prison Releases, public-use dataset of time served by inmates released from state prisons in 2014. 53.8% served less than one year, 20.2% served 1-1.9 years, 17.3% served 2-4.9 years, 5.6% served 5-9.9 years and 3.1% served 10 years or more. Of course, the people

not stay in any given facility for long. Incarcerated people are transferred frequently between facilities, at the discretion of the administration. Nearly 75% of incarcerated people are moved between facilities before they go back home.⁹

The operative fact is that people found in state or federal prisons on Census Day will not have been at that facility for very long, and will in all likelihood leave it soon. In fact, 30% of people in federal and state prisons have been at the current facility for less than six months. Half have been there for under a year.¹⁰

Looking at this from another angle, the length of stay at a given facility for a typical incarcerated person will vary somewhat from state to state, but it is a typically very short period. While most states do not routinely publish this data, we were able to obtain it for a few states. In Georgia the median length of stay is 9 months¹¹; and in New York it is 7.1 months.¹² In Indiana and Massachusetts, in most of the correctional facilities, the stay at that particular facility was less than a year, and in a third of the facilities in each state, the length of stay was less than 6 months.¹³ We understand that the Bureau has received a comment letter from the Vera Institute of Justice reporting a similar finding for Washington, Oregon and Nebraska.

The frequent transfer between facilities, combined with the relatively short total time away from the individual's real home,

found in a prison on a given day are serving longer sentences than people released in a given year, but the difference is small; even among people who are still incarcerated, almost half have been incarcerated for less than two years. (Of people incarcerated in state prisons on December 31, 2014, 30.9% had served under 1 year, 16.7% had served between 1 and 1.9 years, 22.2% had served 2 to 4.9 years, 14.4% served 5 to 9.9 years, and 15.8% having served at least 10 years. Source: Analysis by Peter Wagner of the National Corrections Reporting Program, DS4: Year-End Population.)

⁹ Bureau of Justice Statistics, p. 20 *Sexual Victimization Reported by Former State Prisoners*, 2008, ("During their period of incarceration, inmates typically served time in more than one facility." "Three-quarters of former inmates had served time in more than one prison facility; nearly 1 in 8 had served time in 5 or more prison facilities before their release"), available at <http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>

¹⁰ Email from Allen Beck to Peter Wagner, July 20, 2016. Dr. Beck's figures were based on the National Inmate Survey 2011-12 data collection in state and federal prisons.

¹¹ Georgia Department of Corrections, *Inmate Statistical Profile: All Active Inmates*, p. 35 and 39, available at http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_all_inmates_2016_06.pdf.

¹² State of New York Department of Correctional Services, *HUB SYSTEM: Profile of Inmate Population Under Custody on January 1, 2008*, pp 36-38, available at http://www.doccs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf.

¹³ In both Indiana and Massachusetts, time served at current facility is only available at the more granular level of individual facilities and was not available to us system wide. The data we received upon request from Indiana is available at http://www.prisonpolicy.org/scans/Indiana_Facility_LOS_CY2015.pdf. The Massachusetts data was prepared by Jessica Simes, a Research Intern at the Massachusetts Department of Correction in August 2011 and is available at <http://scholar.harvard.edu/files/jsimes/files/simes-los2011-brief.pdf>

makes it impossible to conclude that the facility where someone is incarcerated in on Census Day should be considered that person's usual residence, especially when compared to their home address.

Apart from how short a time any given person spends at any given facility, the total length of individual sentences of persons in state prisons is much shorter than is routinely assumed. Almost half of the people incarcerated at year end in 2014 had been in state prison for less than two years.¹⁴ And this population may be home quite soon as the median time served in state prison between the start of incarceration and first release is 16 months and the average is 29 months.¹⁵

The court in *Davidson v. City of Cranston*¹⁶ summarized the reality of residence for people incarcerated in both prisons and jails in one representative fact about the incredible churn through Rhode Island's combined state prison and jail system (ACI):

“[T]he median length of stay for those serving a sentence at the ACI is 99 days. The median stay for those awaiting trial is three days.”¹⁷

The Bureau's conclusion that the facility at which a person is detained on Census Day is their usual residence is thus unsupported by the facts on the ground and the factual realities of modern correctional systems.

2. Determining the true home residence of incarcerated persons: the Census Bureau's reliance on community ties in applying the residence rule compels it to count incarcerated people at home

If the prison where people happen to be located on Census Day is not their usual residence, then the question becomes: Do they have a usual residence elsewhere? What we do know for sure is this: While incarcerated people lack a permanent residence anywhere within the correctional system, they do maintain a usual residence at their home.

¹⁴ Almost a third (30.9%) have been incarcerated for less than a year and almost half (47.6%) have been incarcerated for less than two years. (National Corrections Reporting Program, public-use dataset DS4: Year-End Population, reporting time served in state prisons since incarcerated as of December 31, 2014.)

¹⁵ National Corrections Reporting Program: Time Served In State Prison, By Offense, Release Type, Sex, And Race, 2009 Table 8 available at <http://www.bjs.gov/content/data/ncrpt09.zip>

¹⁶ The City of Cranston used Census data for redistricting its City Council and School Committee following the 2010 Census and in so doing, allocated the entire incarcerated population of Rhode Island's Adult Correctional Institutions (ACI) as "residents" of one ward of the City.

¹⁷ *Davidson v. City of Cranston*, p.3 Memorandum and Order (May 24,2016), (USDC Docket 1:14-cv-00091 D. Rhode Island)

It is evident from the Bureau's application of the usual residence rule to different living situations that the Bureau factors in not just time at a location, but a person's enduring family and community ties to a location, in determining his or her usual residence. In proposing to count incarcerated people at the location of the facility, the Bureau weighs the length of time incarcerated people spend away from home too heavily and ignores very real family and community ties. Other similarly-situated people are counted at home, while incarcerated people are strangely singled out to be counted in the wrong place.

Even if a person who is incarcerated happens to spend most of the year, or decade even, at the facility where they happen to be on Census Day (which is decidedly not the case for vast numbers of incarcerated persons), counting them at home would be consistent with the way the Bureau applies the residence rules to people in other situations. Much like other people away from home on Census Day, a person who is incarcerated will, under ordinary circumstances, return home.¹⁸ As we will explain, the Census considers other factors for other groups in deciding where someone's residence is, and should do the same for people who are incarcerated.

Boarding school students¹⁹

As the Bureau explained in its June 2016 notice, "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)."²⁰ The Bureau should consider that similar familial ties

¹⁸ A study conducted by the Brennan Center for Justice at NYU School of Law found that people overwhelmingly went home upon release. The conclusion was based on "interviews with criminal justice officials and data users of wide-ranging expertise" including "Jim Austin, *JFA Institute*; Allen Beck, *Bureau of Justice Statistics*; Jim Beck, *U.S. Parole Commission*; Eric Cadora, *Justice Mapping Center*; William Cooper, *FairData 2000*; Ryan King, *The Sentencing Project*; Jeremy Travis, *John Jay College*; Bruce Western, *Princeton University*; and Reggie Wilkinson, *Ohio Department of Rehabilitation and Correction*", as well as a review of various states' Department of Corrections procedures, ("*Home*" in *2010: A Report on the Feasibility of Enumerating People in Prison at their Home Addresses in the Next Census*, available at https://www.brennancenter.org/sites/default/files/legacy/d/download_file_36223.pdf)

¹⁹ To answer the inevitable question about distinguishing boarding school students and incarcerated people from college students: even college students living on campus are counted in their dorms not by virtue of being found in a group quarter on Census Day, but by the application of the criteria discussed in this section. That is exactly how college students living in off-campus housing are counted too – where they live.

²⁰ Proposed 2020 Census Residence Criteria and Residence Situations, 81 FR

bring incarcerated people back to their home after incarceration. Incarcerated people similarly depend on family members for financial support.²¹ And in fact, incarcerated people are far more likely to return home²² than boarding students, most of whom move on to college within a few short months after graduation.²³

Based on the factors that the Census Bureau has identified as being significant, the living situations of boarding school students and incarcerated people are starkly similar. *We are concerned that the Bureau's current lack of explanation for how it applies the residence rule differently to incarcerated people may be attributed to a double standard, given the fact that incarcerated people are generally poorer, and more likely to be people of color.*

Deployed military

The Bureau recently proposed to change the way it counts deployed military to reflect the fact that even though they are deployed into locations away from home for long periods of time (as long as 15 months at a time during the surge in Iraq),²⁴ they

42577, 42580 (June 30, 2016)

²¹ Incarcerated people are poor before they go to prison (with a median annual income of \$19,185 prior to incarceration) and make little to no wages while they are incarcerated. As a result, they rely heavily on their families to meet the costs of incarceration. One study surveyed 368 family members in 60 cities nationwide and found that almost half of the families surveyed had trouble meeting basic food (49%) and housing (48%) needs because of the financial costs associated with having an incarcerated loved one. Beyond paying for lingering court fees, and the cost of phone calls to stay in touch, families bear most of the cost of basic necessities that incarcerated people need to purchase through commissaries, which alone amounts to \$1.6 billion each year. (For the pre-incarceration incomes of incarcerated people, see Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, Prison Policy Initiative, July 2015, available at <http://www.prisonpolicy.org/reports/income.html> , for the wages of incarcerated people, see Peter Wagner, *The Prison Index*, Prison Policy Initiative, April 2003, at fn 531 available at <http://www.prisonpolicy.org/prisonindex/prisonlabor.html#line531> , for the size of the prison commissary market, see Stephen Raher, *Prison commissary giants prepare to merge*, Prison Policy Initiative, July 5, 2016 available at <http://www.prisonpolicy.org/blog/2016/07/05/commissary-merger/> , and for the burden on families see *Who Pays: The True Cost of Incarceration on Families*, by Ella Baker Center, Forward Together and Research Action Design, September 2015, available at <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> .

²² 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*, available at

https://www.brennancenter.org/sites/default/files/legacy/d/download_file_36223.pdf

²³ LatinoJustice PRLDEF, August 22, 2016, p.4, Comment on the 2020 Decennial Census Residence Criteria and Residence Situations.

²⁴ Currently, the typical deployment is 9 months, but that has varied over time. Between September 2001 and December 2010, the average was 7.7 months. In 2007, during the surge in Iraq, deployments were 15 months, and this was reduced to 12 months in 2008, and to 9 months in 2011. See *Assessment of Readjustment Needs of Veterans, Service Members, and Their Families* Committee on the Assessment of the Readjustment Needs

should still be counted at home, reasoning that: “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.”²⁵ Following this same logic, people who are incarcerated in a correctional facility on Census Day should be counted at home, where they typically return after a short period of incarceration.

Visitors

Despite having some interactions with the community they are temporarily visiting, visitors are counted at home, where they have strong community ties. Incarcerated people have similarly strong community ties to their usual residence, but have no ties whatsoever to the location where they are incarcerated. Yet for some reason, the Bureau’s proposed rule counts incarcerated people at their temporary location where they have no family or community ties.

Todd Breitbart, a redistricting expert, contrasted these comparable populations in his 2015 comment to the Census Bureau.²⁶

of Military Personnel, Veterans, and Their Families; Board on the Health of Select Populations; Institute of Medicine. Academies Press (US); 2013 Mar 12, available at: <http://www.ncbi.nlm.nih.gov/books/NBK206861/>; *U.S. Is Extending Tours of Army*, available at <http://www.nytimes.com/2007/04/12/world/middleeast/12military.html> ; *President Bush Announces Shorter Deployments*, available at https://www.army.mil/article/8416/President_Bush_Announces_Shorter_Deployments/ ; and *Army to reduce deployment time in war zone to 9 months*, available at <http://www.cnn.com/2011/US/08/05/army.afghan.deployment/> . For historical comparison, the deployment period during the Vietnam War (1955-1975) was 12 months, during the Korean War (1950-1953) a tour of duty was nine to 12 months for combat troops and 18 months for rear-echelon troops, and during World War II (1939-1945) US troops served overseas for an average of 16 months. See *U.S. Forces Out of Vietnam: Hanoi Frees the Last P.O.W.*, available at <http://www.nytimes.com/learning/general/onthisday/big/0329.html> - article ; *Korea’s ‘Invisible Veterans’ Return to an Ambivalent America*, available at http://www.koreanwar-educator.org/topics/vfw/p_koreas_invisible_veterans.htm ; and the *National WWII Museum’s By the Numbers: The US Military*, available at <http://www.nationalww2museum.org/learn/education/for-students/ww2-history/ww2-by-the-numbers/us-military.html> .

²⁵ Proposed 2020 Census Residence Criteria and Residence Situations, 81 FR 42577, 42579 (June 30, 2016).

²⁶ Todd A. Breitbart, July 18, 2015, Comment on the 2020 Decennial Census Residence Rule and Residence Situations, Docket No. 150409353-5353-01

Visitors “are at their Census Day location voluntarily”, prisoners are not.

Visitors “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”, prisoners are not.

Visitors “use public services financed by local taxes: roads, public transport, police, ambulances and emergency rooms, building code enforcement, restaurant inspections, etc.”, prisoners do not.

Visitors “pay local taxes: sales taxes, for both groups; hotel occupancy taxes and, indirectly, real estate taxes, for travelers”, prisoners do not.

The same logic that leads the Census Bureau to conclude that visitors should be counted at home requires it to count incarcerated people at home as well.

Under the proposed residence rules, if a New Englander were to go down to Florida for several months to avoid winter weather, he would still be counted at home in the Northeast and not in the South. Snowbirds are not considered residents of Florida even though they have purposefully sought to live there, they eat there and sleep there, and they partake of activities afforded to residents of the communities to which they flock. By contrast, the Bureau proposes that the facility to which a correctional administrator has assigned an incarcerated person is that person’s residence, despite the fact that the incarcerated person often has no choice in the matter. On length of stay alone, incarcerated people and Snowbirds are nearly indistinguishable. Again, we reluctantly point out that this disparity in treatment appears to afford different treatment to groups that disproportionately come from communities of color as compared to other groups.

Other people obligated to be away from home

Other people who are required to be away from home so much that their home stops being the place they eat and sleep most of the time are still counted at home.

In their 2006 book on the residence rules, the National Research Council explained how the Bureau counts people who are away from home for work: “Consider the long haul truck driver. Perhaps he (or she) is on the road 200 or more days a year. Yet he has a family and maintains a household at some fixed location. He and his family regard him as a member of this household, and it would seem to be a mistake not to classify this

person as a member of his household... In such cases, it would seem desirable to classify these persons as residents of their home—wherever they might specify it to be—even though they do not spend a large share of the time there.”²⁷

And indeed the Census Bureau does count people in these situations as residents of their home address. Similar logic is applied to Members of Congress who spend most of their time in DC.

The Bureau has used this approach to count people obligated to be away from home on Census Day since the very first Census, where “[f]or example, during the 36-week enumeration period of the 1790 census, President George Washington spent 16 weeks traveling through the States, 15 weeks at the seat of Government, and only 10 weeks at his home in Mount Vernon. He was, however, counted as a resident of Virginia.”²⁸ A more uniform, consistent, and nondiscriminatory application of the residence rule would similarly count incarcerated people – many of whom are regarded by their family members as members of their household – at home.

The Bureau’s acknowledgment of community ties in residence situations mirrors customary definitions of residence

While definitions of residence can differ for varying purposes, it is worth noting that the Census Bureau’s proposed application of its “usual residence” rule to incarcerated people is at odds with how other government bodies approach residence for nearly all other purposes. These other governmental purposes range from determining residence for diversity jurisdiction in federal courts (being incarcerated across state lines doesn’t count as residing across state lines), to where a person’s children can go to school (not welcome in the district where their parent is incarcerated), and arguably most relevant to the main use of the Census, to where a person is considered to reside for voting and election purposes (in their home district).²⁹

²⁷ National Research Council of the National Academies, p.123, *Only Once, and in the Right Place: Residence Rules in the Decennial Census* (2006)(internal quotations and citations omitted).

²⁸ *Franklin v Massachusetts*, (91-1502), 505 U.S. 788 (1992) available at <https://www.law.cornell.edu/supct/html/91-1502.ZO.html>

²⁹ Professor Justin Levitt (currently on leave from Loyola Law School, serving as a Deputy Assistant Attorney General in the Civil Rights Division of the U.S. Department of Justice), Comment to the Census Bureau c121 (2015), n 4, available at https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2015-12118_FRN_Comments.pdf, : “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, §

In sum, *almost every other governmental body that has contemplated whether a prison cell can be defined as a person's "residence" has undoubtedly concluded that it cannot.* The Census Bureau's current application of the usual residence rule to incarcerated persons is thus out of step with the how this nation views itself.

3. The Census Bureau's two proposals for special data products are helpful but are inadequate in ways the Bureau may not be aware of.

We applaud the Bureau for proposing two changes in how it will *publish* redistricting data. The Bureau proposes to add the group quarters data to the PL94-171 redistricting data. This is the natural extension of the Bureau's work releasing the Advance Group Quarters Summary File in 2011, and this change was a consensus recommendation by the state redistricting officials at the National Conference of State Legislators.³⁰ As the Bureau knows, being able to identify prison populations in the redistricting data is a critical prerequisite for both rural counties that wish to remove prison populations when redistricting and for state officials that wish to use their own data to reallocate incarcerated people to their home addresses.

For the 2000 cycle, this critical data was available within Summary File 1, which made it available too late for most jurisdictions. For 2010, the Bureau agreed to produce this data as soon as possible after the PL redistricting data, and the Bureau made this data available nationwide on April 20, 2011. This data was very helpful, although some jurisdictions did not discover the special product in time, and for many others the data was available too late. For 2020, the Bureau proposes to "incorporate similar group quarters information in the standard Redistricting Data (Pub. L. 94-171) Summary File for 2020"³¹ to be released during the

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)."

³⁰ Catherine McCully, *Designing Public Law (P.L.) 94-171 Redistricting Data for the Year 2020 Census: The View from the States*, available at

<http://www.census.gov/content/dam/Census/library/publications/2014/rdo/pl94-171.pdf>

³¹ Proposed 2020 Census Residence Criteria and Residence Situations, 81 FR 42577, 42578-42579 (June 30, 2016).

period from January to March 2021. This subtle change will be very beneficial to redistricting authorities in state and local governments and we commend the Bureau for this proposal.

The Bureau also proposes to, upon request and submission of the relevant data, produce for states a special file for use in state redistricting that counts incarcerated people at home. In essence, however, the Bureau is refusing to end prison gerrymandering. This proposal continues to shift responsibility to the states by offering to serve as a mere data processor if the state governments are able to collect the necessary data. Had this procedure existed in 2010, Delaware would likely have been able to implement its law ending prison gerrymandering.

In our view, this proposal will have a severely limited usefulness for state legislatures and be entirely unable to meet the needs of county and municipal redistricting officials.

The details remain to be announced, and while this is likely to be a helpful service, it is severely limited and hobbled by its skewed dependence on the political will of states, and worse, retaining a state-by-state ad hoc standard for redistricting data that leaves the needs of county and municipal redistricting officials out in the cold.

We believe, on factual, practical, and legal grounds, that the Bureau is incorrect in asserting that it can cede all responsibility for producing useful redistricting data to state governments. Specifically:

- Many county, municipal, school board and other local governments that want to use this alternative data product will be denied it if their state does not fully participate in a timely fashion with the Bureau's data requirements.
- State governments will not be able to collect home address information from Bureau of Prisons facilities in that state or in other states.³²
- Some states are legally precluded from taking advantage of such a special tabulation. Perhaps as many as 16 states are prohibited by their state constitutions from using anything

³² See, for example, the concerns expressed in the 2015 comments of Daniel Jenkins (a resident of prison-hosting Franklin County New York available at http://www.prisonersofthecensus.org/letters/Daniel_Jenkins_FRN_letter.pdf), Todd Breitbart (retired New York State redistricting expert, available at http://www.prisonersofthecensus.org/letters/Todd_Breitbart_comment_letter.pdf), and raised in the Dēmos report by Erika Wood (available at http://www.prisonersofthecensus.org/letters/Demos_Census_FRN_Comment_attachment.pdf) which addressed the fact that the New York legislation did not seek to collect home addresses from the Bureau of Prisons and that Maryland Department of Planning's efforts to collect this data for implementation of that state's law were rebuffed by the Bureau of Prisons. Only the Federal government can solve this problem.

other than the official Census data to draw districts. Massachusetts is one of those states, and the Co-Chairs of the Massachusetts Special Joint Committee on Redistricting noted that prison gerrymandering was a significant problem they faced when they drew new electoral district lines after the 2010 Census concluding that: “The tabulation of prisoners should be at the forefront of Bureau priorities in evaluating and adjusting how the 2020 U.S. Census will be conducted...” and that “the way prisoners are currently counted does a disservice to the state and should be changed.”³³ Based on those findings, the Massachusetts legislature sent a resolution to the Bureau urging it to count incarcerated people at home.³⁴

The Census Bureau is not only the best-suited agency to end prison gerrymandering, it is the only agency that can provide a uniform, nondiscriminatory, national solution.

4. The inaccuracies in the Census Bureau’s data have serious repercussions

The state and federal prison population stands at about 1.56 million, a population larger than 12 of our smallest U.S. states. Just as misplacing all of Idaho’s population would have a major impact on the accuracy of the Census, so does tabulating people incarcerated in prisons in the wrong locations.

Prison Gerrymandering

To maintain equal representation and conform to the constitutional requirements of “one person one vote”, regular population-based redistricting is required at the state and local level. The Census Bureau has become *the* data source for redistricting because it has 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 and proposed application of the residence rules which counts incarcerated people as if they were residents of the facility they happen to be in on Census Day.

Most people in the country are harmed by prison gerrymandering to one extent or another. In Rhode Island, for

³³ *Report from the Chairs of the Special Joint Committee on Redistricting* (2012), available at <https://malegislature.gov/District/FinalReport>

³⁴ 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.”* (2014) available at <http://www.prisonersofthecensus.org/resolutions/MA-resolution-081414.pdf>

example, when we tallied up all the people who suffer from prison gerrymandering on the state level with senate and house elections, as well as on the local level in municipal elections, we found that only 112 Rhode Islanders — 0.011% of the state — fully benefit from counting incarcerated people in the wrong place.³⁵

These results are significant: seven New York state senate districts drawn after the 2000 Census met minimum population requirements only because they used prison populations as padding³⁶; four of the senators from these districts controlled the powerful Codes Committee where they opposed reforming the state's draconian Rockefeller drug laws that boosted the state's prison population.³⁷

Disproportionate Harm to Minority Communities

Worst of all, counting incarcerated people in the wrong place creates the greatest inaccuracies in Census data for historically marginalized minority communities of color.

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.³⁸ 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.³⁹

These disproportionate incarceration rates, coupled with the enduring and troubling trend of building prisons in communities that bear little demographic resemblance to the people they confine, create a false picture of our population at best, and risk retrenching systemic racially discriminatory outcomes at worst. For example, we found 161 counties where incarcerated Blacks

³⁵ Peter Wagner and Leah Sakala, Prison gerrymandering hurts the 99.989% (May 1, 2014), available at <http://www.prisonersofthecensus.org/news/2014/05/01/ri-percent/>

³⁶ Peter Wagner, *Importing Constituents: Prisoners and Political Clout in New York*, Prison Policy Initiative (May 20, 2002), <http://www.prisonpolicy.org/importing/importing.html>.

³⁷ Peter Wagner, *Locked Up, But Still Counted: How Prison Populations Distort Democracy*, (Sept. 5, 2008), <http://www.prisonersofthecensus.org/news/2008/09/05/stillcounted/>.

³⁸ 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>

³⁹ 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.

outnumber free Blacks, and 20 counties where incarcerated Latinos outnumber free Latinos.⁴⁰

These inaccuracies not only permeate the Bureau's data, they taint it. Their impact is clear in the redistricting context: in the 2000 Census, virtually all — 98% — of New York State's prison cells were located in state senate districts that were disproportionately White, diluting the votes of Black and Latino voters.⁴¹ Similarly, in Connecticut, 75% of the state's prison cells were in state house districts that were disproportionately White.⁴²

In Somerset County Maryland, these inaccuracies in the Bureau's data made it impossible for the residents of an African-American opportunity district to actually elect the candidate of their choice because the county counted people incarcerated in the district as if they were voting in that district. An effective African-American opportunity district could have been drawn if the prison population had not been included in the population count.⁴³ The Bureau's inconsistent application of the residence rules to incarcerated people directly curtails the voting rights of people of color.

Conclusion: The Risks of Inaction

Over the last few decades, the Supreme Court's requirements for equal representation have created a need for more precise redistricting data. And the needs of redistricting bodies now

⁴⁰ Peter Wagner and Daniel Kopf, *The Racial Geography of Mass Incarceration* (July, 2015), available at <http://www.prisonpolicy.org/racialgeography/>

⁴¹ 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/>.

⁴² *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.

⁴³ 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. (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/uploaded_files/0000/0348/finalreportwapp.pdf), available at http://www.prisonersofthecensus.org/fletcher/Final_Fletcher_amicus_with_affidavit_and_service.pdf.)

require a level of accuracy that necessitates counting incarcerated people at home rather than where they are incarcerated.

The Bureau's residence criteria require it to count incarcerated people at home, and this conclusion is not only in accordance with public opinion,⁴⁴ legislative opinion,⁴⁵ and the federal judiciary; it is logically consistent, common sense, and safeguards the Census against participating in or importing racially discriminatory outcomes into the enumeration process itself.

The US District Court in Florida summarized its conclusion in this way:

Defendants argue vigorously that excluding the JCI inmates from the population base for districting purposes would be “arbitrary.” The opposite is true—including them in the population base is arbitrary. The inmates at JCI, unlike aliens, children, etc. living in Jefferson County, are not meaningfully affected by the decisions of the Boards. To say they are “constituents” of the Board representatives from District 3 is to diminish the term constituent. *To treat the inmates the same as actual constituents makes no sense under any theory of one person, one vote, and indeed under any theory of representative democracy. Furthermore, such treatment greatly dilutes the voting and representational*

⁴⁴ A 2001 Quinnipiac University poll found that New York State “voters say 60 – 25 percent that prison inmates should be counted as residents of their home districts, not of where they’re imprisoned. Republican and upstate voters support counting inmates in their homes, not their prisons.” Quinnipiac University Poll Press Release, August 11, 2011, available at <http://www.prisonpolicy.org/scans/QuinnipiacPoll.pdf>. On this latter point that the call for reform is supported not just by urban people but by a majority of the people who live outside high incarceration areas, see also the November 6, 2013 letter from Peter Wagner to Director John Thompson and its 108-page attachment containing “a collection of news articles and editorials, plus two letters to Director Kincannon and several affidavits, that speak directly to the concerns that people who live outside of the nation’s large cities have regarding the Census Bureau’s current method of tabulating incarcerated people. The opinions range from concern about electoral inequities that result, to frustration with the difficulties devising a solution, to assigning responsibility for the problem.” (The letter is available at [http://static.prisonersofthecensus.org/letters/Wagner to Director Thompson-2013-Nov-06.pdf](http://static.prisonersofthecensus.org/letters/Wagner%20to%20Director%20Thompson-2013-Nov-06.pdf) and its attachments are at [http://www.prisonersofthecensus.org/letters/Wagner to Director Thompson-2013-Nov-06 Attachments.pdf](http://www.prisonersofthecensus.org/letters/Wagner%20to%20Director%20Thompson-2013-Nov-06_Attachments.pdf).) Finally, we note that 96% of the 162 comments relating to where incarcerated people are counted in the Census that the Bureau received in response to its 2015 *Federal Register* notice were supportive of counting incarcerated people at home.

⁴⁵ In just the last 6 years, four states have passed legislation addressing prison gerrymandering state-wide and two states (Virginia and Tennessee) have passed legislation changing their laws that required counties and other local governments to engage in prison gerrymandering. An additional 14 states (Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Minnesota, New Jersey, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin) have recently considered legislation to end prison gerrymandering statewide, with some of those bills passing one chamber. A list of legislation is available at <http://www.prisonersofthecensus.org/legislation.html>

*strength of denizens in other districts. Jefferson County's districting scheme for its Board of County Commissioners and School Board therefore violates the Equal Protection Clause.*⁴⁶ [Citations omitted, emphasis added.]

The Bureau's current proposal would clearly result in data that is too inaccurate to be used for redistricting, leading to constitutional violations and precipitating multiple accompanying lawsuits against the Bureau's data users.

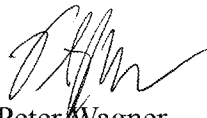
Counting incarcerated people at home, the place where they have family and community ties, accords with the consistent logic of the "usual residence" rule as applied to other similarly situated, albeit economically and racially privileged, populations.

We urge the Bureau to do just that — count incarcerated people at home in the 2020 Census and beyond.

Submitted by,



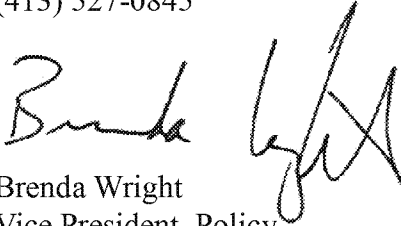
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⁴⁶ *Calvin v. Jefferson County Board of Commissioners*, Case No. 4:15CV131-MW/CAS, (N.D. Florida). See also, *Davidson v. City of Cranston*, (USDC Docket 1:14-cv-00091 D. Rhode Island), on appeal US Court of Appeals First Circuit, No. 16-1692), a recent similar case in Rhode Island, where the court found that "the ACI's inmates lack a 'representational nexus' with the Cranston City Council and School Committee." The court noted that "Cranston's elected officials do not campaign or endeavor to represent their ACI constituents," and pointed out that that the majority of incarcerated persons cannot vote, and those who can are required by law to vote by absentee ballot from their pre-incarceration address.

(413) 527-0845

A handwritten signature in black ink, appearing to read "Brenda Wright". The signature is fluid and cursive, with the first name "Brenda" written in a larger, more prominent script than the last name "Wright".

Brenda Wright
Vice President, Policy
& Legal Strategies
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(617) 232 5885 ext. 13

September 1, 2016

By Email Correspondence –
POP.2020.Residence.Rule@census.gov

Karen Humes, Chief
 Population Division
 U.S. Census Bureau, Room 5H174
 Department of Commerce
 Washington, D.C. 20233

RE: 2020 Decennial Census Residence Rule and Residence Situations
 Docket Number 160526465-6465-01

Dear Ms. Humes:

These comments are submitted in response to the Public Notice, dated June 30, 2016, regarding proposed criteria to be used to determine the “usual residence” of prisoners in the upcoming 2020 Census.¹ Previously, undersigned counsel provided comments urging the Census Bureau to modify the Residence Rule as it relates to those who are incarcerated (Rule 13) and those in Juvenile Facilities (Rule 16). Despite the fact that 156 of the 162 comments submitted in 2015 urged the Census Bureau to modify the rule to designate the “usual residence” of those that are incarcerated as their home or pre-incarceration address, the Public Notice determined that the “usual residence” of those who are incarcerated should be at the correctional facility. This decision is flawed in two significant ways.

First, the Census Bureau incorrectly assumes that “the majority of people in prisons live and sleep most of the time at the prison.”² In reaching this determination, the Census Bureau impermissibly combines inmates of state or federal prisons with inmates of local jails.³ There is a substantial difference between state and federal prisons on one hand, and local jails on the other. As noted in Exhibit A, there were 2,224,400 incarcerated people in 2014, but 744,600 of those that were incarcerated where held in local jails.⁴ Inmates in prisons typically spend more than one year in prison, whereas it is possible that inmates held in local jails end up being incarcerated for less than 24 hours. Moreover, the number of unconvicted jail inmates is more than 150% greater than those jail inmates that have been convicted.⁵ Therefore, there is no reasonable basis for the Census Bureau to determine that “the majority of people in prisons live and sleep most of the time at the prison.”⁶

¹ See *Proposed 2020 Census Residence Criteria and Residence Situations*, 81 Fed. Reg. 42,577 (rel. June 30, 2016) (the “Public Notice”). The deadline for submitting comments was extended to September 1, 2016.

² *Public Notice*, 81 Fed. Reg. at 42,578.

³ *Id.*, nt. 2.

⁴ *Correctional Populations in the United States, 2014*, pg. 2.

⁵ See Exhibit B, *Jail Inmates at Midyear 2014*, pg. 3.

⁶ *Public Notice*, 81 Fed. Reg. at 42,578.

Second, there is significant churn within prisons and jails. As noted in Exhibit C, there were 575,779 admissions in state prisons in 2014, and 50,865 admissions in federal prisons. However, during that same year, there were 581,817 releases from state prisons and 54,529 releases from federal prisons.⁷ The same analysis holds true for jails, where 58.1% of the jail population turns over in one week!⁸ Thus, the Census Bureau's determination that "the majority of people in prisons [including local jails] live and sleep most of the time at prison" is simply not correct. Instead, both prison and jail inmates are constantly rotating through several stages of incarceration (pre-trial, post-trial, parole, residential reentry centers) which make the proposed one-size-fits-all definition for both prison and jail inmates illogical and legally unsustainable.

Therefore, the tentative conclusion that "counting prisoners anywhere other than the facility would violate the concept of usual residence" is simply incorrect and most likely is the result of both (i) combining inmates in prisons and in jails into one group; and (ii) failing to consider the enormous churn of inmates in both prisons and jails.

Moreover, there is no difference between inmates being held in local jails (33% of the total inmates incarcerated in 2014) and military personnel who are deployed outside the United States or juveniles in residential treatment centers. The Public Notice tentatively concluded that deployments "are typically short in duration, and the deployed personnel will be returning to their usual residence ... after their temporary deployment ends."⁹ A similar finding was made with respect to "people in residential treatment centers for juveniles."¹⁰ Both situations are identical to inmates that (i) are held in jails, (ii) will be released after their short period of incarceration, and (iii) will return to their usual residence after their temporary detention ends.

Finally, incorporated by reference are the arguments previously presented in my July 2015 comments, which are separate justifications for modifying the census criteria.¹¹ In addition to the fundamental problems with the Census Bureau's proposed definition of inmates discussed herein, there are significant public policy arguments that must be taken into consideration. Adoption of the proposed criteria would provide a perverse incentive for the construction of prisons and jails in rural areas, which will significantly enhance the relative power of that area in the determination of voting districts. Such actions will further exacerbate the very high recidivism rate among inmates, which will significantly impact our society.

In light of all of these factors, the Census Bureau has a rare opportunity to contribute to the growing movement to reform the criminal justice system, and encourage successful reentry of inmates into their local communities by counting these inmates at their legal address, voting residence or where they prefer to be counted.

Thank you this opportunity to provide comments on this very important criminal justice matter.

⁷ *Prisoners in 2014*, pg. 29.

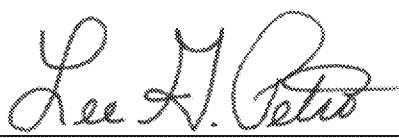
⁸ See Exhibit B, *Jail Inmates at Midyear 2014*, pg. 8.

⁹ *Public Notice*, 81 Fed. Reg. 42,579.

¹⁰ *Id.*

¹¹ A copy is attached hereto as Exhibit D.

Respectfully submitted,

By: 

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3000 Connecticut Avenue, N.W.
Washington, DC 20008
(703) 798-2001

EXHIBIT A



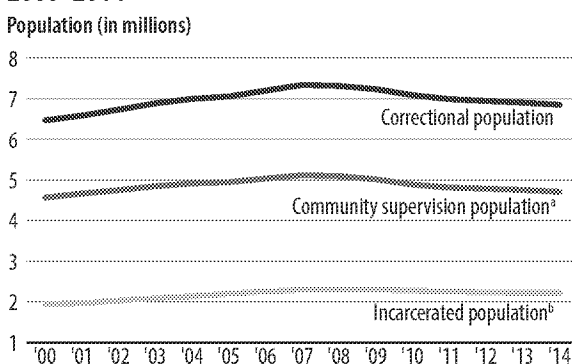
Correctional Populations in the United States, 2014

Danielle Kaeble, Lauren Glaze, Anastasios Tsoutis, and Todd Minton, *BJS Statisticians*

At yearend 2014, an estimated 6,851,000 persons were under the supervision of U.S. adult correctional systems, a decline of about 52,200 from 6,903,200 at yearend 2013 (figure 1). After peaking at 7,339,600 in 2007, the correctional population decreased each year by an average of 1.0%. By yearend 2014, the population declined by 0.8% to the lowest level observed in more than a decade (6,886,800 in 2003). About 1 in 36 adults in the United States was under some form of correctional supervision at yearend 2014. This was the lowest rate observed since 1996 (5,531,300) when about 1.3 million fewer offenders were under correctional supervision (not shown).

This report summarizes data from several Bureau of Justice Statistics (BJS) correctional data collections to provide statistics on the total population supervised by adult correctional systems in the United States. (See *Methodology* for sources.) These systems include offenders living in the community while supervised by probation or parole agencies and those under the jurisdiction of state or federal prisons or held in local jails. (See *Terms and definitions* for more information.)

FIGURE 1
Estimated total population under the supervision of U.S. adult correctional systems, by correctional status, 2000–2014



Note: Estimates were rounded to the nearest 100. Estimates may not be comparable to previously published BJS reports because of updated information or rounding. Includes estimates for nonresponding jurisdictions. Detail may not sum to total due to adjustments to account for offenders with multiple correctional statuses. See *Methodology*.

^aIncludes persons living in the community while supervised on probation or parole.

^bIncludes inmates under the jurisdiction of state or federal prisons or held in local jails.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics program, 2000–2014.

HIGHLIGHTS

- Adult correctional systems supervised an estimated 6,851,000 persons at yearend 2014, about 52,200 fewer offenders than at yearend 2013.
- About 1 in 36 adults (or 2.8% of adults in the United States) was under some form of correctional supervision at yearend 2014, the lowest rate since 1996.
- The correctional population has declined by an annual average of 1.0% since 2007.
- The community supervision population (down 1.0%) continued to decline during 2014, accounting for all of the decrease in the correctional population.
- The incarcerated population (up 1,900) slightly increased during 2014.
- Between 2007 and 2014, about 88% of the decrease in the correctional population (down 488,600 offenders) was attributed to the decline in the probation population.
- Seven jurisdictions accounted for almost half (48%) of the U.S. correctional population at yearend 2014.
- Nearly all (47) jurisdictions had a larger proportion of their correctional population supervised in the community at yearend 2014 than incarcerated in prison or local jail.

The community supervision population declined during 2014, accounting for all of the decrease in the correctional population

From 2013 (6,903,200) to 2014 (6,851,000), the total correctional population declined by 0.8% (table 1). (See appendix tables 1, 2, and 3 for correctional population estimates by jurisdiction and sex.) About 7 in 10 persons under correctional supervision at yearend 2014 were supervised in the community either on probation (3,864,100) or parole (856,900).¹ In comparison, about 3 in 10 offenders (2,224,400) under correctional supervision were under the jurisdiction of state or federal prisons (1,561,500) or held in local jails (744,600).

The 52,200 decrease in the number of persons under correctional supervision during 2014 was attributed to a decline in the community supervision population (down 1.0%), as the change in the incarcerated population during the

year was small (up 0.1%). All of the decrease in the community supervision population during 2014 was accounted for by the decline in the probation population (down 46,500), as the parole population increased slightly during the year (up 1,700).

After reaching a high of 5,119,000 persons in 2007, the community supervision population declined by annual average of 1.2%. The downward trend in the probation population over the past 7 years was consistent with that of the community supervision population. Since 2007, the probation population declined by an annual average of 1.5%, the largest rate of decline across all correctional populations. In comparison, the parole population grew by an annual average of 0.5% since 2007.

During 2014, the number of inmates incarcerated in state or federal prisons or local jails increased slightly (up 1,900), reversing a 5-year decline since 2008. While the jail population grew by 1.8% during 2014, the U.S. prison population dropped by 1.0%. The decrease in the U.S. prison population resulted from a decline in the state (down 10,100) and federal (down 5,300) prison populations. This was the second consecutive decline in the federal prison population after peaking in 2012 (217,800).

¹The total correctional population, total community supervision population, and total incarcerated population exclude offenders with multiple correctional statuses to avoid double counting. For this reason, the sum of the community supervision and incarcerated populations, and the change in the populations, will not equal the total correctional population. See table 6 and *Methodology*.

TABLE 1
Estimated number of persons supervised by U.S. adult correctional systems, by correctional status, 2000, 2005–2010, and 2013–2014

Year	Total correctional population ^a	Community supervision			Incarcerated ^b		
		Total ^{a,c}	Probation	Parole	Total ^{a,d}	Local jail	Prison
2000	6,467,800	4,564,900	3,839,400	725,500	1,945,400	621,100	1,394,200
2005	7,055,600	4,946,600	4,162,300	784,400	2,200,400	747,500	1,525,900
2006	7,199,700	5,035,000	4,236,800	798,200	2,256,600	765,800	1,568,700
2007	7,339,600	5,119,000	4,293,000	826,100	2,296,400	780,200	1,596,800
2008	7,313,600	5,094,400	4,270,100	828,200	2,310,300	785,500	1,608,300
2009	7,235,200	5,015,900	4,196,200	824,100	2,297,700	767,400	1,615,500
2010	7,086,500	4,886,000	4,053,600	840,700	2,279,100	748,700	1,613,800
2013	6,903,200	4,753,400	3,910,600	855,200	2,222,500	731,200	1,577,000
2014	6,851,000	4,708,100	3,864,100	856,900	2,224,400	744,600	1,561,500
Average annual percent change, 2007–2014	-1.0%	-1.2%	-1.5%	0.5%	-0.5%	-0.7%	-0.3%
Percent change, 2013–2014	-0.8%	-1.0%	-1.2%	0.2%	0.1%	1.8%	-1.0%

Note: Estimates were rounded to the nearest 100 and may not be comparable to previously published BJS reports due to updated information or rounding. Counts include estimates for nonresponding jurisdictions. All probation, parole, and prison counts are for December 31; jail counts are for the last weekday in June. Detail may not sum to total due to rounding and adjustments made to account for offenders with multiple correctional statuses. See *Methodology*.

^aTotal was adjusted to account for offenders with multiple correctional statuses. See *Methodology*.

^bIncludes inmates under the jurisdiction of state or federal prisons or held in local jails.

^cIncludes some offenders held in a prison or local jail but who remained under the jurisdiction of a probation or parole agency.

^dMay differ from estimates reported elsewhere in this report. See *Terms and definitions*.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics program, 2000, 2005–2010, and 2013–2014.

During 2014, the correctional supervision rate fell for the seventh consecutive year

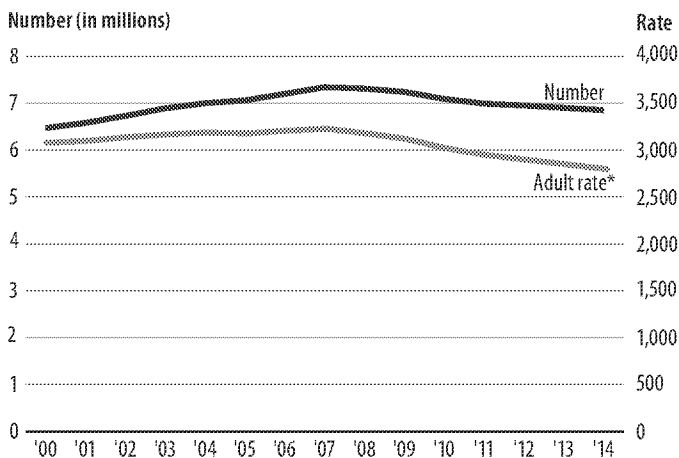
By yearend 2014, about 2,780 offenders per 100,000 U.S. adult residents were under some form of correctional supervision, down from 2,830 per 100,000 adults at yearend 2013 (figure 2). More than half (56%) of the decline in the correctional supervision rate was attributed to the increase in the size of the U.S. adult resident population during the year, while a smaller share of the decline (44%) resulted from the decrease in the correctional population. (See *Methodology*.)

After peaking at 3,210 per 100,000 U.S. adult residents in 2007, the correctional supervision rate fell steadily each year. Since 2007, the trend in the correctional supervision rate diverged from the trend in the number of persons under correctional supervision. The number of persons supervised by adult correctional systems decreased by an annual average of 1.0% from yearend 2007 to 2014. In comparison, the average annual decline in the correctional supervision rate (down 2.1%) was twice as fast during the same period. However, more than half (52%) of the decrease in the correctional supervision rate resulted from the increase in the U.S. adult resident population since 2007, compared to 48% of the decline attributed to the decrease in the number of offenders under correctional supervision.

From 2013 to 2014, the rate of offenders under community supervision declined from 1,950 to 1,910 per 100,000 adults, continuing a downward trend since 2007 (table 2). The decrease in the community supervision rate over the past 7 years accounted for about three-quarters of the decline

in the correctional supervision rate during the period. The incarceration rate also dropped slightly by yearend 2014, from 910 per 100,000 at yearend 2013 to 900 per 100,000. The incarceration rate has declined steadily each year since 2008.

FIGURE 2
Estimated number and rate of persons supervised by U.S. adult correctional systems, 2000–2014



Note: Counts were rounded to the nearest 100, and rates were rounded to the nearest 10. Estimates may not be comparable to previously published BJS reports due to updated information or rounding. Counts include estimates for nonresponding jurisdictions. See *Methodology*.

*Rates were computed using estimates of the U.S. resident population for persons age 18 or older.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics program, 2000–2014; and U.S. Census Bureau, postcensal estimated resident population for January 1 of the following year, 2001–2015.

TABLE 2
Estimated rate of persons supervised by U.S. adult correctional systems, by correctional status, 2000 and 2005–2014

Year	Total correctional population ^a			Community supervision population		Incarcerated population ^b	
	Number supervised per 100,000 U.S. residents age 18 or older ^c	U.S. adult residents under correctional supervision ^c	Number supervised per 100,000 U.S. residents of all ages ^d	Number on probation or parole per 100,000 U.S. residents age 18 or older ^c	Number on probation or parole per 100,000 U.S. residents of all ages ^d	Number in prison or local jail per 100,000 U.S. residents age 18 or older ^c	Number in prison or local jail per 100,000 U.S. residents of all ages ^d
2000	3,060	1 in 33	2,280	2,160	1,610	920	690
2005	3,160	1 in 32	2,370	2,210	1,660	990	740
2006	3,190	1 in 31	2,400	2,230	1,680	1,000	750
2007	3,210	1 in 31	2,420	2,240	1,690	1,000	760
2008	3,160	1 in 32	2,390	2,200	1,670	1,000	760
2009	3,100	1 in 32	2,350	2,150	1,630	980	750
2010	3,000	1 in 33	2,280	2,070	1,570	960	730
2011	2,930	1 in 34	2,230	2,010	1,540	940	720
2012	2,880	1 in 35	2,200	1,980	1,520	920	710
2013	2,830	1 in 35	2,170	1,950	1,500	910	700
2014	2,780	1 in 36	2,140	1,910	1,470	900	690

Note: Rates were estimated to the nearest 10. Estimates may not be comparable to previously published BJS reports due to updated information or rounding.

^aIncludes offenders in the community under the jurisdiction of probation or parole agencies, under the jurisdiction of state or federal prisons, or held in local jails.

^bIncludes inmates under the jurisdiction of state or federal prisons or held in local jails.

^cRates were computed using estimates of the U.S. resident population for persons age 18 or older.

^dRates were computed using estimates of the U.S. resident population for persons of all ages.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics program, 2000, 2005–2014; and U.S. Census Bureau, postcensal estimated resident population for January 1 of the following year, 2001, and 2006–2015.

The difference between measures of the incarceration rate and the imprisonment rate

The incarceration rate and the imprisonment rate are two different statistics that BJS reports, depending on the correctional population of interest. The incarceration rate describes the incarcerated population that consists of inmates under the jurisdiction of state or federal prisons and inmates held in local jails. In comparison, the imprisonment rate describes the prison population under the jurisdiction of state or federal prisons and sentenced to more than 1 year. The imprisonment rate excludes prisoners who are unsentenced, those with sentences of less than 1 year, and all local jail inmates. Given these differences, the incarceration rate will always be higher than the imprisonment rate because the imprisonment rate

includes only a subset of the population accounted for in the incarceration rate (table 3).

This report focuses on the total correctional population, which consists of the community supervision (i.e., probation and parole) and incarcerated (i.e., prison and local jail) populations. Therefore, except for table 3, rates presented in this report are incarceration rates because they describe the total incarcerated population. BJS reports on the imprisonment rates in its annual report on the prison population. For more information on imprisonment rates, see *Prisoners in 2014* (NCJ 248955, BJS web, September 2015).

TABLE 3

Incarceration rate of inmates under the jurisdiction of state or federal prisons or held in local jails and imprisonment rate of sentenced prisoners under the jurisdiction of state or federal prisons, 2004–2014

Year	Rate per 100,000 U.S. residents age 18 or older ^a		Rate per 100,000 U.S. residents of all ages ^b	
	Incarceration rate ^c	Imprisonment rate ^d	Incarceration rate ^c	Imprisonment rate ^d
2004	970	650	730	490
2005	990	660	740	490
2006	1,000	670	750	500
2007	1,000	670	760	510
2008	1,000	670	760	510
2009	980	660	750	500
2010	960	660	730	500
2011	940	640	720	490
2012	920	630	710	480
2013	910	620	700	480
2014	900	610	690	470

Note: Rates were rounded to the nearest 10 and include estimates for nonresponding jurisdictions. See *Methodology*.

^aRates were computed using estimates of the U.S. resident population for persons age 18 or older.

^bRates were computed using estimates of the U.S. resident population for persons of all ages.

^cIncludes inmates under the jurisdiction or legal authority of state or federal prisons or held in local jails.

^dIncludes prisoners sentenced to more than 1 year who were under the jurisdiction or legal authority of state or federal prisons. The imprisonment rate excludes unsentenced prisoners, prisoners with sentences of less than 1 year, and all inmates held in local jails.

Sources: Bureau of Justice Statistics, National Prisoner Statistics program, Census of Jail Inmates, and Annual Survey of Jails, 2004–2014; and U.S. Census Bureau, postcensal estimated resident population for January 1 of the following year, 2005–2015.

Since 2007, compositional changes in the correctional population were small despite the decrease of 488,900 offenders

Despite the overall decline in the correctional population over the past 7 years (down 488,900 offenders), the changes in the composition of the population were small. Probationers continued to account for the majority (56%) of offenders under correctional supervision at yearend 2014 (table 4). In 2014, probationers accounted for a slightly smaller portion of the correctional population compared to 2007 (58%), as the number of probationers decreased each year during the period.

Prison and parole populations grew slightly as a share of the total correctional population between 2007 and 2014. Prisoners accounted for 23% of offenders under correctional supervision at yearend 2014, up slightly from 22% in 2007. The parole population accounted for 13% of the correctional population at the end of 2014, up slightly from 11% in 2007. Inmates incarcerated in local jails represented the smallest shares of the correctional population in 2007 and 2014 (11% each).

The decline in the probation population from 2007 to 2014 accounted for 88% of the decrease in the correctional population

Probationers represented the majority of offenders under correctional supervision from 2007 to 2014, and the decline in this population contributed significantly to the decrease in the correctional population. From 2007 to 2014, the number of probationers decreased by 428,800, representing about 88% of the total decline in the correctional population since 2007—the largest decline among all correctional populations (table 5).

The prison and local jail populations also declined between 2007 and 2014. However, they accounted for a significantly smaller portion of the decrease in the correctional population compared to probationers. From 2007 to 2014, the number of

inmates in prison declined by 35,300 offenders and the number in local jails fell by 35,600, accounting for equal shares of the decline in the correctional population (down 7% each).

The parole population was the only correctional population to increase from 2007 to 2014. About 30,800 more parolees were supervised in the community in 2014 compared to 2007, partially offsetting the overall decline in the correctional population during the 7-year period.

TABLE 4
Estimated number of persons supervised by U.S. adult correctional systems, by correctional status, 2007 and 2014

Correctional populations	2007		2014	
	Population	Percent of total population	Population	Percent of total population
Total ^a	7,339,600	100%	6,851,000	100%
Probation ^b	4,293,000	58.5	3,864,100	56.4
Prison ^b	1,596,800	21.8	1,561,500	22.8
Parole ^b	826,100	11.3	856,900	12.5
Local jail ^c	780,200	10.6	744,600	10.9
Offenders with multiple correctional statuses ^d	156,400	:	176,100	:

Note: Counts were rounded to the nearest 100 and include estimates for nonresponding jurisdictions. Detail may not sum to total due to rounding and because offenders with multiple correctional statuses were excluded from the total correctional population. See *Methodology*.

:Not calculated.

^aAdjusted to exclude offenders with multiple correctional statuses to avoid double counting. See *Methodology*.

^bPopulation as of December 31.

^cPopulation as of the last weekday in June.

^dSome probationers and parolees on December 31 were held in a prison or local jail but still remained under the jurisdiction of a probation or parole agency, and some parolees were also on probation. In addition, some prisoners were held in a local jail on December 31. They were excluded from the total correctional population to avoid double counting. See table 6 and *Methodology*.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, and National Prisoner Statistics program, 2007 and 2014.

TABLE 5
Change in the estimated number of persons supervised by U.S. adult correctional systems, 2000–2007 and 2007–2014

Correctional populations	2000–2007		2007–2014	
	Change in population ^a	Percent of total change ^a	Change in population ^a	Percent of total change ^a
Total change ^b	871,900	100%	-488,600	100%
Probation	453,600	52.0	-428,800	87.8
Prison	202,600	23.2	-35,300	7.2
Local jail	159,000	18.2	-35,600	7.3
Parole	100,600	11.5	30,800	-6.3
Offenders with multiple correctional statuses ^c	43,900	:	19,700	:

Note: Estimates were rounded to the nearest 100 and include adjustments for nonresponding jurisdictions. See *Methodology*.

:Not calculated.

^aDetail may not sum to total due to adjustments to exclude offenders with multiple correctional statuses from the total to avoid double counting. See table 6 and *Methodology*.

^bIncludes the change in the number of offenders with multiple correctional statuses. See table 6 and *Methodology*.

^cSome probationers and parolees on December 31 were held in a prison or local jail but still remained under the jurisdiction of a probation or parole agency, and some parolees were also on probation. Some prisoners were held in a local jail on December 31. These offenders were excluded from the total correctional population prior to calculating change to avoid double counting. See table 6 and *Methodology*.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, and National Prisoner Statistics program, 2000–2014.

Seven jurisdictions accounted for almost half of the U.S. correctional population at yearend 2014

At yearend 2014, the size of the correctional population by jurisdiction varied, from a low of 8,400 offenders to a high of 699,300 (figure 3). Including the federal system but excluding the District of Columbia, the average number of offenders under the supervision of adult correctional systems by jurisdiction was about 133,400. Seven jurisdictions had correctional populations of 300,000 or more offenders, including Texas (699,300), California (589,600), Georgia (579,600), Florida (382,600), Pennsylvania (360,800), the federal system (338,000), and Ohio (326,300). These seven jurisdictions made up almost half (48%) of the U.S. correctional population at the end of 2014.

Excluding the federal system, four of the same six jurisdictions had more than 3,000 per 100,000 U.S. adult residents under some form of correctional supervision at yearend 2014 (figure 4). The other two states, Florida (2,390 per 100,000 U.S. adult residents) and California (1,980 per 100,000), had correctional supervision rates that were less than 2,500 per 100,000.

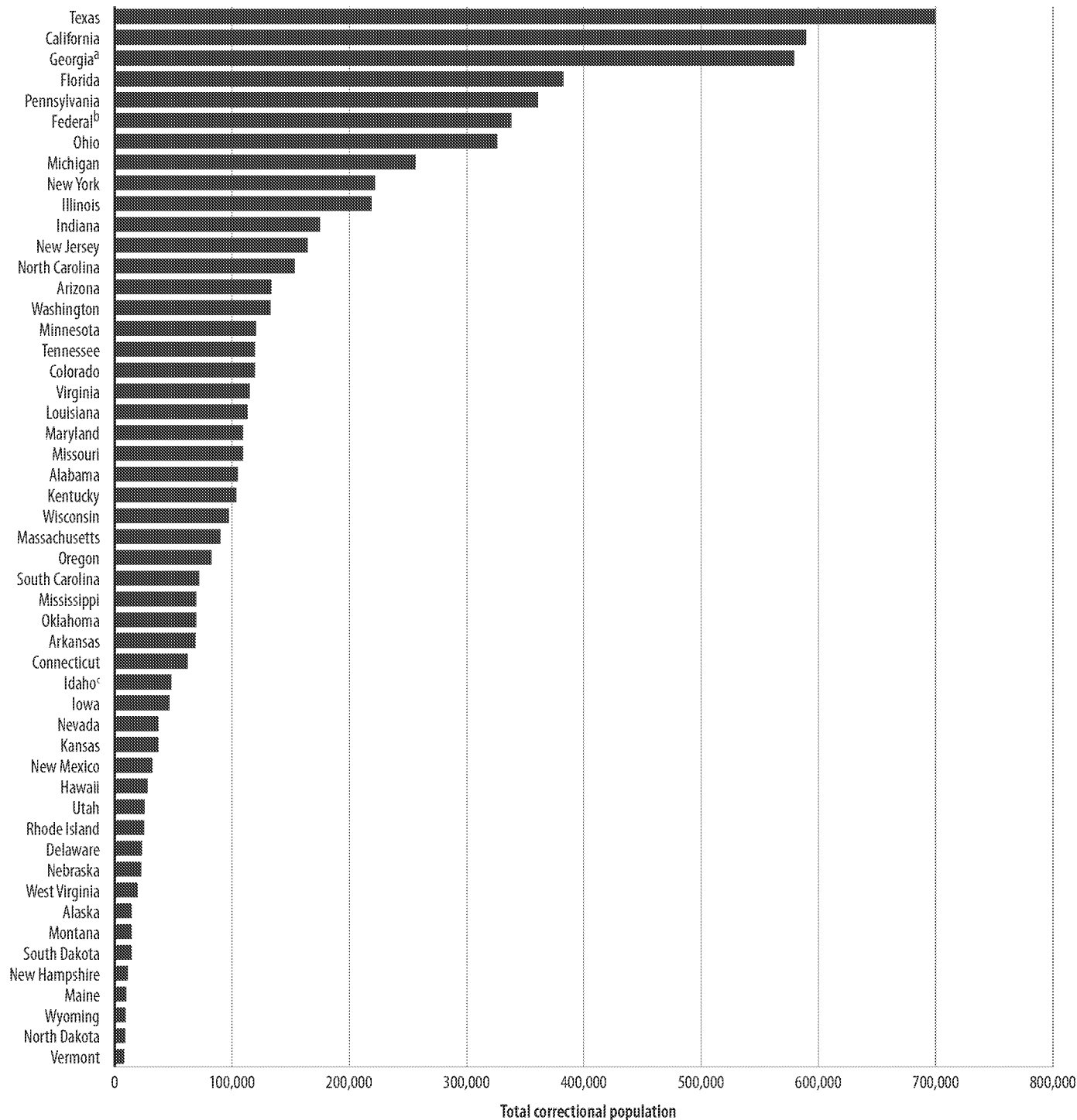
At yearend 2014, almost all jurisdictions had a larger portion of their correctional population supervised in the community than incarcerated

While the distribution of the correctional population varied by jurisdiction, almost all (47) jurisdictions had more than half of their correctional population supervised in the community on probation or parole at the end of 2014. Including the federal system but excluding the District of Columbia, jurisdictions ranged from a low of 38% of their correctional population supervised in the community at yearend 2014 to a high of 88%, with a national average of about 66% (figure 5). The proportion of the correctional population incarcerated in state or federal prisons or local jails ranged from a low of 12% to a high of 62%, with a national average of about 34%.

Of the seven jurisdictions that constituted almost half of the U.S. correctional population at yearend 2014, six had at least 60% of their correctional population supervised in the community rather than incarcerated. These included Georgia (84% of total correctional population in the community), Ohio (78%), Pennsylvania (77%), Texas (69%), California (65%), and Florida (60%). One of the seven jurisdictions, the federal system (62%), had more than 60% of its correctional population incarcerated rather than supervised in the community at the end of the year.

FIGURE 3

Estimated total population supervised by U.S. adult correctional systems, by jurisdiction, 2014



Note: Excludes the District of Columbia. Estimates were rounded to the nearest 100. Counts include adjustments for nonresponding jurisdictions and exclude offenders with multiple correctional statuses to avoid double counting. See appendix table 1 for estimates. See *Methodology*.

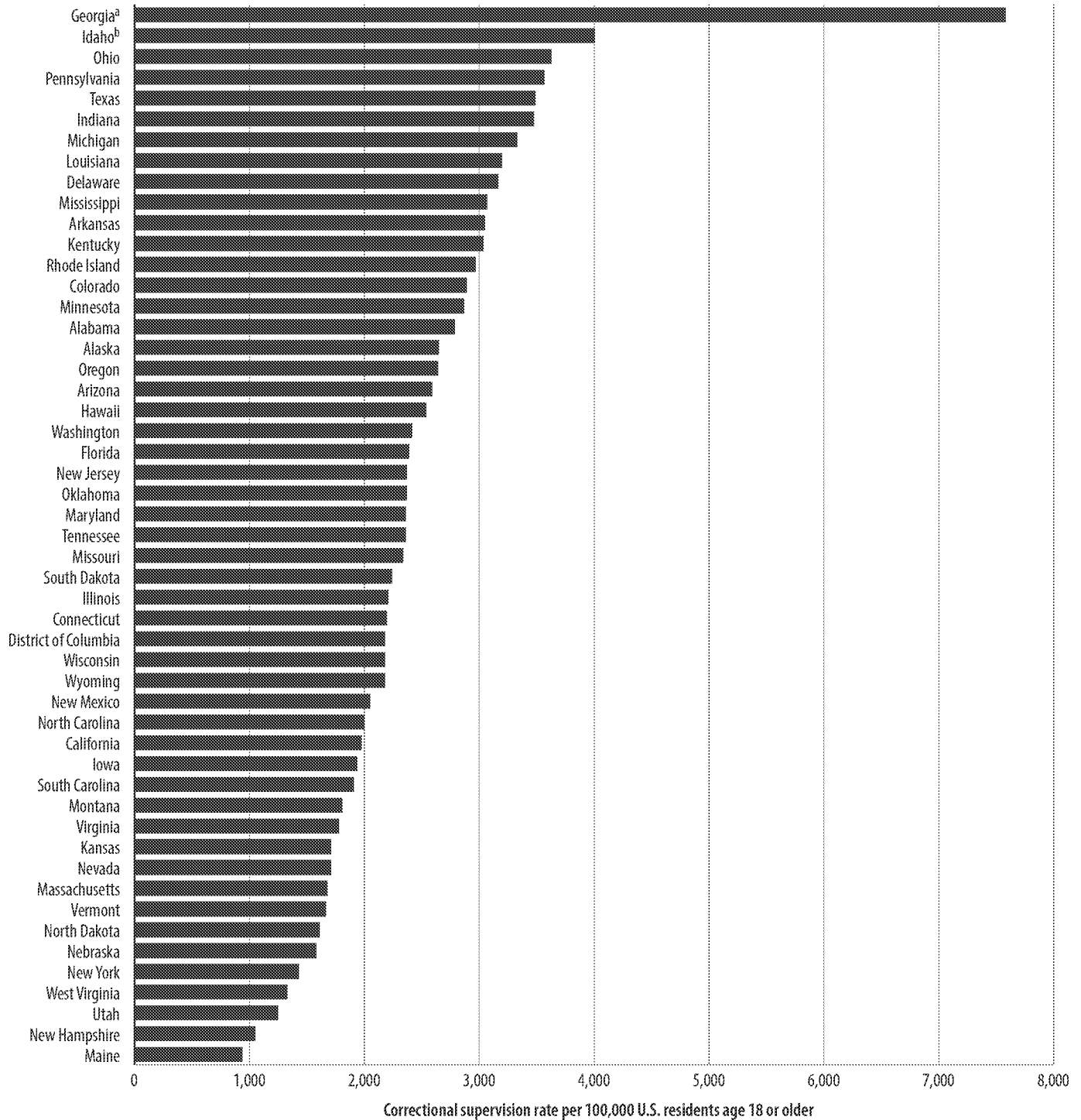
^aIncludes misdemeanor probation cases, not individuals, supervised by private companies and may overstate the number of offenders under supervision.

^bExcludes about 11,900 inmates who were not held in locally operated jails but in facilities that were operated by the Federal Bureau of Prisons and functioned as jails.

^cIncludes estimates of probationers supervised for a misdemeanor based on admissions and may overstate the number of offenders under supervision.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Deaths in Custody Reporting Program, and National Prisoner Statistics program, 2014.

FIGURE 4
Estimated adult correctional supervision rate, by jurisdiction, 2014



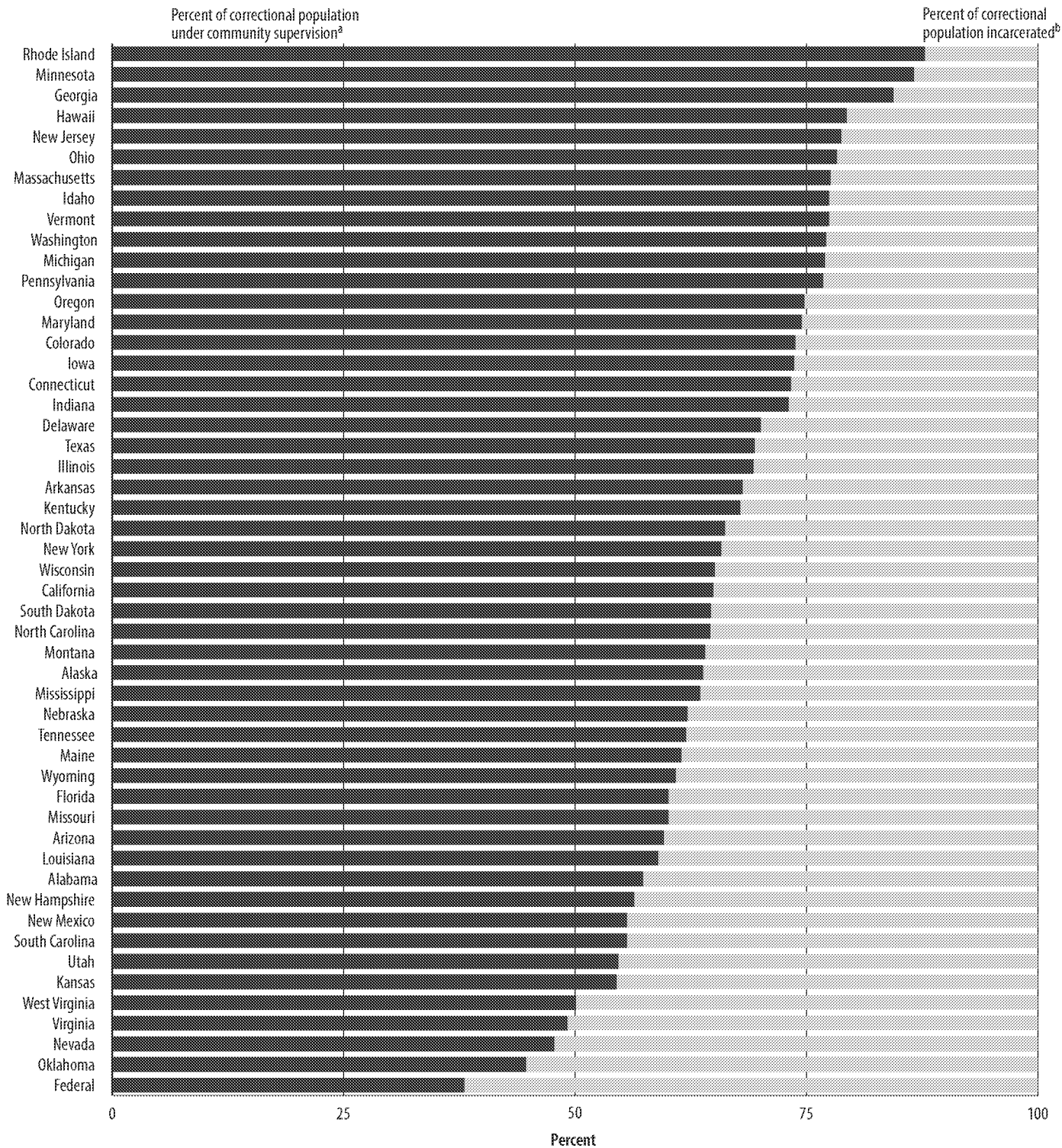
Note: Excludes the federal system and the District of Columbia. Rates were rounded to the nearest 10. Rates include estimates for nonresponding jurisdictions and exclude offenders with multiple correctional statuses to avoid double counting. See appendix table 1 for estimates. See *Methodology*.

^aIncludes misdemeanor probation cases, not individuals, supervised by private companies and may overstate the number of offenders under supervision. For this reason, the adult correctional supervision rate may not be comparable to other jurisdictions.

^bIncludes estimates of probationers supervised for a misdemeanor based on admissions and may overstate the number of offenders under supervision. For this reason, the adult correctional supervision rate may not be comparable to other jurisdictions.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Deaths in Custody Reporting Program, and National Prisoners Statistics program, 2014; and U.S. Census Bureau, unpublished U.S. resident population estimates within jurisdiction on January 1, 2015.

FIGURE 5
Distribution of correctional population, by correctional status and jurisdiction, 2014



Note: Excludes the District of Columbia. Estimates are based on counts that include adjustments for nonresponding jurisdictions. Estimates of the total correctional population used to calculate the percentages presented are based on the sum of the community supervision and incarcerated populations within each jurisdiction. That total may include probationers or parolees held in state or federal prisons or local jails. See *Methodology*.

^aIncludes persons living in the community while supervised on probation or parole.

^bIncludes inmates under the jurisdiction of state or federal prisons or held in local jails.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Deaths in Custody Reporting Program, and National Prisoner Statistics program, 2014.

Terms and definitions

Adult—persons subject to the jurisdiction of an adult criminal court or correctional agency. Adults are age 18 or older in most jurisdictions. Persons age 17 or younger who were prosecuted in criminal court as if they were adults are considered adults, but persons age 17 or younger who were under the jurisdiction of a juvenile court or agency are excluded. (See *Methodology* for more information on prison and local jail inmates age 17 or younger.)

Annual change—change in a population between two consecutive years.

Average annual change—average (mean) annual change in a population across a specific time period.

Community supervision population—estimated number of persons living in the community while supervised on probation or parole.

Community supervision rate—estimated number of persons supervised in the community on probation or parole per 100,000 U.S. residents of all ages (i.e., total community supervision rate) or U.S. residents age 18 or older (i.e., adult community supervision rate).

Correctional population—estimated number of persons living in the community while supervised on probation or parole and inmates under the jurisdiction of state or federal prisons or held in local jails.

Correctional supervision rate—estimated number of persons supervised in the community on probation or parole and inmates under the jurisdiction of state or federal prisons or held in local jails per 100,000 U.S. residents of all ages (i.e., total correctional supervision rate) or U.S. residents age 18 or older (i.e., adult correctional supervision rate).

Imprisonment rate—estimated number of prisoners under state or federal jurisdiction sentenced to more than 1 year per 100,000 U.S. residents of all ages (i.e., total imprisonment rate) or U.S. residents age 18 or older (i.e., adult imprisonment rate). (The imprisonment rate is presented and discussed in *The difference between measures of the incarceration rate and imprisonment rate* text box.)

Incarcerated population—estimated number of inmates under the jurisdiction of state or federal prisons or held in local jails.

Incarceration rate—estimated number of inmates under the jurisdiction of state or federal prisons or held in local jails per 100,000 U.S. residents of all ages (i.e., total incarceration rate) or U.S. residents age 18 or older (i.e., adult incarceration rate).

Indian country jail population—estimated number of inmates held in correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA), U.S. Department of the Interior. These facilities include confinement facilities, detention centers, jails, and other facilities operated by tribal authorities or the BIA. (This estimate is presented in appendix table 4.)

Local jail population—estimated number of inmates held in a confinement facility usually administered by a local law enforcement agency that is intended for adults, but sometimes holds juveniles, for confinement before and after adjudication. These facilities include jails and city or county correctional centers; special jail facilities, such as medical treatment or release centers; halfway houses; work farms; and temporary holding or lockup facilities that are part of the jail's combined function. Inmates sentenced to jail facilities usually have a sentence of 1 year or less.

Military prison population—estimated number of service personnel incarcerated under the jurisdiction of U.S. military correctional authorities. (This estimate is presented in appendix table 4.)

Parole population—estimated number of persons who are on conditional release in the community following a prison term while under the control, supervision, or care of a correctional agency. Violations of the conditions of supervision during this period may result in a new sentence to confinement or a return to confinement for a technical violation. This population includes parolees released through discretionary (i.e., parole board decision) or mandatory (i.e., provisions of a statute) supervised release from prison, those released through other types of post-custody conditional supervision, and those sentenced to a term of supervised release.

Prison population—estimated number of inmates incarcerated in a long-term confinement facility, run by a state or the federal government, that typically holds felons and offenders with sentences of more than 1 year, although sentence length may vary by jurisdiction.

Prison jurisdiction population—estimated number of prisoners under the jurisdiction or legal authority of state or federal correctional officials, regardless of where the prisoner is held. This population represents BJS's official measure of the prison population and includes prisoners held in prisons, penitentiaries, correctional facilities, halfway houses, boot camps, farms, training or treatment centers, and hospitals. Counts also include prisoners who were temporarily absent (less than 30 days), in court, or on work release; housed in privately operated facilities, local jails, or other state or federal facilities; and serving concurrent sentences for more than one correctional authority.

Prison custody population—estimated number of prisoners held in the physical custody of state or federal prisons regardless of sentence length or the authority having jurisdiction. This population includes prisoners housed for other correctional facilities but excludes those in the custody of local jails, inmates held in other jurisdictions, inmates out to court, and those in transit from one jurisdiction of legal authority to the custody of a confinement facility outside that jurisdiction. (This estimate is presented in appendix table 5.)

Probation population—estimated number of persons who are on a court-ordered period of supervision in the community while under the control, supervision, or care of a correctional agency. The probation conditions form a contract with the

court by which the person must abide in order to remain in the community, generally in lieu of incarceration. In some cases, probation can be a combined sentence of incarceration followed by a period of community supervision.

Often, probation entails monitoring or surveillance by a correctional agency. In some instances, probation may not involve any reporting requirements.

Territorial prison population—estimated number of prisoners in the custody of correctional facilities operated by departments of corrections in U.S. territories (American Samoa, Guam, and the U.S. Virgin Islands) and U.S. commonwealths (Northern Mariana Islands and Puerto Rico). (This estimate is presented in appendix table 4.)

Methodology

Data sources

The statistics presented in this report include data from various Bureau of Justice Statistics (BJS) data collections, each relying on the voluntary participation of federal, state, and local respondents. For more information about any of the following data collections, see the Data Collections webpage at www.bjs.gov.

Annual Surveys of Probation and Parole. The Annual Surveys of Probation and Parole (ASPP) began in 1980. The reference date for the surveys is December 31, and they collect data from probation and parole agencies in the United States that supervise adults. Both surveys cover the 50 states, the District of Columbia, and the federal system.

In these data, adults are persons who are subject to the jurisdiction of an adult criminal court or correctional agency. Persons age 17 or younger who were prosecuted in criminal court as if they were adults are considered adults, but persons age 17 or younger who were under the jurisdiction of a juvenile court or agency are excluded.

Annual Survey of Jails. The Annual Survey of Jails (ASJ) has collected data from a nationally representative sample of local jails each year since 1982, except in 1983, 1988, 1993, 1999, and 2005, when a complete census of U.S. local jails was conducted. Jails are confinement facilities, usually administered by a local law enforcement agency, that are intended to hold adults, but they may also hold youth age 17 or younger before or after they are adjudicated. The ASJ data used in this report include inmates age 17 or younger who were held either before or after they were adjudicated (about 4,200 persons in 2014).

To maintain the jail series in this report, all tables and figures that include national estimates of the local jail population as of the last weekday in June were provided through the ASJ, except in 1999 and 2005 when a jail census was completed (see *Census of Jails*). Because the ASJ is designed to produce only national estimates, tables and figures in this report that include jurisdiction-level counts of the incarcerated population and the total correctional population were based on jail data collected through two other BJS sources, specifically the *Census of Jails* and the *Deaths in Custody Reporting Program*. (See *Census of Jails* and *Deaths in Custody Reporting Program*.)

Census of Jails. The *Census of Jails* began in 1970 and was conducted in 1972, 1978, 1983, 1988, 1993, 1999, 2005, and 2006. In 2013, BJS expanded the 2013 *Deaths in Custody Reporting Program—Annual Summary on Inmates under Jail Jurisdiction* to act as the 2013 *Census of Jails*. (See *Deaths in Custody Reporting Program*.) The census is designed to produce a complete enumeration of jail facilities in the United States. It is part of a series of data collection efforts, including the *Census of Jail Inmates* and the *Census of Jail Facilities*, aimed at studying the nation's jails and their inmate populations. The reference date of the 2013 census was

December 31, while the reference date for prior iterations was the last weekday in June within the reference year.

BJS relied on local jail counts provided through the census in 1999, 2005, and 2013 to generate jurisdiction-level estimates of the total incarcerated population and total correctional population that appear in appendix tables 2 and 3. Because they include the 2013 local jail estimates as of December 31, the national totals of the correctional and incarcerated populations reported in appendix tables 2 and 3 are not consistent with the national totals of the populations reported in the other tables and figures of this report, which include BJS's official estimates of the total correctional and incarcerated populations.

Deaths in Custody Reporting Program. The *Deaths in Custody Reporting Program* (DCRP) is an annual collection that provides national, state, and incident-level data on persons who died while in the physical custody of the 50 state departments of corrections or the approximately 2,900 local adult jail jurisdictions nationwide. To reduce respondent burden for the 2013 iteration, BJS combined the 2013 DCRP collection with the 2013 *Census of Jails*. For more information, see *Census of Jails* and *Census of Jails: Population Changes, 1999–2013*, NCJ 248627, BJS web, December 2015.

The DCRP began in 2000 under the *Death in Custody Reporting Act of 2000* (P.L. 106–297), and it is the only national statistical collection to obtain comprehensive information about deaths in adult correctional facilities. In addition to the death count, BJS requests that jails provide summary statistics about their population and admissions. All jails, including those with no deaths to report (which includes about 80% of jails in any given year), are asked to complete the annual summary survey form.

BJS relied on the local jail counts provided through the DCRP in 2014 to generate jurisdiction-level estimates of the total incarcerated population and total correctional population that appear in figures 2, 3, and 4 and appendix tables 1 and 2. Because they include the 2014 local jail estimates as of December 31, the national totals of the correctional and incarcerated populations reported in appendix tables 1 and 2 are not consistent with the national totals of the populations reported in the other tables and figures of this report, which include BJS's official estimates of the total correctional and incarcerated populations.

National Prisoner Statistics program. The *National Prisoner Statistics* (NPS) program began in 1926 under a mandate from Congress and has been conducted annually. It collects data from the nation's state departments of corrections and the Federal Bureau of Prisons (BOP).

The NPS distinguishes between inmates in custody and prisoners under the jurisdiction of correctional authorities. To have custody of a prisoner, a state or the BOP must hold that inmate in one of its facilities. To have jurisdiction over a prisoner, the state or BOP must have legal authority over that

prisoner, regardless of where the prisoner is incarcerated or supervised. Some states were unable to provide counts that distinguish between custody and jurisdiction. See *Jurisdiction notes in Prisoners in 2014* (NCJ 248955, BJS web, September 2015) to determine which states did not distinguish between custody and jurisdiction counts.

With the exception of appendix table 5, the NPS prisoner counts in all tables and figures of this report are consistent with the jurisdiction counts and findings reported in *Prisoners in 2014*. The jurisdiction counts represent BJS's official measure of the prison population.

The NPS prisoner custody counts are presented in appendix table 5 and include all inmates age 17 or younger who were serving time in a state or federal correctional facility after being sentenced in criminal court as if they were adults (about 1,000 persons in 2014), and inmates in the six states in which prisons and jails form one integrated system, including inmates age 17 or younger who may have been held before or after adjudication.

Through the annual NPS collection, BJS has obtained yearend counts of prisoners in the custody of U.S. military authorities from the Department of Defense Corrections Council since 1999. In 1994, the council, comprising representatives from each branch of military service, adopted a standardized report (DD Form 2720) that obtains data on persons held in U.S. military confinement facilities inside and outside of the continental United States. These data are presented in appendix table 4 of this report. See *Prisoners in 2014* for more statistics and information.

Since 1995, through the annual NPS collection, BJS has collected yearend counts of inmates from the departments of corrections in U.S. territories (American Samoa, Guam, and the U.S. Virgin Islands) and U.S. commonwealths (Northern Mariana Islands and Puerto Rico). These data are presented in appendix table 4 of this report and represent all inmates in the custody of prison facilities in U.S. territories or commonwealths. See *Prisoners in 2014* for more information, including nonresponse.

Survey of Jails in Indian Country. The Annual Survey of Jails in Indian Country (SJIC) has been conducted annually since 1998 with the exception of 2005 and 2006. The SJIC collects detailed information on all adult and juvenile confinement facilities, detention centers, jails, and other facilities operated by tribal authorities or the U.S. Department of the Interior's Bureau of Indian Affairs. The SJIC data in this report includes inmates age 17 or younger who are in the custody of Indian

country jails (about 200 persons in 2014). These data are presented in appendix table 4. See *Jails in Indian Country, 2014* (NCJ 248974, BJS web, October 2015) for more information.

Counts adjusted for offenders with multiple correctional statuses

Offenders under correctional supervision may have multiple correctional statuses for several reasons. For example, probation and parole agencies may not always be notified immediately of new arrests, jail admissions, or prison admissions; absconders included in a probation or parole agency's population in one jurisdiction may actually be incarcerated in another jurisdiction; persons may be admitted to jail or prison before formal revocation hearings and potential discharge by a probation or parole agency; and persons may be serving separate probation and parole sentences concurrently. In addition, state and federal prisons may hold inmates in county facilities or local jails to reduce crowding in their prisons.

Through the ASPP, BJS began collecting data on the number of probationers and parolees with multiple correctional statuses in 1998 and has since expanded on the information collected. Through the NPS, BJS began collecting data in 1999 on the number of prisoners under the jurisdiction of state or federal prisons who were held in county facilities or local jails. Table 6 includes adjustments that were made to the total correctional population, total community supervision population, and total incarcerated population estimates presented in this report to exclude offenders with multiple correctional statuses to avoid double counting offenders.

The estimates from the ASPP are based on data reported by the probation and parole agencies that were able to provide the information within the specific reporting year. Because some probation and parole agencies did not provide these data each year, the numbers may underestimate the total number of offenders who had multiple correctional statuses between 2000 and 2014.

Due to these adjustments, the sum of correctional statuses in tables 1, 2, 4, and 5; figure 1; and appendix tables 1, 2, and 3 will not equal the total correctional population. In addition, the sum of the probation and parole populations for 2008 through 2014 will not yield the total community supervision population because the total was adjusted for parolees who were also on probation. Also, the sum of the prison and local jail populations for 2000 through 2014 will not equal the total incarcerated population because prisoners held in local jails were excluded from the total.

TABLE 6**Estimated number of offenders with multiple correctional statuses at yearend, by correctional status, 2000–2014**

Year	Total	Prisoners held in local jail	Probationers in—		Parolees in—		On probation
			Local jail	State or federal prison	Local jail	State or federal prison	
2000	112,500	70,000	20,400	22,100	:	:	:
2001	116,100	72,500	23,400	20,200	:	:	:
2002	122,800	72,600	29,300	20,900	:	:	:
2003	120,400	73,400	25,500	21,500	:	:	:
2004	130,400	74,400	34,400	21,600	:	:	:
2005	164,500	73,100	32,600	22,100	18,300	18,400	:
2006	169,900	77,900	33,900	21,700	20,700	15,700	:
2007	156,400	80,600	19,300	23,100	18,800	14,600	:
2008	178,500	83,500	23,800	32,400	19,300	15,600	3,900
2009	168,100	85,200	21,400	23,100	19,100	14,300	5,000
2010	170,300	83,400	21,300	21,500	21,400	14,400	8,300
2011	169,300	82,100	21,100	22,300	18,000	14,900	11,000
2012	168,400	83,600	21,200	21,700	18,500	10,700	12,700
2013	170,800	85,700	22,400	16,700	21,800	11,800	12,500
2014	176,100	81,700	23,500	24,600	21,800	11,600	12,900

Note: Estimates were rounded to the nearest 100 and may not be comparable to previously published BJS reports due to updated information. Detail may not sum to total due to rounding.

:Not collected or excluded from total correctional population.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, and National Prisoner Statistics program, 2000–2014.

Decomposing the decline in the correctional supervision rate

To decompose the decline in the correctional supervision rate, the following formula was used:

$$\begin{aligned}\Delta R &= [P1 * (1/GP1)] - [P0 * (1/GP0)] \\ &= [P1 * ((1/GP1) - (1/GP0))] + [(1/GP0) * (P1 - P0)] \\ &= [(1/GP1) * (P1 - P0)] + [P0 * ((1/GP1) - (1/GP0))]\end{aligned}$$

In this formula, ΔR is the change in the correctional supervision rate, $P1$ is the total correctional population for the most recent year, $P0$ is the total correctional population for the earlier year, $GP1$ is the U.S. adult resident population for the most recent year, and $GP0$ is the U.S. adult resident population for the earlier year. The components $[(1/GP0) * (P1 - P0)]$ and $[(1/GP1) * (P1 - P0)]$ provide the change in the correctional supervision rate due to the change in the total correctional population. These two components were summed, and the average was used to estimate the amount of change in the correctional supervision rate attributed to the change in the total correctional population during that period.

The components $[P1 * ((1/GP1) - (1/GP0))]$ and $[P0 * ((1/GP1) - (1/GP0))]$ provide the change due to the U.S. adult resident population. These two components were summed, and the average was used to estimate the amount of change in the correctional supervision rate attributed to the change in the U.S. adult resident population during the period.

Nonresponse adjustments to estimate population counts

Probation, parole, jail, and prison populations

Probation, parole, jail, and prison population counts were adjusted to account for nonresponse across the data collections. The methods varied and depended on the type of collection, type of respondent, and availability of information. For more information on the nonresponse adjustments implemented to generate national and jurisdiction-level estimates of the probation, parole, and prison populations, see *Prisoners in 2014* (NCJ 248955, BJS web, September 2015) and *Probation and Parole in the United States, 2014* (NCJ 249057, BJS web, November 2015). For more information on the nonresponse adjustments implemented to generate national counts of the jail population that are included in the tables and figures of this report that include only national estimates, see *Jail Inmates at Midyear 2014* (NCJ 248629, BJS web, June 2015).

Jail population—jurisdiction-level estimates

The response rate to the 1999 Census of Jails was 99.8%. Six jail jurisdictions did not respond to the census. Data for critical items, including the population count on the last weekday in June, were imputed based on previous survey and census reports. For more information, see *Census of Jails, 1999* (NCJ 186633, BJS web, August 2001). Considering that the response rate to the 2005 Census of Jail Inmates was 100%, no nonresponse adjustments were implemented. For more information, see *Prison and Jail Inmates at Midyear 2005* (NCJ 213133, BJS web, May 2006).

Nonresponse in the 2013 Census of Jails and 2014 DCRP was minimal. The unit response rate to the 2013 Census of Jails was 92.4% and the 2014 DCRP was 95.8% at the time of this report. The item response rate for the December 31 confined jail population total was 99.3% in the 2013 Census of Jails and 99.0% in the 2014 DCRP.

For jails that did not participate in the 2013 Census of Jails or 2014 DCRP or were not able to provide the yearend confined population count, a sequential hot-deck imputation procedure was used to impute values. This procedure used respondent (donor) data as a substitute for missing values. The donor for each nonrespondent was randomly selected from within a set of similar jails, which was sorted by the previous-year population value. The resulting imputed values are generally similar to previous-year reported values, but are not identical due to differences between each donor and nonrespondent pair and the year-to-year fluctuation in donor population values.

Because the 2013 Census of Jails and 2014 DCRP data collections used a census design (no sampling), each jail was initially self-representing and had a design weight of 1. To reduce nonresponse bias, responding jails had their weight adjusted via post-stratification to allow their responses to represent jails that did not respond. The description of the weighting used in the 2014 DCRP is described next. The method used for the 2013 Census of Jails was similar. For more information, see *Census of Jails: Population Changes, 1999–2013* (NCJ 248627, BJS web, November 2015).

Control totals for the 2014 confined jail population from the DCRP were estimated at the state level as follows:

- The year-to-year change in confined jail population among respondents to both the 2013 and 2014 DCRP was computed within the state.
- Plausible values for the 2013 confined population were imputed for jails that did not report to the DCRP in 2013 using a hot-deck procedure that randomly selected a donor for each nonrespondent from within a set of jails that reported similar confined jail populations in the prior year.
- Estimated 2014 values were calculated by multiplying the yearly change rate and the 2013 DCRP estimate of confined population for jails that did not respond to the 2014 DCRP.
- The sum of reported, item-imputed, and DCRP-estimated values for the 2014 confined jail population for each state served as the control totals for the post-stratification procedure. The post-stratification weight adjustment factor was identical for all jails within a state and was computed as

the ratio of the control total for state i to the sum of the reported and item-imputed 2014 DCRP confined jail population values for state i :

$$PSAdj_i = \frac{\text{Control total}_i}{\sum_{j=1}^{n_i} \text{Reported confined}_i + \text{Item imputed confined}_i}$$

The final analysis weight is the product of the design weight and the post-stratification adjustment factor. Because the design weight was 1 for all jails, the analysis weight is equal to the adjustment factor.

Nonresponse adjustments to estimate males and females under correctional supervision

The number of males and the number of females on probation or parole in 2013 and 2014 were adjusted to account for nonresponse using a ratio adjustment method. For jurisdictions that did not provide data on sex for a single year, the sex distribution reported the prior or subsequent year was used. For jurisdictions that did not provide data on sex for a portion of their population, the sex distribution of the known portion of the population was used to impute for the unknown portion because it was assumed that the distributions were the same. For jurisdictions that were unable to provide any data on sex for more than 1 year, the state national average was used to impute the number of males and females supervised in those states. Adjusted jurisdiction totals were then aggregated to produce national estimates of the number of males and females on probation and parole.

The counts of prisoners by sex in 2013 and 2014 were adjusted to account for nonresponse using either external sources or a ratio adjustment method. When possible, BJS used information available on state department of corrections' websites to impute the number of males and females under the jurisdiction of that state's prison system within the reference year. Otherwise, the sex distribution reported by the state in a recent, prior year was used to impute the number of males and females in the reference year. For more information, see *Prisoners in 2014* (NCJ 248955, BJS web, September 2015).

For jails that were unable to report the number of males and females confined at yearend 2013 or 2014, the same sequential hot-deck imputation procedure described in *Jail population—jurisdiction-level estimates* to impute for the confined jail population was also used to impute for the number of males and females confined in jail. Control totals for the 2014 confined jail population by sex were estimated at the state level as described in the section about weighting under the

heading *Jail population—jurisdiction-level estimates*. A similar method was used to estimate 2013 control totals by sex. More information can be found in *Census of Jails: Population Changes, 1999–2013* (NCJ 248627, BJS web, November 2015).

To generate estimates of the total correctional population in 2013 and 2014 by sex and jurisdiction, ratio estimation was used to account for male and female offenders with multiple correctional statuses in each jurisdiction. These adjustments were made by correctional status and were based on reported counts, by jurisdiction, of the number of offenders by sex and the number of offenders with multiple correctional statuses:

- To estimate the number of male and female prisoners held in local jails, the distribution of the prison population by sex within the reference year was applied to the number of prisoners in local jails by jurisdiction. The estimated number of male prisoners held in local jails was then subtracted from the total number of males under correctional supervision by jurisdiction. This same method was used to adjust the number of females under correctional supervision by jurisdiction.
- The correctional population estimates in each jurisdiction were also adjusted to account for the number of males and females on probation who were held in prisons or local jails. The distribution of the local jail population by sex was applied to the number of probationers in local jails by jurisdiction within the reference year to estimate the number of males and females with both correctional statuses. In addition, the distribution of the prison population by sex was applied to the total number of probationers in prison within the reference year to estimate the number of males and females with both correctional statuses. The estimated number of male probationers in prisons and local jails was then subtracted from the number of males under correctional supervision within the reference year by jurisdiction, and this same method was used to adjust the number of females under correctional supervision by jurisdiction. This method was also employed to account for parolees held in prisons or local jails and the totals, by sex, were excluded from the number of males and females under correctional supervision in each jurisdiction.

- To estimate the number of males and females on parole who were also on probation in 2013 and 2014, the distribution of the parole population by sex within the reference year was applied to the number of parolees on probation in each jurisdiction. The estimated number of males with dual community supervision statuses was then subtracted from the number of males under correctional supervision by jurisdiction. This same method was used to adjust the number of females under correctional supervision.

Comparability of jurisdiction-level estimates over time

All jurisdiction-level estimates included in this report are based on data reported within the reference year. Some jurisdictions update their population counts for different reasons after submitting their data to BJS. Updated population counts usually include data that were not entered into the information system before the survey was submitted or data that were not fully processed by yearend.

Also, some jurisdictions have experienced reporting changes for one or more correctional population collections over time. These changes may result because of administrative changes, such as consolidating databases or implementing new information systems, resulting in data review and cleanup; reconciling offender records; reclassifying offenders, including those on probation to parole and offenders on dual community supervision statuses; and including certain subpopulations that were not previously reported.

For these reasons, comparisons between jurisdictions and comparisons between years for the same jurisdiction over time may not be valid. More detailed information about updates and reporting changes that impact the ability to make jurisdiction-level comparisons over time can be found in the source reports for each of the four correctional populations, such as the *Probation and Parole in the United States* series or *Prisoners* series, within the particular reference year.

APPENDIX TABLE 1

Estimated number and rate of persons supervised by U.S. adult correctional systems, by correctional status and jurisdiction, 2014

Jurisdiction	Total correctional population		Community supervision		Incarcerated	
	Number under correctional supervision, 12/31/2014 ^a	Correctional supervision rate per 100,000 U.S. residents age 18 or older ^b	Number on probation or parole, 12/31/2014 ^c	Community supervision rate per 100,000 U.S. residents age 18 or older ^b	Number in prison or local jail, 12/31/2014 ^d	Incarceration rate per 100,000 U.S. residents age 18 or older ^b
U.S. total ^e	6,814,600	2,760	4,708,100	1,910	2,188,000	890
Federal ^f	338,000	140	128,400	50	209,600	90
State	6,476,600	2,630	4,579,700	1,860	1,978,300	800
Alabama	104,900	2,790	61,400	1,640	45,800	1,220
Alaska	14,600	2,650	9,300	1,690	5,300	960
Arizona	133,600	2,590	80,700	1,570	54,800	1,060
Arkansas	69,100	3,050	49,300	2,170	23,100	1,020
California	589,600	1,980	382,600	1,280	207,100	690
Colorado	119,800	2,890	89,100	2,150	31,500	760
Connecticut	62,300	2,200	45,600	1,610	16,600	590
Delaware	23,300	3,170	16,300	2,220	7,000	950
District of Columbia ^g	11,900	2,180	11,400	2,070	1,600	300
Florida	382,600	2,390	231,600	1,450	153,600	960
Georgia ^h	579,600	7,580	491,800	6,430	91,000	1,190
Hawaii	28,300	2,540	22,500	2,010	5,900	530
Idaho ⁱ	48,600	4,010	37,700	3,110	11,000	910
Illinois	219,000	2,210	151,800	1,530	67,200	680
Indiana	175,200	3,480	128,100	2,540	47,100	940
Iowa	46,500	1,940	35,500	1,490	12,700	530
Kansas	37,400	1,710	20,400	930	17,000	780
Kentucky	103,600	3,040	70,800	2,080	33,500	980
Louisiana	113,600	3,200	70,600	1,990	49,100	1,380
Maine	10,100	940	6,600	610	4,100	380
Maryland	109,700	2,360	91,100	1,960	31,100	670
Massachusetts	90,300	1,680	70,200	1,310	20,300	380
Michigan	256,700	3,330	199,000	2,580	59,400	770
Minnesota	120,500	2,870	104,300	2,490	16,200	390
Mississippi	69,700	3,070	44,300	1,950	25,400	1,120
Missouri	109,500	2,340	65,800	1,400	43,700	930
Montana	14,500	1,810	9,700	1,210	5,500	680
Nebraska	22,500	1,580	14,000	990	8,500	600
Nevada	37,500	1,710	18,000	820	19,600	890
New Hampshire	11,200	1,050	6,300	590	4,900	460
New Jersey	164,500	2,370	130,800	1,880	35,200	510
New Mexico	32,500	2,050	18,100	1,140	14,400	910
New York	222,100	1,430	149,100	960	77,500	500
North Carolina	153,600	2,000	99,300	1,290	54,300	710
North Dakota	9,300	1,610	6,200	1,070	3,200	550
Ohio	326,300	3,630	256,200	2,850	71,200	790
Oklahoma	69,600	2,370	31,100	1,060	38,400	1,310
Oregon	82,700	2,640	61,900	1,980	20,900	670
Pennsylvania	360,800	3,570	281,400	2,780	85,200	840
Rhode Island	25,100	2,970	24,100	2,850	3,400	400
South Carolina	71,900	1,910	40,000	1,060	31,900	850
South Dakota	14,500	2,240	9,400	1,460	5,100	800
Tennessee	119,900	2,360	76,400	1,500	46,900	920
Texas	699,300	3,490	496,900	2,480	219,100	1,090
Utah	25,700	1,250	15,300	740	12,600	620
Vermont	8,400	1,670	6,800	1,340	2,000	390
Virginia	115,300	1,780	56,700	880	58,600	900

Continued on next page

APPENDIX TABLE 1 (continued)**Estimated number and rate of persons supervised by U.S. adult correctional systems, by correctional status and jurisdiction, 2014**

Jurisdiction	Total correctional population		Community supervision		Incarcerated	
	Number under correctional supervision, 12/31/2014 ^a	Correctional supervision rate per 100,000 U.S. residents age 18 or older ^b	Number on probation or parole, 12/31/2014 ^c	Community supervision rate per 100,000 U.S. residents age 18 or older ^b	Number in prison or local jail, 12/31/2014 ^d	Incarceration rate per 100,000 U.S. residents age 18 or older ^b
Washington	133,000	2,420	104,000	1,890	30,900	560
West Virginia	19,600	1,330	9,900	680	9,900	670
Wisconsin	97,300	2,180	64,500	1,440	34,600	770
Wyoming	9,700	2,180	5,900	1,330	3,800	850

Note: Counts were rounded to the nearest 100, and rates were rounded to the nearest 10. Detail may not sum to total due to rounding and because offenders with multiple correctional statuses were excluded from totals. Counts include estimates for nonresponding jurisdictions. See *Methodology*.

^aExcludes an estimated 81,700 prisoners held in local jails; 23,500 probationers in prisons; 24,600 probationers in local jails; 21,800 parolees in local jails; 11,600 parolees in prisons; and 12,900 parolees on probation. See table 6.

^bRates were computed using estimates of the U.S. resident population of persons age 18 or older within jurisdiction.

^cExcludes an estimated 12,900 parolees on probation. See table 6.

^dExcludes an estimated 81,700 prisoners held in local jails. See table 6.

^eTotal correctional population and total number in prison or local jail include local jail counts that are based on December 31, 2014, in order to produce jurisdiction-level estimates. For this reason, with the exception of appendix table 2, the totals in this table differ from the national estimates presented in other tables and figures in this report. See *Methodology*.

^fExcludes about 11,900 inmates who were not held in locally operated jails but in facilities that were operated by the Federal Bureau of Prisons and functioned as jails.

^gAfter 2001, responsibility for sentenced prisoners was transferred to the Federal Bureau of Prisons. Therefore, the 2005 and 2013 incarcerated populations represent inmates held in local jails.

^hTotal correctional population and community supervision population estimates include misdemeanor probation cases, not individuals, supervised by private companies and may overstate the number of offenders under supervision.

ⁱTotal correctional population and community supervision population include estimates of probationers supervised for a misdemeanor based on admissions and may overstate the number of offenders under supervision.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Deaths in Custody Reporting Program, and National Prisoner Statistics program, 2014; and U.S. Census Bureau, unpublished U.S. resident population estimates within jurisdiction on January 1, 2015.

APPENDIX TABLE 2**Estimated number and rate of persons supervised by U.S. adult correctional systems, by sex and jurisdiction, 2013 and 2014**

Jurisdiction	Total correctional population, 12/31/2013					Total correctional population, 12/31/2014				
	Total ^b	Number		Rate per 100,000 U.S. residents of all ages ^a		Total ^b	Number		Rate per 100,000 U.S. residents of all ages ^a	
		Male	Female	Male	Female		Male	Female	Male	Female
U.S. total^c	6,903,600	5,647,300	1,256,300	3,610	780	6,814,600	5,563,100	1,251,600	3,530	770
Federal^d	347,000	308,600	38,400	200	20	338,000	300,600	37,400	190	20
State	6,556,600	5,338,700	1,217,900	3,410	750	6,476,600	5,262,500	1,214,100	3,340	750
Alabama ^d	115,500	98,500	17,100	4,200	690	104,900	87,400	17,500	3,710	700
Alaska	14,600	12,200	2,500	3,150	710	14,600	12,100	2,400	3,130	690
Arizona	132,300	111,100	21,200	3,350	630	133,600	111,900	21,700	3,330	640
Arkansas	70,100	56,400	13,700	3,870	910	69,100	55,500	13,500	3,800	890
California	601,800	506,800	95,000	2,640	490	589,600	495,500	94,100	2,560	480
Colorado	120,500	95,000	25,500	3,560	960	119,800	94,000	25,800	3,470	960
Connecticut	62,900	52,700	10,200	3,000	550	62,300	51,500	10,700	2,930	580
Delaware	23,700	19,100	4,600	4,240	960	23,300	18,800	4,500	4,130	930
District of Columbia ^e	13,700	11,700	2,000	3,770	580	11,900	10,200	1,800	3,230	520
Florida	389,200	314,400	74,800	3,260	740	382,600	308,800	73,700	3,150	720
Georgia ^f	623,500	496,600	126,800	10,120	2,470	579,600	463,800	115,800	9,370	2,230
Hawaii	28,900	22,800	6,200	3,190	890	28,300	22,300	6,000	3,100	850
Idaho ^g	46,200	35,900	10,300	4,410	1,270	48,600	37,700	10,900	4,580	1,330
Illinois	222,700	183,500	39,200	2,900	600	219,000	181,000	38,000	2,860	580
Indiana	179,100	142,200	36,900	4,380	1,100	175,200	139,300	35,900	4,280	1,070
Iowa	45,900	36,300	9,600	2,360	610	46,500	36,600	9,900	2,360	630
Kansas	37,100	30,900	6,200	2,140	430	37,400	31,200	6,200	2,150	420
Kentucky ^d	97,500	73,500	24,000	3,390	1,070	103,600	77,900	25,700	3,580	1,150
Louisiana	115,300	97,700	17,700	4,300	750	113,600	96,300	17,400	4,220	730
Maine	10,500	8,900	1,700	1,370	250	10,100	8,400	1,700	1,290	250
Maryland ^d	74,900	67,200	7,700	2,330	250	109,700	92,100	17,700	3,170	570
Massachusetts	90,700	76,100	14,600	2,330	420	90,300	75,900	14,400	2,310	410
Michigan ^d	253,500	203,300	50,200	4,180	1,000	256,700	203,200	53,400	4,170	1,060
Minnesota	123,500	97,400	26,100	3,600	950	120,500	95,500	25,000	3,510	910
Mississippi	67,600	52,400	15,200	3,600	990	69,700	58,200	11,500	4,000	750
Missouri	113,400	93,000	20,400	3,130	660	109,500	89,400	20,100	3,000	650
Montana	14,800	12,100	2,700	2,360	530	14,500	11,700	2,800	2,270	550
Nebraska	23,200	18,500	4,600	1,980	490	22,500	17,800	4,700	1,890	500
Nevada	37,200	31,000	6,300	2,190	450	37,500	31,400	6,100	2,190	430
New Hampshire	11,100	9,300	1,800	1,420	270	11,200	9,300	1,900	1,420	280
New Jersey	164,100	137,900	26,300	3,170	580	164,500	137,300	27,200	3,140	590
New Mexico	34,500	27,700	6,900	2,680	650	32,500	26,000	6,500	2,520	620
New York	227,200	197,500	29,700	2,060	290	222,100	192,300	29,800	2,000	290
North Carolina	156,100	126,500	29,600	2,620	580	153,600	124,100	29,500	2,550	580
North Dakota	8,300	6,500	1,800	1,730	500	9,300	7,300	2,000	1,900	550
Ohio	335,600	255,800	79,900	4,510	1,350	326,300	251,000	75,300	4,410	1,270
Oklahoma	67,600	55,900	11,700	2,920	600	69,600	57,700	11,900	2,990	610
Oregon	82,300	68,200	14,100	3,490	710	82,700	68,200	14,500	3,460	720
Pennsylvania	357,400	286,700	70,700	4,590	1,080	360,800	284,700	76,100	4,540	1,160
Rhode Island	24,600	20,900	3,700	4,090	680	25,100	21,300	3,800	4,160	700
South Carolina	73,500	62,700	10,800	2,680	440	71,900	61,000	10,800	2,580	430
South Dakota	14,800	11,900	2,900	2,790	690	14,500	11,600	2,800	2,690	660
Tennessee	121,700	97,600	24,200	3,070	720	119,900	95,900	24,000	2,990	710
Texas	712,000	574,200	137,800	4,330	1,020	699,300	564,200	135,100	4,180	990
Utah	25,300	20,500	4,800	1,390	330	25,700	20,600	5,100	1,380	350
Vermont	8,600	6,900	1,800	2,230	570	8,400	6,700	1,700	2,170	540
Virginia	114,500	95,900	18,600	2,350	440	115,300	95,900	19,400	2,330	460
Washington ^d	139,400	112,600	26,900	3,210	770	133,000	106,600	26,500	3,000	750
West Virginia ^d	20,500	16,000	4,500	1,750	480	19,600	15,500	4,100	1,700	440
Wisconsin	97,900	83,000	14,900	2,910	510	97,300	82,300	15,000	2,870	520
Wyoming	9,700	7,700	2,000	2,590	700	9,700	7,700	2,000	2,580	700

Note: Counts were rounded to the nearest 100, and rates were rounded to the nearest 10. Detail may not sum to total due to rounding and because offenders with multiple correctional statuses were excluded from totals. Counts include estimates for nonresponding jurisdictions. See *Methodology*.

^aRates were computed using estimates of the resident population of persons of all ages within jurisdiction, by sex. U.S. resident population estimates of persons age 18 or older were not available by sex. For this reason, jurisdiction-level rates in other tables of this report may not be comparable to the rates in this table.

^bExcludes, by jurisdiction, an estimated 154,100 males and 16,700 females in 2013 and 157,900 males and 18,200 females with multiple correctional statuses. See *Methodology*.

^cTotal correctional population includes local jail counts that are based on December 31 in order to produce jurisdiction-level estimates. For this reason, with the exception of appendix tables 1 and 3, the estimates in this table differ from other estimates in this report. See *Methodology*.

^dEstimates may not be comparable between years due to updated information or changes in reporting. See *Methodology*.

^eAfter 2001, responsibility for sentenced prisoners was transferred to the Federal Bureau of Prisons. Therefore, the 2005 and 2013 incarcerated populations represent inmates held in local jails.

^fEstimates include misdemeanor probation cases, not individuals, supervised by private companies and may overstate the number of offenders under supervision.

^gIncludes estimates of probationers supervised for a misdemeanor based on admissions and may overstate the number of offenders under supervision.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Deaths in Custody Reporting Program, Deaths in Custody Reporting Program—Annual Summary on Inmates under Jail Jurisdiction, and National Prisoner Statistics program, 2013–2014; and U.S. Census Bureau, unpublished U.S. resident population estimates within jurisdiction, by sex, for January 1 of the following year.

APPENDIX TABLE 3

Estimated number of persons supervised by U.S. adult correctional systems, by correctional status and jurisdiction, 1999, 2005, and 2013

Jurisdiction	1999			2005			2013		
	Total correctional population	Community supervision population ^a	Incarcerated population ^b	Total correctional population	Community supervision population ^a	Incarcerated population ^b	Total correctional population	Community supervision population ^a	Incarcerated population ^b
U.S. total	6,349,000	4,485,300	1,910,400	7,055,600	4,946,600	2,200,400	6,907,800	4,753,400	2,222,900
Federal	239,100	103,800	135,200	304,500	117,900	186,600	347,000	131,900	215,100
State	6,109,900	4,381,500	1,775,100	6,751,100	4,828,700	2,013,800	6,560,800	4,621,500	2,007,800
Alabama ^c	80,500	46,800	34,700	84,800	46,200	40,800	115,500	70,800	45,900
Alaska ^c	9,000	5,000	4,000	11,500	6,700	4,900	14,600	9,500	5,100
Arizona	97,100	60,800	36,300	126,000	77,200	48,800	132,300	79,200	55,100
Arkansas	52,900	38,100	15,500	63,200	46,800	18,600	70,100	50,200	22,900
California	683,800	446,500	237,400	750,300	500,000	250,300	601,800	383,600	218,200
Colorado ^c	69,200	50,600	22,000	94,300	64,800	34,700	120,500	89,700	31,800
Connecticut	75,200	56,600	18,600	78,000	58,600	19,400	62,900	45,400	17,600
Delaware	28,600	21,600	7,000	26,000	19,100	6,900	23,700	16,700	7,000
District of Columbia ^{c,d}	27,500	17,200	10,300	14,800	12,700	3,600	13,700	12,600	2,400
Florida	418,700	298,800	120,700	431,900	282,600	153,300	389,200	237,800	154,300
Georgia ^{c,e}	397,500	329,700	71,200	531,600	445,700	88,800	623,500	536,200	90,900
Hawaii	22,900	18,000	4,900	24,400	18,900	6,100	28,900	23,300	5,600
Idaho ^{c,f}	45,000	37,700	7,200	56,200	46,200	10,000	46,200	35,200	10,900
Illinois ^c	226,300	164,800	61,500	242,700	177,700	65,000	222,700	153,400	69,300
Indiana	141,300	110,400	30,900	168,600	128,300	40,300	179,100	134,000	45,100
Iowa ^c	32,400	22,200	10,200	39,300	27,000	12,400	45,900	34,700	12,700
Kansas	36,600	23,700	12,900	35,600	19,700	16,000	37,100	20,500	16,600
Kentucky	46,300	23,900	22,500	72,900	44,800	30,700	97,500	65,900	32,000
Louisiana	101,800	57,000	44,800	108,700	62,400	51,800	115,300	70,700	49,700
Maine	10,400	7,600	2,800	11,100	8,200	3,600	10,500	6,700	3,900
Maryland ^c	119,200	96,300	33,900	115,400	89,900	35,000	74,900	46,300	32,700
Massachusetts ^c	72,300	50,600	21,700	192,100	168,900	23,100	90,700	70,000	21,000
Michigan ^c	247,800	186,500	62,000	265,500	198,600	67,600	253,500	195,200	60,100
Minnesota	118,600	107,800	10,800	136,700	121,000	15,600	123,500	107,800	15,700
Mississippi	36,800	13,800	23,800	53,300	25,800	27,500	67,600	38,600	29,000
Missouri	97,000	63,900	33,100	113,300	72,000	41,300	113,400	70,400	43,000
Montana ^c	10,400	6,500	3,900	14,100	9,100	5,100	14,800	9,500	6,000
Nebraska ^c	27,000	21,100	5,900	26,700	19,100	7,600	23,200	14,800	8,500
Nevada	29,900	15,700	14,200	33,600	16,900	18,700	37,200	17,600	19,600
New Hampshire	8,100	4,300	3,800	10,300	6,000	4,200	11,100	6,300	4,800
New Jersey	185,600	141,600	44,000	196,200	153,000	43,200	164,100	128,100	37,600
New Mexico ^c	23,500	13,200	10,200	36,500	21,600	15,000	34,500	18,700	15,800
New York ^c	346,500	241,600	104,900	260,500	172,600	92,300	227,200	151,400	80,500
North Carolina	150,800	109,500	44,300	168,300	114,700	53,500	156,100	100,600	55,400
North Dakota	4,400	2,900	1,500	6,500	4,200	2,300	8,300	5,500	2,800
Ohio	262,900	200,600	63,500	322,200	258,500	65,700	335,600	267,400	69,900
Oklahoma	57,200	29,500	28,100	65,400	32,900	32,600	67,600	"	37,800
Oregon	79,300	63,400	16,100	86,100	66,400	19,900	82,300	61,100	21,100
Pennsylvania ^c	265,400	202,300	63,500	313,300	243,200	76,800	357,400	275,800	87,300
Rhode Island	25,200	22,200	3,000	26,500	26,000	3,700	24,600	23,400	3,400
South Carolina ^c	79,200	48,900	30,300	77,500	42,500	35,000	73,500	40,900	32,600
South Dakota	8,400	4,800	3,600	12,500	7,800	4,800	14,800	9,500	5,300
Tennessee	83,400	47,400	36,400	99,300	58,000	43,500	121,700	77,900	47,400
Texas	756,600	556,400	214,000	733,800	532,200	225,000	712,000	508,000	222,000
Utah	20,000	12,800	8,500	23,100	13,400	11,900	25,300	14,500	12,600
Vermont	12,600	11,300	1,500	11,500	10,000	2,100	8,600	6,900	2,100
Virginia ^c	86,000	38,000	48,000	107,200	50,100	57,100	114,500	55,800	58,700

Continued on next page

APPENDIX TABLE 3 (continued)**Estimated number of persons supervised by U.S. adult correctional systems, by correctional status and jurisdiction, 1999, 2005, and 2013**

Jurisdiction	1999			2005			2013		
	Total correctional population	Community supervision population ^a	Incarcerated population ^b	Total correctional population	Community supervision population ^a	Incarcerated population ^b	Total correctional population	Community supervision population ^a	Incarcerated population ^b
Washington ^c	179,300	157,800	25,100	139,600	115,900	29,700	139,400	111,100	30,000
West Virginia ^c	12,400	7,000	5,400	16,000	8,900	8,100	20,500	11,000	9,700
Wisconsin	94,600	62,700	31,900	107,100	70,700	36,400	97,900	65,300	34,600
Wyoming ^c	7,000	4,300	2,700	9,000	5,400	3,600	9,700	6,000	3,800

Note: Estimates are rounded to the nearest 100 and may not be comparable to previously published BJS reports due to updated information or changes in methods. Detail may not sum to total due to rounding and because adjustments were made to exclude offenders with multiple correctional statuses. See table 6. Counts include estimates for nonresponding jurisdictions. All probation, parole, and prison counts are for December 31. The 1999 and 2005 jail counts are for the last weekday in June while the 2013 counts are for December 31. See *Methodology*.

^cNot known.

^aIncludes persons living in the community while supervised on probation or parole.

^bIncludes inmates under the jurisdiction of the state or federal prisons or held in local jails.

^cEstimates may not be comparable between years due to updated information or changes in reporting. See *Methodology*.

^dAfter 2001, responsibility for sentenced prisoners was transferred to the Federal Bureau of Prisons. Therefore, the 2005 and 2013 incarcerated populations represent inmates held in local jails.

^eThe 2005 and 2013 total correctional and community supervision population estimates include misdemeanor probation cases, not individuals, supervised by private companies and may overstate the number of offenders under supervision.

^fIncludes estimates of probationers supervised for a misdemeanor based on admissions and may overstate the number of offenders under supervision.

Sources: Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Census of Jail Inmates, Deaths in Custody Reporting Program—Annual Summary on Inmates under Jail Jurisdiction, and National Prisoner Statistics program, 1999, 2005, and 2013.

APPENDIX TABLE 4**Number of inmates incarcerated by other adult correctional systems, 2000, 2005, and 2013–2014**

Other adult correctional systems	Number of inmates				Average annual percent change, 2000–2013	Percent change, 2013–2014
	2000	2005	2013	2014		
Total	20,400	19,800	17,600	17,800	-1.1%	1.1%
Territorial prisons ^a	16,200	15,800	13,900	14,000	-1.1	0.9
Military facilities ^b	2,400	2,300	1,400	1,400	-4.1	-0.8
Jails in Indian country ^c	1,800	1,700	2,300	2,400	1.9	4.1

Note: Estimates were rounded to the nearest 100. Total excludes inmates held in local jails, under the jurisdiction of state or federal prisons, in U.S. Immigration and Customs Enforcement facilities, or in juvenile facilities.

^aPopulation counts are for December 31. The 2013–2014 totals include population counts that were estimated for some territories due to nonresponse. See *Prisoners in 2014* (NCJ 248955, BJS web, September 2015).

^bPopulation counts are for December 31. See *Prisoners in 2014* (NCJ 248955, BJS web, September 2015).

^cPopulation counts are for the last weekday in June. The 2005 population was estimated as the 2004 population because the Survey of Jails in Indian Country was not conducted in 2005 or 2006. See *Jails in Indian Country, 2014* (NCJ 248974, BJS web, October 2015).

Sources: Bureau of Justice Statistics, National Prisoner Statistics program and Survey of Jails in Indian Country, 2000, 2005, and 2013–2014.

APPENDIX TABLE 5**Inmates held in custody in state or federal prisons or local jails, 2000 and 2013–2014**

Inmates in custody	Number of inmates			Average annual percent change, 2000–2013	Percent change, 2013–2014
	2000	2013	2014		
Total	1,938,500	2,211,400	2,217,900	1.0%	0.3%
Federal prisoners ^a	140,100	215,000	209,600	3.3%	-2.5%
Prisons	133,900	205,700	200,100	3.3	-2.7
Federal facilities	124,500	173,800	169,500	2.6	-2.5
Privately operated facilities	9,400	31,900	30,500	9.4	-4.4
Community corrections centers ^b	6,100	9,300	9,500	3.2	2.2
State prisoners	1,177,200	1,265,200	1,263,800	0.6%	-0.1%
State facilities ^c	1,101,200	1,173,000	1,172,600	0.5	0.0
Privately operated facilities	76,100	92,200	91,200	1.5	-1.1
Local jails	621,100	731,200	744,600	1.3%	1.8%
Incarceration rate ^d	690	700	690	0.1%	-1.4%
Adult incarceration rate ^e	920	910	900	-0.1	-1.1

Note: Estimates may not be comparable to previously published BJS reports due to updated information. Counts were rounded to the nearest 100 and include estimates for nonresponding jurisdictions. See *Methodology*. Rates were rounded to the nearest 10. Detail may not sum to total due to rounding. Prison counts are for December 31; jail counts are for the last weekday in June. Total includes all inmates held in local jails, state or federal prisons, or privately operated facilities. It does not include inmates held in U.S. territories (appendix table 4), military facilities (appendix table 4), U.S. Immigration and Customs Enforcement facilities, in jails in Indian country (appendix table 4), or juvenile facilities. See *Methodology* for sources of incarceration data and *Terms and definitions* for an explanation of the differences between the custody prison population reported in this table and the jurisdiction prison population reported in all other tables and figures.

^aAfter 2001, responsibility for sentenced prisoners from the District of Columbia was transferred to the Federal Bureau of Prisons.

^bNonsecure, privately operated community corrections centers.

^cExcludes prisoners held in local jails in Georgia for 2013 and 2014 to avoid double counting.

^dThe total number in the custody of local jails, state or federal prisons, or privately operated facilities per 100,000 U.S. residents of all ages.

^eThe total number in custody per 100,000 U.S. residents age 18 or older.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, and National Prisoner Statistics program, 2000 and 2013–2014; and U.S. Census Bureau, postcensal estimated resident populations for January 1 of the following year, 2001, 2014, and 2015.

APPENDIX TABLE 6**Estimated standard errors for local jail inmates, 2000 and 2005–2014**

Year	Total	Standard error
2000	621,100	2,500
2005	747,500	~
2006	765,800	3,550
2007	780,200	3,720
2008	785,500	4,020
2009	767,400	4,230
2010	748,700	5,430
2011	735,600	6,010
2012	744,500	7,680
2013	731,200	8,040
2014	744,600	8,380

Note: Population estimates were rounded to the nearest 100. Standard errors were rounded to the nearest 10.

~Not applicable. Data represent a complete enumeration based on the 2005 Census of Jail Inmates.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, Census of Jail Inmates, 2000 and 2005–2014.



The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for measuring crime, criminal victimization, criminal offenders, victims of crime, correlates of crime, and the operation of criminal and civil justice systems at the federal, state, tribal, and local levels. BJS collects, analyzes, and disseminates reliable and valid statistics on crime and justice systems in the United States, supports improvements to state and local criminal justice information systems, and participates with national and international organizations to develop and recommend national standards for justice statistics. William J. Sabol is director.

This report was written by Danielle Kaeble, Lauren Glaze, Anastasios Tsoutis, and Todd Minton. Lauren Glaze, E. Ann Carson, and Todd Minton verified the report.

Lynne McConnell and Jill Thomas edited the report. Tina Dorsey produced the report.

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EXHIBIT B



Jail Inmates at Midyear 2014

Todd D. Minton and Zhen Zeng, Ph.D., *BJS Statisticians*

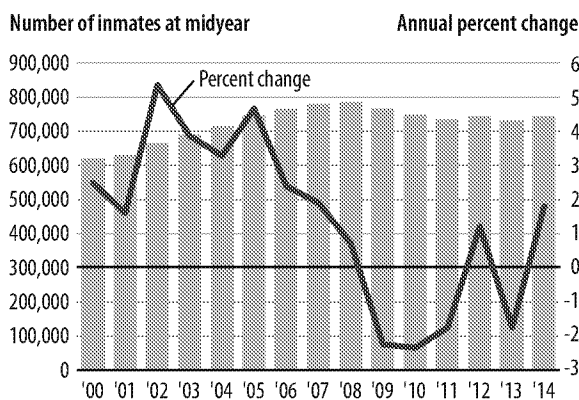
The number of inmates confined in county and city jails was an estimated 744,600 at midyear 2014 (figure 1, table 1). The jail population remained steady at the 2012 level and was significantly lower than the peak of an estimated 785,500 at midyear 2008. Since 2000, the jail inmate population increased about 1% each year.

The jail incarceration rate—the confined jail population per 100,000 U.S. residents—decreased steadily from a peak of 259 inmates per 100,000 at midyear 2007 to 234 per 100,000 at midyear 2014. The adult only jail incarceration rate has also declined from a high of 340 inmates per 100,000 at midyear 2007 to 302 per 100,000 at midyear 2014.

This report summarizes data from the Annual Survey of Jails (ASJ) which is conducted in years between the complete census of local jails. ASJ uses a stratified probability sample of jail jurisdictions to estimate the number and characteristics of local inmates nationwide. The 2014 ASJ sample consisted of 891 jail jurisdictions, represented by 942 jail facilities (referred to as reporting units). This sample

represents about 2,750 jail jurisdictions nationwide. Local jail jurisdictions include counties (parishes in Louisiana) or municipal governments that administer one or more local jails.

FIGURE 1
Inmates confined in local jails at midyear and percent change in the jail population, 2000–2014



Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000–2004 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

HIGHLIGHTS

- The number of inmates confined in county and city jails was an estimated 744,600 at midyear 2014, which was significantly lower than the peak of 785,500 inmates at midyear 2008.
- Since 2000, the jail inmate population increased about 1% each year.
- The jail incarceration rate decreased from a peak of 259 per 100,000 in 2007 to 234 per 100,000 at midyear 2014.
- The female inmate population increased 18.1% between midyear 2010 and 2014, while the male population declined 3.2%.
- White inmates accounted for 47% of the total jail population, blacks represented 35%, and Hispanics represented 15%.
- About 4,200 juveniles age 17 or younger were held in local jails at midyear 2014. They accounted for 0.6% of the confined population, down from 1.2% at midyear 2000.
- Nearly 90% or 3,700 juvenile inmates were tried or awaiting trial in adult court. The number of juveniles not charged as an adult declined by 74% between midyear 2010 and 2014.
- Since 2000, 95% of the growth in the overall jail inmate population (123,500) was due to the increase in the unconvicted population (117,700 inmates).
- Local jails admitted about 11.4 million persons during the 12-month period ending June 30, 2014, which was down from a peak of 13.6 million in 2008.

TABLE 1

Inmates confined in local jails at midyear, average daily population, and incarceration rates, 2000–2014

Year	Inmates confined at midyear ^a			Average daily population ^b			Jail incarceration rate ^c	
	Total	Year-to-year change		Total	Year-to-year change		Adults and juveniles ^d	Adults only
		Number	Percent		Number	Percent		
2000	621,149**	15,206	2.5%	618,319**	10,341	1.7%	220	292
2001	631,240**	10,091	1.6	625,966**	7,647	1.2	222	294
2002	665,475**	34,235	5.4	652,082**	26,116	4.2	231	307
2003	691,301**	25,826	3.9	680,760**	28,678	4.4	238	315
2004	713,990**	22,689	3.3	706,242**	25,482	3.7	243	322
2005	747,529	33,539	4.7	733,442	27,200	3.9	252	334
2006	765,819**	18,290	2.4	755,320	21,878	3.0	256	338
2007	780,174**	14,355	1.9	773,138	17,818	2.4	259	340
2008	785,533**	5,359	0.7	776,573**	3,435	0.4	258	338
2009	767,434**	-18,099	-2.3	768,135**	-8,438	-1.1	250	327
2010	748,728	-18,706	-2.4	748,553	-19,582	-2.5	242	315
2011	735,601	-13,127	-1.8	735,565	-12,988	-1.7	236	307
2012	744,524	8,923	1.2	737,369	1,804	0.2	237	308
2013	731,208	-13,316	-1.8	731,352	-6,017	-0.8	231	299
2014*	744,592	13,384	1.8	738,975	7,623	1.0	234	302
Average annual change								
2000–2013			1.3%			1.3%		
2013–2014			1.8			1.0		

Note: Detail may not sum to total because of rounding. See appendix table 1 for standard errors.

*Comparison year on confined inmates and average daily population.

**Difference with comparison year is significant at the 95% confidence level. See *Methodology* for tests of significance.

^aNumber of inmates held on the last weekday in June.

^bSum of all inmates in jail each day for a year, divided by the number of days in the year.

^cNumber of inmates confined at midyear per 100,000 U.S. residents.

^dJuveniles are persons age 17 or younger at midyear.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000–2004 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

Males have made up at least 85% of the jail population since 2000. The female inmate population increased 18.1% (up 16,700 inmates) between midyear 2010 and 2014, while the male population declined 3.2% (down 20,900 inmates) (table 2, table 3). The female jail population grew by an average of about 1.6% every year between 2005 and 2014. In comparison, the male jail population declined by 0.3% every year since 2005 (not shown).

White inmates accounted for 47% of the total jail population, blacks represented 35%, and Hispanics represented 15% at midyear 2014. From midyear 2010 to 2014, white inmates increased by 21,200, while black (19,400) and Hispanic (7,500) inmates declined.

TABLE 2

Number of inmates in local jails, by characteristics, midyear 2000 and 2005–2014

Characteristic	2000	2005	2006	2007	2008	2009	2010	2011 ^a	2012 ^a	2013 ^a	2014 ^{aa}
Total^b	621,149**	747,529	765,819**	780,174**	785,533**	767,434**	748,728	735,601	744,524	731,208	744,592
Sex											
Male	550,162**	652,958**	666,819**	679,654**	685,862**	673,728**	656,360**	642,300	645,900	628,900	635,500
Female	70,987**	94,571**	99,000**	100,520**	99,670**	93,706**	92,368**	93,300**	98,600**	102,400**	109,100
Adult	613,534**	740,770	759,717**	773,341**	777,829**	760,216**	741,168	729,700	739,100	726,600	740,400
Male	543,120**	646,807**	661,164**	673,346**	678,657**	667,039**	649,284**	636,900	640,900	624,700	631,600
Female	70,414**	93,963**	98,552**	99,995**	99,172**	93,176**	91,884**	92,800**	98,100**	101,900**	108,800
Juvenile^c	7,615**	6,759**	6,102**	6,833**	7,703**	7,218**	7,560**	5,900**	5,400**	4,600	4,200
Held as adult ^d	6,126**	5,750**	4,835**	5,649**	6,410**	5,846**	5,647**	4,600**	4,600**	3,500	3,700
Held as juvenile	1,489**	1,009	1,268	1,184	1,294	1,373	1,912**	1,400	900	1,100	500
Race/Hispanic origin^e											
White ^f	260,500**	331,000**	336,500**	338,200**	333,300**	326,400**	331,600**	329,400**	341,100	344,900	352,800
Black/African American ^f	256,300	290,500**	295,900**	301,700**	308,000**	300,500**	283,200**	276,400**	274,600	261,500	263,800
Hispanic/Latino	94,100**	111,900	119,200**	125,500**	128,500**	124,000**	118,100**	113,900	112,700	107,900	110,600
American Indian/ Alaska Native ^{f,g}	5,500**	7,600**	8,400	8,600	9,000	9,400	9,900	9,400	9,300	10,200	10,400
Asian/Native Hawaiian/ Other Pacific Islander ^{f,g}	4,700**	5,400**	5,100**	5,300**	5,500**	5,400**	5,100**	5,300**	5,400	5,100**	6,000
Two or more races ^f	...	1,000	700	800	1,300	1,800**	800	1,200	1,500**	1,600**	1,000
Conviction status^{eh}											
Convicted	271,300	284,400	290,000**	296,700**	291,200**	290,100**	291,300**	289,600**	293,100**	278,000	277,100
Unconvicted	349,800**	463,200	475,800	483,500**	494,200**	477,300	457,400	446,000**	451,400**	453,200	467,500

Note: Detail may not sum to total because of rounding. See appendix table 2 for reported data and appendix table 3 for standard errors.

... Not collected.

*Comparison year for each characteristic.

**Difference with comparison year is significant at the 95% confidence level.

^aData for 2011–2014 are adjusted for nonresponse and rounded to the nearest 100.

^bMidyear count is the number of inmates held on the last weekday in June.

^cPersons age 17 or younger at midyear.

^dIncludes juveniles who were tried or awaiting trial as adults.

^eData adjusted for nonresponse and rounded to the nearest 100. See *Methodology*.

^fExcludes persons of Hispanic or Latino origin.

^gPrevious reports combined American Indians and Alaska Natives and Asians, Native Hawaiians, and other Pacific Islanders into an Other race category.

^hIncludes juveniles who were tried or awaiting trial as adults.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

About 4,200 juveniles age 17 or younger were held in local jails at midyear 2014. They accounted for 0.6% of the confined population, down from 1.2% at midyear 2000. Nearly 90% or 3,700 juvenile inmates were tried or awaiting trial in adult court. The number of juveniles not charged as an adult declined by 74% between midyear 2010 and 2014 (from 1,900 to 500 inmates).

At midyear 2014, about 6 in 10 inmates were not convicted, but were in jail awaiting court action on a current charge—a rate unchanged since 2005. About 4 in 10 inmates were sentenced

offenders or convicted offenders awaiting sentencing. From midyear 2013 to 2014, the number of unconvicted inmates and the number of convicted inmates remained statistically the same. Since 2000, 95% of the growth in the overall jail inmate population (up 123,500) was due to the increase in the unconvicted population (up 117,700 inmates) and 5% was due to the increase in the convicted population (up 5,800 inmates).

TABLE 3
Percent of inmates in local jails, by characteristics, midyear 2000 and 2005–2014

Characteristic	2000	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Sex											
Male	88.6%	87.3%	87.1%	87.1%	87.3%	87.8%	87.7%	87.3%	86.8%	86.0%	85.3%
Female	11.4	12.7	12.9	12.9	12.7	12.2	12.3	12.7	13.2	14.0	14.7
Adult	98.8%	99.1%	99.2%	99.1%	99.0%	99.1%	99.0%	99.2%	99.3%	99.4%	99.4%
Male	87.4	86.5	86.3	86.3	86.4	86.9	86.7	86.6	86.1	85.4	84.8
Female	11.3	12.6	12.9	12.8	12.6	12.1	12.3	12.6	13.2	13.9	14.6
Juvenile^a	1.2%	0.9%	0.8%	0.9%	1.0%	0.9%	1.0%	0.8%	0.7%	0.6%	0.6%
Held as adult ^b	1.0	0.8	0.6	0.7	0.8	0.8	0.8	0.6	0.6	0.5	0.5
Held as juvenile	0.2	0.1	0.2	0.2	0.2	0.2	0.3	0.2	0.1	0.1	0.1
Race/Hispanic origin^c											
White ^d	41.9%	44.3%	43.9%	43.3%	42.5%	42.5%	44.3%	44.8%	45.8%	47.2%	47.4%
Black/African American ^d	41.3	38.9	38.6	38.7	39.2	39.2	37.8	37.6	36.9	35.8	35.4
Hispanic/Latino	15.2	15	15.6	16.1	16.4	16.2	15.8	15.5	15.1	14.8	14.9
American Indian/ Alaska Native ^{d,e}	0.9	1.0	1.1	1.1	1.1	1.2	1.3	1.3	1.2	1.4	1.4
Asian/Native Hawaiian/ Other Pacific Islander ^{d,e}	0.8	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.8
Two or more races ^d	...	0.1	0.1	0.1	0.2	0.2	0.1	0.2	0.2	0.2	0.1
Conviction status^{b,c}											
Convicted	44.0%	38.0%	37.9%	38.0%	37.1%	37.8%	38.9%	39.4%	39.4%	38.0%	37.2%
Unconvicted	56.0	62.0	62.1	62.0	62.9	62.2	61.1	60.6	60.6	62.0	62.8

Note: Percentages are based on the total number of inmates held on the last weekday in June. Detail may not sum to total because of rounding. See table 2 for significance test. See appendix table 4 for standard error ratios.

...Not collected.

^aPersons age 17 or younger at midyear.

^bIncludes juveniles who were tried or awaiting trial as adults.

^cData adjusted for nonresponse. See *Methodology*.

^dExcludes persons of Hispanic or Latino origin.

^ePrevious reports combined American Indians and Alaska Natives and Asians, Native Hawaiians, and other Pacific Islanders into an Other race category.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

Nearly half of jail inmates were held in less than 10% of jails

The largest jails (those with an average daily population (ADP) of 1,000 or more inmates) held 47% of the jail inmate population at midyear 2014, but accounted for 6% of all jail jurisdictions nationwide (table 4). In comparison, the smallest jail jurisdictions (those with an ADP of less than 50 inmates)

held 3% of the inmate population, but accounted for 38% of all jail jurisdictions. Jail jurisdictions with an ADP of 50 to 99 inmates and 100 to 249 inmates accounted for about 20% each of jail jurisdictions. Combined, these jail jurisdictions held 19% of all inmates. Jail jurisdictions with an ADP of 250 to 999 inmates accounted for 17% of all jail jurisdictions, but held 31% of all inmates at midyear 2014. Similar patterns were observed in 2013 for all categories.

TABLE 4
Inmates confined in local jails at midyear, by size of jurisdiction, 2013–2014

Jurisdiction size ^b	Inmates confined at midyear ^a				Percent of all inmates	
	2013	2014	Difference	Percent change	2013	2014
Total	731,208	744,592	13,384	1.8%	100%	100%
49 or fewer	23,545	25,058	1,513	6.4	3.2	3.4
50–99	38,970	42,172	3,202	8.2	5.3	5.7
100–249	95,031	96,443	1,412	1.5	13.0	13.0
250–499	102,362	101,609	-753	-0.7	14.0	13.6
500–999	123,155	128,070	4,915	4.0	16.8	17.2
1,000 or more	348,145	351,239	3,094	0.9	47.6	47.2

Note: Detail may not sum to total because of rounding. All comparisons by jurisdiction size are not significant at the 95%-confidence level. See appendix table 5 for standard errors.

^aNumber of inmates held on the last weekday in June.

^bStandardized on the average daily population (ADP) for the 12-month period ending June 30, 2006, the first year in the current Annual Survey of Jails sample. ADP is the sum of all inmates in jail each day for a year, divided by the number of days in the year.

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2013–2014.

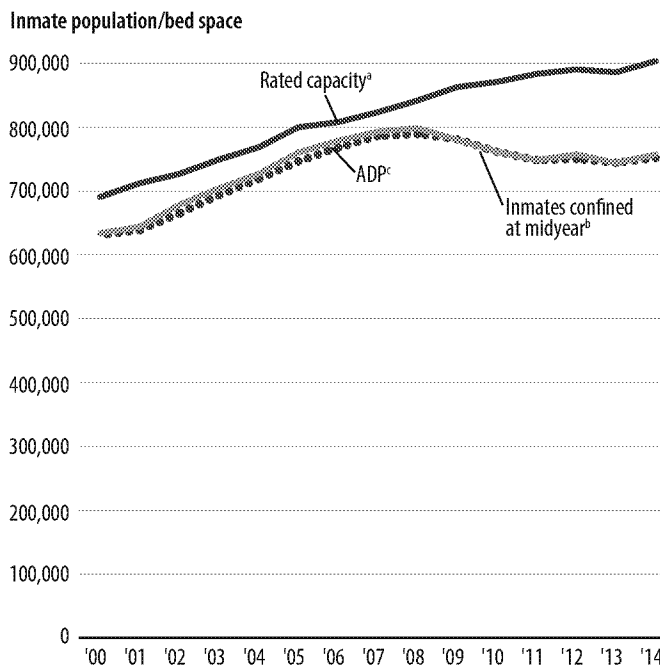
Increase in new bed space between 2013 and 2014 was similar to the average annual increase between 2000 and 2013

Rated capacity in jails reached an estimated 890,500 beds at midyear 2014, an increase of nearly 4% from 857,900 beds at midyear 2010 (figure 2, table 5). Rated capacity is the maximum number of beds or inmates allocated to each jail facility by a state or local rating official.

Since peaking in 2007 (96%), the percentage of rated capacity occupied at midyear 2014 (84%) was the lowest since 2000. At midyear 2014, jail jurisdictions holding 250 or more inmates reported a higher percentage of occupied bed space (85% to 87%) than smaller jail jurisdictions holding fewer than 250 inmates (67% to 79%) (table 6).

In addition to the ratio of midyear jail population to rated capacity, two additional measures can be used to measure jail crowding—the ratio of ADP in a year to rated capacity, and the ratio of the number of inmates on the most crowded day in June to rated capacity. Using these measures, the nation’s jails operated at about 83% of rated capacity on an average day and about 89% of rated capacity on their most crowded day in June 2014.

FIGURE 2
Midyear custody population, average daily population (ADP), and rated capacity in local jails, 2000–2014



^aMaximum number of beds or inmates assigned by a rating official to a facility, excluding separate temporary holding areas.

^bNumber of inmates held on the last weekday in June.

^cSum of all inmates in jail each day for a year, divided by the number of days in the year.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000–2004 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

TABLE 5
Rated capacity of local jails and percent of capacity occupied, 2000 and 2005–2014

Year	Rated capacity ^c	Year-to-year change in rated capacity ^a		Percent of capacity occupied ^b	
		Number	Percent	Midyear ^d	Average daily population ^e
2000	677,787**	25,466	3.9%	92.0%**	91.2%**
2005	786,954**	33,398	4.1	95.0**	93.2**
2006	794,984**	8,638	1.0	96.3**	95.0**
2007	810,543**	15,863	2.0	96.3**	95.4**
2008	828,714**	18,171	2.2	94.8**	93.7**
2009	849,895**	21,181	2.6	90.3**	90.4**
2010	857,918**	8,023	0.9	87.3**	87.3**
2011	870,422	12,504	1.5	84.5	84.5
2012	877,396	6,974	0.8	84.9	84.0
2013	872,943	-4,453	-0.5	83.8	83.8
2014*	890,486	17,543	2.0	83.6	83.0
Average annual change					
2000–2013	2.0%	17,199			
2013–2014	2.0	17,543			

Note: See appendix table 6 for standard errors.

*Comparison year on rated capacity and percent of capacity occupied.

**Difference with comparison year is significant at the 95% confidence level.

^aIncrease or reduction in the number of beds during the 12 months ending midyear of each year. Number and percentage change for 2000 are calculated using the rated capacity of 652,321 for 1999.

^bBased on the confined inmate population divided by the rated capacity and multiplied by 100.

^cMaximum number of beds or inmates assigned by a rating official to a facility, excluding separate temporary holding areas.

^dNumber of inmates held on the last weekday in June.

^eSum of all inmates in jail each day for a year, divided by the number of days in the year.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

While the confined population and rated jail capacity both increased at roughly comparable rates from 2000 through 2008, the growth rates have diverged since 2008. The confined population declined by 0.9% on average per year, while rated capacity increased by 1.2% on average per year. The increase in capacity and decrease in confined population almost equally contributed to the decline in the percentage of capacity occupied, from 95% at midyear 2008 to 84% at midyear 2014.

TABLE 6
Percent of jail capacity occupied at midyear, by size of jurisdiction, 2013–2014

Jurisdiction size	2013	2014*
Total	83.8%	83.6%
49 or fewer	64.4	67.0
50–99	69.4	74.2
100–249	77.9	78.7
250–499	87.3	86.7
500–999	84.9	85.0
1,000 or more	87.9**	86.5

Note: Number of inmates held on the last weekday in June divided by the rated capacity multiplied by 100. Jurisdiction size is standardized on the average daily population for the 12-month period ending June 30, 2006, the first year in the current Annual Survey of Jails sample. See appendix table 7 for standard errors.

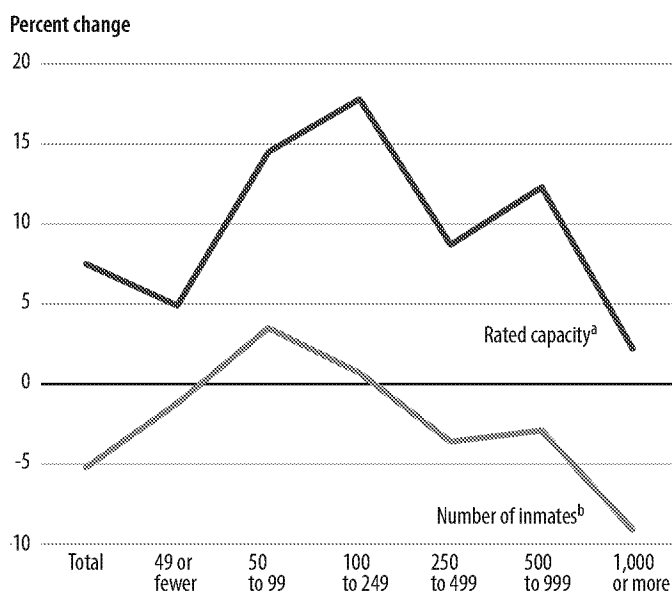
*Comparison year on percent of capacity occupied at midyear.

**Difference with comparison year is significant at the 95% confidence level.

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2013–2014.

From midyear 2008 to 2014, jail jurisdictions holding 100 to 249 inmates experienced the largest percentage increase in rated capacity relative to population change (figure 3). These jurisdictions reported an 18% increase in their rated capacity and a small increase (less than 1%) in their inmate population. The smallest jail jurisdictions, which held fewer than 50 inmates, reported the smallest percentage increase in rated capacity (up 4.9%) relative to population change (down 1.2%). Jails holding more than 250 inmates experienced a decline in their midyear jail population and an increase in their rated capacity.

FIGURE 3
Percent change in the midyear custody population and rated capacity between 2008 and 2014



Note: Jail jurisdiction size is standardized to the average daily population (ADP) for the 12-month period ending June 30, 2006, the first year in the current Annual Survey of Jails sample. ADP is the sum of all inmates in jail each day for a year, divided by the number of days in the year.

^aMaximum number of beds or inmates assigned by a rating official to a facility, excluding separate temporary holding areas.

^bNumber of inmates held on the last weekday in June.

Source: Bureau of Justice Statistics, Annual Survey of Jails, 2008 and 2014.

Local jails admitted 11.4 million persons during the 12-month period ending midyear 2014

Local jails admitted an estimated 11.4 million persons during the 12-month period ending June 30, 2014, a stable estimate since 2011 (11.8 million), but down from a peak of 13.6 million admissions in 2008. The number of persons admitted in 2014 was 15 times the size of the ADP (an estimated 739,000) during the 12-month period ending June 30, 2014. (See *Methodology* for methods used to estimate admissions.)

Nearly 4 in 10 admissions to jail during the last week of June 2014 were to the largest jail jurisdictions (table 7). In comparison, jail jurisdictions holding fewer than 50 inmates accounted for 6% of all jail admissions. For these jurisdictions, the number of inmates admitted was 28 times the size of the ADP between midyear 2013 and 2014. These small jail jurisdictions also experienced the highest turnover rate (104%), measured as the change in admissions and releases by the ADP. (See *Methodology* for detail.) The turnover rate was the smallest in large jail jurisdictions (49%). Higher turnover rates mean larger numbers of admissions and releases relative to the size of the ADP.

TABLE 7

Average daily jail population, admissions, and turnover rate, by size of jurisdiction, week ending June 30, 2013 and 2014

Jurisdiction size ^c	Average daily population ^a			Estimated number of admissions during the last week in June		Weekly turnover rate ^b	
	2013	2014	Difference	2013	2014*	2013	2014*
Total	731,352	738,975	7,623	224,536	218,924	60.2%	58.1%
49 or fewer	23,301	23,490	189	15,296	12,610	121.1	104.2
50–99	38,721	40,554	1,833	16,315	18,763	83.6	87.2
100–249	93,653	96,200	2,547	32,470	32,087	67.9	65.5
250–499	102,045	99,889	-2,156	35,003	33,527	66.3	65.0
500–999	123,220	125,954	2,734	46,806	35,430	75.5	56.1
1,000 or more	350,412	352,888	2,476	78,645**	86,507	44.3**	48.5

Note: Detail may not sum to total because of rounding. See *Methodology* for more detail on estimation procedures. All comparisons by average daily population are not significant at the 95%-confidence level. See appendix table 8 for standard errors.

*Comparison year on admissions and weekly turnover rate.

**Difference with comparison year is significant at the 95% confidence level.

^aSum of all inmates in jail each day for a year.

^bCalculated by adding weekly admissions and releases, dividing by the average daily population (ADP), and multiplying by 100.

^cStandardized on the ADP for the 12-month period ending June 30, 2006, the first year in the current Annual Survey of Jails sample.

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2013–2014.

Other selected data from ASJ

TABLE 8
Inmate population in jail jurisdictions reporting on confined persons being held for U.S. Immigration and Customs Enforcement (ICE), midyear 2002–2014

Year	Jurisdictions reporting on holdings for ICE ^a	Inmates confined at midyear ^b	Confined persons held for ICE at midyear	
			Number	Percent of all inmates
2002	2,961	626,870	12,501	2.0%
2003	2,940	637,631	13,337	2.1
2004	2,962	673,807	14,120	2.1
2005	2,824	703,084	11,919	1.7
2006	2,784	698,108	13,598	1.9
2007	2,713	683,640	15,063	2.2
2008	2,699	704,278	20,785	3.0
2009	2,643	685,500	24,278	3.5
2010	2,531	622,954	21,607	3.5
2011	2,758	672,643	22,049	3.3
2012	2,716	690,337	22,870	3.3
2013	2,685	673,707	17,241	2.6
2014	2,634	654,730	16,384	2.5

Note: Data are based on the reported data and were not estimated for survey item nonresponse. Comparisons were not tested due to changing coverage each year. See appendix table 9 for standard errors.

^aNot all jurisdictions reported on holdings for ICE.

^bNumber of inmates held on the last weekday in June in jails reporting complete data or the number of inmates held for ICE.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2002–2004 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

TABLE 9
Persons under jail supervision, by confinement status and type of program, midyear 2000 and 2006–2014

Confinement status and type of program	2000	2006	2007	2008	2009	2010	2011	2012	2013	2014*
Total	687,033**	826,041	848,419**	858,385**	837,647**	809,360	798,417	808,622	790,649	808,070
Held in jail^a	621,149**	765,819**	780,174**	785,533**	767,434**	748,728	735,601	744,524	731,208	744,592
Supervised outside of a jail facility^b	65,884	60,222	68,245	72,852**	70,213**	60,632	62,816	64,098	59,441	63,478
Weekend programs ^c	14,523**	11,421**	10,473	12,325**	11,212**	9,871	11,369**	10,351	10,950	9,698
Electronic monitoring	10,782**	10,999**	13,121	13,539	11,834**	12,319	11,950**	13,779	12,023**	14,223
Home detention ^d	332	807	512	498	738	736	809	2,129**	1,337**	646
Day reporting	3,969	4,841	6,163**	5,758**	6,492**	5,552**	5,200	3,890	3,683	4,413
Community service	13,592	14,667	15,327	18,475**	17,738**	14,646	11,680	14,761	13,877	14,331
Other pretrial supervision	6,279**	6,409**	11,148**	12,452**	12,439**	9,375	10,464	7,738	7,542	8,634
Other work programs ^e	8,011	8,319**	7,369	5,808	5,912	4,351**	7,165	7,137	5,341**	7,003
Treatment programs ^f	5,714**	1,486**	2,276	2,259	2,082	1,799	2,449	2,164	2,002	2,100
Other	2,682	1,273**	1,857**	1,739	1,766**	1,983**	1,731**	2,149	2,687	2,430

Note: See appendix table 10 for standard errors.

*Comparison year by status and program.

**Difference with comparison year is significant at the 95% confidence level.

^aNumber of inmates held on the last weekday in June.

^bNumber of persons under jail supervision but not confined on the last weekday in June. Excludes persons supervised by a probation or parole agency.

^cOffenders serve their sentences of confinement on weekends only (i.e., Friday to Sunday).

^dIncludes only persons without electronic monitoring.

^eIncludes persons in work release programs, work gangs, and other alternative work programs.

^fIncludes persons in drug, alcohol, mental health, and other medical treatment.

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014.

Methodology

Annual Survey of Jails

In years between the complete census of local jails, the Bureau of Justice Statistics (BJS) conducts the Annual Survey of Jails (ASJ). ASJ uses a stratified probability sample of jail jurisdictions to estimate the number and characteristics of local inmates nationwide. The 2014 ASJ sample consisted of 891 jail jurisdictions, represented by 942 jail facilities (referred to as reporting units). This sample represents about 2,750 jail jurisdictions nationwide. Local jail jurisdictions include counties (parishes in Louisiana) or municipal governments that administer one or more local jails.

In the sampling design, the jail jurisdictions nationwide were grouped into 10 strata. The 10 strata were defined by the interaction of two variables: the jail jurisdiction average daily population (ADP) in 2005, and whether in 2005 the jurisdiction held at least one juvenile. For 8 of the 10 strata, a random sample of jail jurisdictions was selected. For the remaining two strata, all jurisdictions were included in the sample. One stratum consisted of all jails (70) that were operated jointly by two or more jurisdictions (referred to as multi-jurisdictional jails). The other stratum (referred to as certainty stratum) consisted of all jail jurisdictions (267) that—

- held juvenile inmates at the time of the 2005 Census of Jail Inmates and had an ADP of 500 or more inmates during the 12 months ending June 30, 2005.
- held only adult inmates and had an ADP of 750 or more.

The sampling design used for the 2014 ASJ is the same as the design used for the 2013 ASJ. The 2013 ASJ differed from the 2006–2012 ASJs in that it included in the sample, with a probability of one, all California jail jurisdictions in response to the two enacted laws—AB 109 and AB 117 by the California State Legislature and governor—to reduce the number of inmates housed in state prisons starting October 1, 2011. The inclusion of all California jail jurisdictions resulted in an additional 21 jail jurisdictions (for a total sample size of 891 jurisdictions). Since the enactment of the two laws in recent years, the California jail population has experienced changes in size that cannot be compared to the changes of any other state in the U.S. For this reason, the California jail jurisdictions were put in separate strata so that they could represent only California jurisdictions. The same sampling design was adopted for the California jurisdictions.

BJS obtained data from sampled jail jurisdictions by mailed and web-based survey questionnaires. After follow-up phone calls and facsimiles, the item response rate for jails that responded to the survey was nearly 100% for critical items, such as the number of inmates confined, ADP, and rated capacity. (See appendix tables 1 to 7 for standard errors associated with reported estimates from the 2014 ASJ.)

Response rate, nonresponse adjustment, and out-of-scope jail facilities

The 2014 ASJ sample initially comprised 942 reporting units. However, 12 units were out-of-scope for the 2014 data collection because they had closed either permanently or temporarily, which resulted in a sample of 930 active respondents. Ninety-three percent (or 878) of the 930 active individual reporting units responded to the 2014 data collection, and 52 active individual reporting units did not respond to the survey.

BJS implemented nonresponse weight adjustment procedures to account for unit nonresponse, as it did in 2011 to 2013.

Respondent indicators

The respondent reporting unit indicator $JAILR_{hij}$ is set for each individual reporting unit j in jurisdiction i in stratum h on the file, based on the status of the individual reporting unit.

$$JAILR_{hij} = \begin{cases} 1 & \text{if respondent or using prior year data,} \\ 0 & \text{if nonrespondent, closed, or out-of-scope.} \end{cases}$$

The respondent jurisdiction indicator $JURISR_{hi}$ is set for each jurisdiction i in stratum h on the file, based on the value of $JAILR_{hij}$ for the reporting units within the jurisdiction.

$$JURISR_{hi} = \begin{cases} 1 & \text{if } \sum_{j=1}^{n_i} JAILR_{hij} \geq 1 \\ 0 & \text{otherwise.} \end{cases}$$

Active indicators

The active reporting unit indicator $JAILA_{hij}$ is set for each individual reporting unit j in jurisdiction i in stratum h on the file, based on the status of the individual reporting unit.

$$JAILA_{hij} = \begin{cases} 1 & \text{if respondent, using prior year data, or nonrespondent} \\ 0 & \text{if closed or out-of-scope.} \end{cases}$$

The active jurisdiction indicator $JURISA_{hi}$ is set for each jurisdiction i in stratum h on the file, based on the value of $JAILA_{hij}$ for the reporting units within the jurisdiction.

$$JURISA_{hi} = \begin{cases} 1 & \text{if } \sum_{j=1}^{n_i} JAILA_{hij} \geq 1 \\ 0 & \text{otherwise.} \end{cases}$$

Nonresponse weighting adjustment factor

The nonresponse weighting adjustment factor is calculated within each stratum. BJS uses the sample weights in the nonresponse adjustment factor. The nonresponse weighting adjustment factor F_{2h} is calculated as

$$F_{2h} = \frac{\sum_{i=1}^{n_h} W_{hi} \times JURISA_{hi}}{\sum_{i=1}^{n_h} W_{hi} \times JURISR_{hi}}$$

where

n_h = number of jurisdictions sampled in stratum h,

w_{hi} = sample weight for jurisdiction i in stratum h.

Final weight

The final weight FW_{hi} for each jail jurisdiction on the 2014 ASJ data file is calculated as

$$FW_{hi} = W_{hi} \times F_{2h} \times JURISR_{hi}$$

where

w_{hi} = sample weight for jurisdiction i in stratum h.

JAILR_{hi} is used to set the final weight to 0 for units that are closed, out-of-scope, or nonrespondents.

Final weight post-stratification: California jail jurisdictions and the Public Safety Realignment

Because of the California Public Safety Realignment, between midyear 2011 and midyear 2014, California jails experienced a significant increase in the number of inmates (about 13,900 inmates) that was not experienced by jails nationwide. To capture this jail population growth in California more accurately, all California jurisdictions were added to the ASJ sample in 2013. Accordingly, BJS computed new weights to ensure that the sampled California jail jurisdictions represent California jurisdictions only. Without computing these new weights, the estimated nationwide jail population would be erroneously inflated.

The post-stratification final weight adjustment is calculated for each stratum from which California jurisdictions were sampled. More specifically for each stratum, two new strata and set of weights were created: one for the California jurisdictions (PS_{CAh}) and one for the non-California jurisdictions ($PS_{\overline{CAh}}$). In 2013, all California jail jurisdictions were included in the sample; however, not all of them responded.

The weight adjustment for California jail jurisdictions is computed as

$$PS_{CAh} = \frac{N_{CAh}}{\sum_{i=1}^{n_{CAh}} JURISR_{CAhi}}$$

where

N_{CAh} = number of active California jurisdictions in stratum h,

n_{CAh} = number of sampled California jurisdictions in stratum h

In 2014, all 63 California jail jurisdictions responded, so their final weights post-stratification were 1.

The post-stratification adjustment for non-California jail jurisdictions is computed as

$$PS_{\overline{CAh}} = \frac{N_{\overline{CAh}}}{\sum_{i=1}^{n_{\overline{CAh}}} JURISR_{\overline{CAhi}}}$$

where

$N_{\overline{CAh}}$ = number of active non-California jail jurisdictions in stratum h, computed as

$$N_{\overline{CAh}} = W_h \times \sum_{i=1}^{n_{\overline{CAh}}} JURISRA_{\overline{CAhi}}$$

$n_{\overline{CAh}}$ = number of sampled non-California jail jurisdictions in stratum h.

Item nonresponse imputation

Critical items: Midyear inmate population, ADP, and rated capacity

Based on the 2014 ASJ, about 99% of the 878 individual reporting units provided valid data on their midyear inmate population (872), ADP (864), and rated capacity (869). To calculate a national midyear inmate population, ADP, and rated capacity estimate, data were estimated for the reporting units that did not report specific data.

Estimates were calculated based on the following criteria:

- Data for 1 individual reporting unit included midyear inmate population data based on the 2014 ASJ.
- Data for 5 individual reporting units included midyear inmate population data based on estimates from the 2013 ASJ.
- Data for 9 individual reporting units included ADP data based on their confined population at midyear 2014.
- Data for 5 individual reporting units included ADP data based on estimates from the 2013 ASJ.
- Data for 9 individual reporting units included rated capacity data based on estimates from the 2013 ASJ.

Inmate characteristics

Based on the 2014 ASJ, 90% to 95% of the 878 individual reporting units provided valid data on sex, age, race/Hispanic origin, and inmate conviction status. To calculate a national rate for inmate characteristics, data were estimated based on the ratio of the reported characteristic population to the total midyear confined population.

Weekly admission and release estimation procedures

Based on the 2014 ASJ, 841 of the 878 individual reporting units (96%) provided valid data on weekly admissions or releases. To calculate an overall weekly estimate, data on offender flows through local jails were estimated for the 37 reporting units that did not report specific data on admissions and releases. Release data were estimated for 5 reporting units that reported data on admissions, but not on releases. Nonresponse weight adjustments account for the survey nonrespondents.

Estimates were calculated based on the following criteria:

- Data for 3 individual reporting units included admission and release data based on estimates from the 2012 ASJ.
- Data for 29 individual reporting units included admission and release data based on estimates from the 2013 ASJ.
- Release data for 5 individual reporting units were based on admission data reported in 2014.

Calculating annual admissions

The ASJ collects data on weekly admissions. BJS determined that the June admission data from the 2004 Survey of Large Jails (SLJ) were a reliable source to calculate a nationwide annual admission estimate. Although the number of admissions to jails fluctuated throughout the year, the SLJ tracked monthly movements from January 2003 to January 2004 and showed that the June 2003 count (339,500) closely matched the annual average number of admissions (342,956). The number of annual admissions was calculated by multiplying the weekly admissions by 365 days and dividing by 7 days.

Calculating weekly turnover rates

Weekly jail turnover rates were modeled after the Bureau of Labor Statistics' Job Openings and Labor Turnover Survey. Additional information on turnover rates is available at <http://www.bls.gov/jlt/>. Jail turnover rates were calculated by adding admissions and releases, and then dividing by the ADP. The turnover rate takes into account jail admissions and releases and gives an indication of the fluctuation of the jail population.

Jurisdiction size categories

For the 2011 through 2014 reports, BJS categorized jurisdiction sizes based on the ADP during the 12 months ending midyear 2006 (the first year in the current ASJ series). For the 2010 report, comparisons of size categories from midyear 2009 to midyear 2010 were based on the ADP during the 12 months ending midyear 2009. In previous reports (2007 through 2009),

the size category comparisons were based on the 12 months ending midyear of the specific collection year. As a result, not all data in previous reports are comparable with data in this report.

Standard errors and tests of significance

As with any survey, the ASJ estimates are subject to error arising from sampling rather than using a complete enumeration of the jail population. A common way to express this sampling variability is to construct a 95% confidence interval around each survey estimate. Typically, multiplying the standard error by 1.96 and then adding or subtracting the result from the estimate produces the confidence interval. This interval expresses the range of values that could result among 95% of the different samples that could be drawn.

Jail functions

Jails in the ASJ include confinement facilities—usually administered by a local law enforcement agency—that are intended for adults but may hold juveniles before or after they are adjudicated. Facilities include jails and city or county correctional centers; special jail facilities, such as medical or treatment release centers, halfway houses, and work farms; and temporary holding or lockup facilities that are part of the jail's combined function. Inmates sentenced to jail facilities usually have a sentence of 1 year or less.

Within the ASJ, jails—

- receive individuals pending arraignment and hold them awaiting trial, conviction, or sentencing
- re-admit probation, parole, and bail bond violators and absconders
- temporarily detain juveniles pending their transfer to juvenile authorities
- hold mentally ill persons pending their movement to appropriate mental health facilities
- hold individuals for the military, for protective custody, for contempt, and for the courts as witnesses
- release convicted inmates to the community upon completion of sentence
- transfer inmates to federal, state, or other authorities
- house inmates for federal, state, or other authorities because of crowding of their facilities
- sometimes operate community-based programs as alternatives to incarceration.

Terms and definitions

Admissions—Persons who are officially booked and housed in jails by formal legal document and the authority of the courts or some other official agency. Jail admissions include persons sentenced to weekend programs and those who are booked into the facility for the first time. Excluded from jail admissions are inmates re-entering the facility after an escape, work release, medical appointment or treatment facility appointment, and bail and court appearances. BJS collects jail admissions for the last 7 days in June.

Average daily population (ADP)—The average is derived by the sum of inmates in jail each day for a year, divided by the number of days in the year (i.e., between July 1, 2013, and June 30, 2014).

Average annual change—The mean average change across a 12-month time period.

Calculating annual admissions—BJS collects the number of jail admissions during the last 7 days in June. Annual jail admissions are calculated by multiplying weekly admissions by the sum of 365 days divided by 7 days.

Calculating weekly jail turnover rate—This rate is calculated by adding admissions and releases and dividing by the average daily population. See *Calculating weekly turnover rates* for additional information.

Inmates confined at midyear—The number of inmates held in custody on the last weekday in June.

Jail incarceration rate—The number of inmates held in the custody of local jails, per 100,000 U.S. residents.

Percent of capacity occupied—This percentage is calculated by taking the number of inmates (midyear or average daily population), dividing by the rated capacity, and multiplying by 100.

Rated capacity—The number of beds or inmates assigned by a rating official to a facility, excluding separate temporary holding areas.

Releases—Persons released after a period of confinement (e.g., sentence completion, bail or bond releases, other pretrial releases, transfers to other jurisdictions, and deaths). Releases include those persons who have completed their weekend program and who are leaving the facility for the last time. Excluded from jail releases are temporary discharges including work release, medical appointment or treatment center, court appearance, furlough, day reporting, and transfers to other facilities within the jail's jurisdiction.

Under jail supervision but not confined—This classification includes all persons in community-based programs operated by a jail facility. These programs include electronic monitoring, house arrest, community service, day reporting, and work programs. The classification excludes persons on pretrial release and who are not in a community-based program run by the jail, as well as persons under supervision of probation, parole, or other agencies; inmates on weekend programs; and inmates who participate in work release programs and return to the jail at night.

Weekend programs—Offenders in these programs are allowed to serve their sentences of confinement only on weekends (i.e., Friday to Sunday).

APPENDIX TABLE 1**Standard errors for table 1: Inmates confined in local jails at midyear, average daily population, and incarceration rates, 2000–2014**

Year	Inmates confined at midyear	Average daily population
2000	2,504	2,265
2001	2,721	2,648
2002	3,213	2,980
2003	3,572	3,448
2004	3,919	3,748
2005	~	~
2006	3,552	3,230
2007	3,720	3,549
2008	4,016	3,883
2009	4,231	4,109
2010	5,430	5,359
2011	6,009	5,879
2012	7,684	7,769
2013	8,042	7,943
2014	8,382	8,430

~Not applicable. Data represent a complete enumeration based on the 2005 Census of Jail Inmates.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000–2004 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

APPENDIX TABLE 2**Reported data for table 2: Number of inmates in local jails, by characteristics, midyear 2000 and 2005–2014**

Characteristic	2000	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Sex											
Male	547,624	652,958	666,819	679,654	685,862	673,728	650,341	633,171	636,708	602,193	617,842
Female	70,659	94,571	99,000	100,520	99,670	93,706	91,521	91,923	97,190	98,015	106,081
Adult	610,703	740,770	759,717	773,341	777,829	760,216	734,372	719,253	728,547	695,817	719,857
Male	540,614	646,807	661,164	673,346	678,657	667,039	643,331	627,777	631,802	598,228	614,102
Female	70,089	93,963	98,552	99,995	99,172	93,176	91,042	91,476	96,745	97,589	105,754
Juvenile	7,580	6,759	6,102	6,833	7,703	7,218	7,490	5,840	5,351	4,391	4,067
Held as adult	6,126	5,750	4,835	5,649	6,410	5,846	5,596	4,490	4,489	3,366	3,581
Held as juvenile	1,454	1,009	1,268	1,184	1,294	1,373	1,895	1,350	862	1,025	485
Race/Hispanic origin											
White	236,969	315,598	323,474	327,864	320,111	289,606	274,907	298,663	304,762	297,745	314,846
Black/African American	233,078	276,959	284,412	292,457	295,747	266,638	234,738	250,577	245,376	225,751	235,436
Hispanic/Latino	85,612	106,707	114,564	121,660	123,376	109,998	97,869	103,274	100,682	93,133	98,714
American Indian/Alaska Native	4,974	7,270	8,052	8,347	8,638	8,328	8,223	8,527	8,292	8,793	9,285
Asian/Native Hawaiian/ Other Pacific Islander	4,304	5,130	4,940	5,181	5,267	4,785	4,225	4,776	4,826	4,386	5,388
Two or more races	...	975	633	754	1,237	1,563	689	1,070	1,320	1,419	906
Conviction status											
Convicted	245,698	270,712	280,914	289,098	272,291	250,920	234,566	250,464	248,800	234,134	240,944
Unconvicted	316,728	440,873	460,837	470,960	462,052	412,914	368,411	385,631	383,152	381,588	406,565

Note: See appendix table 3 for standard errors.

...Not collected.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

APPENDIX TABLE 3**Standard errors for table 2: Number of inmates in local jails, by characteristics, midyear 2000 and 2005–2014**

Characteristic	2000	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Sex											
Male	2,235	~	3,146	3,298	3,570	3,729	4,832	5,278	6,776	7,088	7,015
Female	548	~	979	950	1,125	912	999	1,179	1,404	1,469	1,532
Adult	2,492	~	3,554	3,697	4,012	4,190	5,400	6,004	7,655	8,049	8,004
Male	2,223	~	3,144	3,276	3,568	3,692	4,794	5,241	6,685	7,025	6,961
Female	542	~	978	948	1,123	909	994	1,177	1,398	1,467	1,531
Juvenile	211	~	148	166	170	195	263	172	241	199	164
Held as adult	181	~	152	157	149	167	246	151	230	143	158
Held as juvenile	132	~	144	147	88	107	255	77	84	139	46
Race/Hispanic origin											
White	2,676	~	3,031	3,220	3,115	3,255	3,589	3,764	4,370	4,574	4,605
Black/African American	1,853	~	2,752	2,751	2,995	2,945	3,194	3,418	4,608	4,860	4,712
Hispanic/Latino	1,075	~	1,749	1,748	1,878	1,927	2,131	2,617	2,958	2,580	2,719
American Indian/Alaska Native	363	~	651	700	730	756	1,031	933	866	932	926
Asian/Native Hawaiian/ Other Pacific Islander	112	~	78	103	123	120	130	188	239	125	196
Two or more races	...	~	72	115	41	142	153	149	161	212	180
Conviction status											
Convicted	2,258	~	2,749	2,892	2,978	3,122	3,292	3,521	3,750	3,619	4,156
Unconvicted	2,256	~	3,321	3,392	3,552	3,710	4,515	4,819	5,918	6,740	5,691

Note: Standard errors are based on the reported data in appendix table 2 and were not estimated for survey item nonresponse.

...Not collected.

~Not applicable. Data represent a complete enumeration based on the 2005 Census of Jail Inmates.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

APPENDIX TABLE 4**Standard error ratios for table 3: Percent of inmates in local jails, by characteristics, midyear 2000 and 2005–2014**

Characteristic	2000	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Sex											
Male	0.1%	~	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.2%
Female	0.1	~	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2
Adult	--	~	--	--	--	--	--	--	--	--	--
Male	0.1%	~	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
Female	0.1	~	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2
Juvenile	--	~	--	--	--	--	--	--	--	--	--
Held as adult	--	~	--	--	--	--	--	--	--	--	--
Held as juvenile	--	~	--	--	--	--	--	--	--	--	--
Race/Hispanic origin											
White	0.3%	~	0.3%	0.3%	0.3%	0.3%	0.4%	0.4%	0.5%	0.5%	0.5%
Black/African American	0.3	~	0.3	0.3	0.3	0.3	0.4	0.4	0.5	0.5	0.5
Hispanic/Latino	0.2	~	0.2	0.2	0.2	0.3	0.3	0.3	0.4	0.3	0.3
American Indian/Alaska Native	0.1	~	0.1	0.1	0.1	0.1	0.2	0.1	0.1	0.1	0.1
Asian/Native Hawaiian/ Other Pacific Islander	--	~	--	--	--	--	--	--	--	--	--
Two or more races	...	~	--	--	--	--	--	--	--	--	--
Conviction status											
Convicted	0.3%	~	0.3%	0.3%	0.3%	0.4%	0.4%	0.4%	0.5%	0.5%	0.5%
Unconvicted	0.3	~	0.3	0.3	0.3	0.4	0.4	0.4	0.5	0.5	0.5

Note: Detail may not sum to total because of rounding.

--Less than 0.05%.

...Not collected.

~Not applicable. Data represent a complete enumeration based on the 2005 Census of Jail Inmates.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

APPENDIX TABLE 5**Standard errors for table 4: Inmates confined in local jails at midyear, by size of jurisdiction, 2013–2014**

Jurisdiction size	Number		Percent	
	2013	2014	2013	2014
49 or fewer	2,589	2,719	0.3%	0.4%
50–99	3,185	3,218	0.4	0.4
100–249	4,313	4,398	0.6	0.6
250–499	5,092	4,988	0.7	0.6
500–999	4,109	4,166	0.6	0.6
1,000 or more	6,901	7,248	0.7	0.7

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2013–2014.

APPENDIX TABLE 7**Standard errors for table 6: Percent of jail capacity occupied at midyear, by size of jurisdiction, 2013–2014**

Jurisdiction size	2013	2014
Total	0.5%	0.4%
49 or fewer	3.1	3.4
50–99	3.0	2.4
100–249	2.2	1.8
250–499	1.4	1.5
500–999	0.6	0.6
1,000 or more	0.4	0.4

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2013–2014.

APPENDIX TABLE 6**Standard errors for table 5: Rated capacity of local jails and percent of capacity occupied, 2000 and 2005–2014**

Year	Rated capacity	Percent of capacity occupied	
		Midyear	Average daily population
2000	3,425	0.4%	0.4%
2005	~	~	~
2006	4,741	0.4	0.4
2007	5,056	0.4	0.4
2008	5,063	0.4	0.4
2009	6,460	0.5	0.5
2010	11,013	0.9	0.9
2011	11,776	0.9	0.9
2012	10,217	0.5	0.5
2013	13,198	0.5	0.5
2014	11,082	0.4	0.4

~Not applicable. Data represent a complete enumeration based on the 2005 Census of Jail Inmates.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014, and Census of Jail Inmates, midyear 2005.

APPENDIX TABLE 8**Standard errors for table 7: Average daily jail population, admissions, and turnover rate, by size of jurisdiction, week ending June 30, 2013 and 2014**

Jurisdiction size	Estimated number of admissions during the—					
	Average daily population		Last week in June		Weekly turnover rate	
	2013	2014	2013	2014	2013	2014
Total	7,943	8,430	13,198	3,937	11.1%	0.9%
49 or fewer	2,422	2,471	1,785	1,526	12.8	12.8
50–99	3,119	3,110	2,173	2,109	9.1	7.7
100–249	4,165	4,397	2,446	2,210	3.7	3.5
250–499	4,956	4,835	2,391	2,327	3.7	3.6
500–999	4,128	4,093	13,009	1,312	20.5	1.1
1,000 or more	6,974	7,455	1,584	1,825	0.5	0.5

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2013–2014.

APPENDIX TABLE 9**Standard errors for table 8: Inmate population in jail jurisdictions reporting on confined persons being held for U.S. Immigration and Customs Enforcement (ICE), midyear 2002–2014**

Year	Confined persons held for ICE at midyear
2002	804
2003	935
2004	976
2005	~
2006	959
2007	740
2008	729
2009	851
2010	977
2011	1,533
2012	1,670
2013	2,136
2014	2,157

Note: The standard errors are based on the reported data and were not estimated for survey item nonresponse.

~Not applicable. Data represent a complete enumeration based on the 2005 Census of Jail Inmates.

Sources: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2002–2004 and midyear 2006–2014; and Census of Jail Inmates, midyear 2005.

APPENDIX TABLE 10**Standard errors for table 9: Persons under jail supervision, by confinement status and type of program, midyear 2000 and 2006–2014**

Confinement status and type of program	2000	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total	2,728	3,783	4,041	4,732	4,548	5,897	6,446	8,438	8,692	9,248
Held in jail	2,504	3,552	3,720	4,016	4,231	5,430	6,009	7,684	8,042	8,382
Supervised outside of a jail facility	996	1,151	1,267	2,327	1,535	1,960	1,832	2,418	2,351	2,707
Weekend programs	457	381	347	477	350	296	514	369	508	399
Electronic monitoring	320	352	519	469	328	574	581	747	624	788
Home detention	17	184	512	41	41	74	89	386	232	188
Day reporting	70	336	475	340	300	360	301	396	348	429
Community service	286	547	587	796	1,152	1,319	845	1,089	1,133	1,262
Other pretrial supervision	350	131	183	392	300	411	708	909	698	845
Other work programs	440	382	257	572	446	428	497	334	390	491
Treatment programs	66	59	104	122	67	153	153	261	230	270
Other	47	147	99	619	71	114	151	196	512	179

Source: Bureau of Justice Statistics, Annual Survey of Jails, midyear 2000 and midyear 2006–2014.



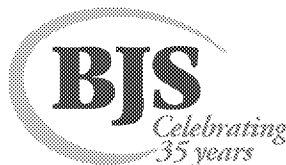
The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for measuring crime, criminal victimization, criminal offenders, victims of crime, correlates of crime, and the operation of criminal and civil justice systems at the federal, state, tribal, and local levels. BJS collects, analyzes, and disseminates reliable and valid statistics on crime and justice systems in the United States, supports improvements to state and local criminal justice information systems, and participates with national and international organizations to develop and recommend national standards for justice statistics. William J. Sabol is director.

This report was written by Todd D. Minton and Zhen Zeng, Ph.D. Tracy L. Snell provided statistical review and verified the report.

Leslie Miller carried out the data collection and processing under the supervision of Nicole Adolph and Crecilla Scott, Economic Reimbursable Surveys Division, Census Bureau, U.S. Department of Commerce. Suzanne Dorinski and Rekha Kudlur provided statistical and technical assistance.

Irene Cooperman and Jill Thomas edited the report. Barbara Quinn produced the report.

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EXHIBIT C



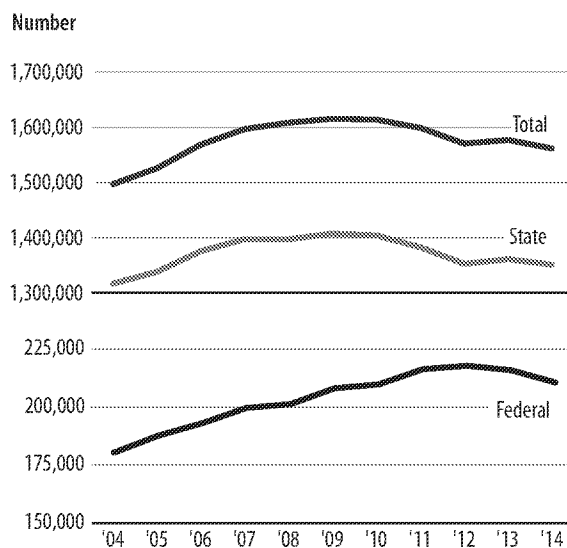
Prisoners in 2014

E. Ann Carson, Ph.D., *BJS Statistician*

At yearend 2014, the United States held an estimated 1,561,500 prisoners in state and federal correctional facilities, a decrease of approximately 15,400 prisoners (down 1%) from December 31, 2013. A third (34%) of the decrease was due to fewer prisoners under the jurisdiction of the Federal Bureau of Prisons (BOP), which declined for the second consecutive year (figure 1). Prisoners sentenced to more than 1 year in state or federal prison declined by almost 1% (down 11,800 prison inmates) from yearend 2013 (1,520,400) to yearend 2014 (1,508,600). The number of prisoners housed in private facilities in the United States decreased by almost 2% in 2014 to 131,300 prison inmates.

The statistics in this report are based on the Bureau of Justice Statistics' (BJS) National Prisoner Statistics (NPS) program, which collects annual data from state DOCs and the BOP on prisoner counts, prisoner characteristics, admissions, releases, and prison capacity. The 2014 NPS collection is number 90 in a series that began in 1926. Forty-nine states and the BOP reported NPS data for 2014, while data for Alaska were obtained from other sources or imputed. (See *Methodology*.)

FIGURE 1
Total, state, and federal U.S. prison population, 2004–2014



Note: Counts based on all prisoners under the jurisdiction of state and federal correctional authorities.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014.

HIGHLIGHTS

- The number of prisoners held by state and federal correctional authorities on December 31, 2014 (1,561,500) decreased by 15,400 (down 1%) from yearend 2013.
- The federal prison population decreased by 5,300 inmates (down 2.5%) from 2013 to 2014, the second consecutive year of decline.
- On December 31, 2014, state and federal correctional authorities held 1,508,600 individuals sentenced to more than 1 year in prison, 11,800 fewer inmates than at yearend 2013.
- The number of women in prison who were sentenced to more than 1 year increased by 1,900 offenders (up 2%) in 2014 from 104,300 in 2013 to 106,200 in 2014.
- The decline in the BOP population in 2014 was explained by 5% fewer admissions (down 2,800) than in 2013.
- The imprisonment rate declined from 621 prisoners per 100,000 U.S. residents age 18 or older in 2013 to 612 per 100,000 in 2014.
- In 2014, 6% of all black males ages 30 to 39 were in prison, compared to 2% of Hispanic and 1% of white males in the same age group.
- Violent offenders made up 54% of the state male prison population at yearend 2013, the most recent year for which data were available.
- The BOP housed 40,000 prisoners in private secure and nonsecure facilities at yearend 2014, which represents 19% of the total federal prison population.
- Half of males (50%) and more than half of females (59%) in federal prison were serving time for drug offenses on September 30, 2014.

The U.S. prison population decreased by 1% in 2014

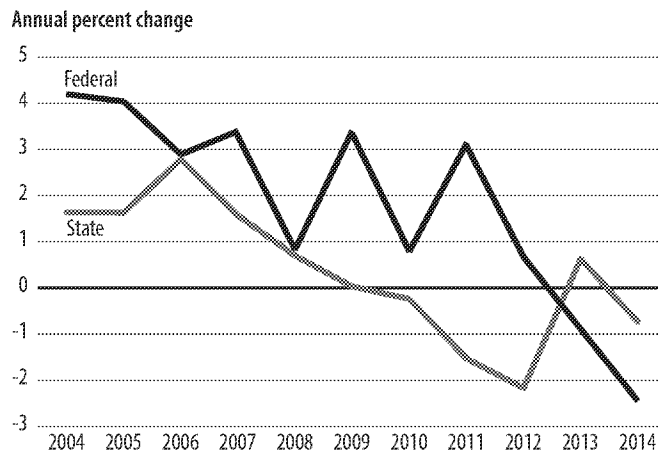
The total number of persons held under the jurisdiction of state and federal correctional authorities on December 31, 2014, decreased 1% (15,400 prisoners) from the count at yearend 2013 (table 1). The estimated 1,561,500 prisoners at yearend 2014 represent the smallest total prison population since 2005, and reverse the 0.4% increase that occurred from 2012 to 2013. Several states updated their 2013 counts, which resulted in an even larger increase than originally reported. The total prison population on December 31, 2013, was 1,577,000, an increase of 6,600 prisoners from 2012 (1,570,400).

The decrease observed in 2014 was the second largest decline in the number of prisoners in more than 35 years. The decline of 28,600 prisoners from 2011 to 2012 coincided with the enactment of California’s Public Safety Realignment policy, which diverted newly sentenced nonviolent, nonserious, nonsex offenders from state prison to serve time in local jails and under community supervision.

More than a third of the total decline in the number of prison inmates (34% or 5,300 prisoners) occurred in the federal prison population. This was the second straight year of decline in the federal system, which is the nation’s largest

prison jurisdiction followed by Texas and California (table 2, figure 2). The federal system held 13% of all prison inmates at yearend 2014. States held 10,100 fewer prisoners at yearend 2014 than in 2013.

FIGURE 2
Percent change in state and federal U.S. prison population, 2004–2014



Note: Percentages based on all prisoners under the jurisdiction of state and federal correctional authorities.
Source: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014.

TABLE 1
Prisoners under the jurisdiction of state or federal correctional authorities, December 31, 2004–2014

Year	Total	Federal ^a	State	Male	Female
2004	1,497,100	180,328	1,316,772	1,392,278	104,822
2005	1,525,910	187,618	1,338,292	1,418,392	107,518
2006	1,568,674	193,046	1,375,628	1,456,366	112,308
2007	1,596,835	199,618	1,397,217	1,482,524	114,311
2008	1,608,282	201,280	1,407,002	1,493,670	114,612
2009	1,615,487	208,118	1,407,369	1,502,002	113,485
2010	1,613,803	209,771	1,404,032	1,500,936	112,867
2011	1,598,968	216,362	1,382,606	1,487,561	111,407
2012	1,570,397	217,815	1,352,582	1,461,625	108,772
2013 ^b	1,576,950	215,866	1,361,084	1,465,592	111,358
2014 ^c	1,561,525	210,567	1,350,958	1,448,564	112,961
Percent change					
Average annual, 2004–2013	0.5%	1.8%	0.3%	0.5%	0.6%
2013–2014	-1.0	-2.5	-0.7	-1.2	1.4

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.
^aIncludes inmates held in nonsecure privately operated community corrections facilities and juveniles held in contract facilities.
^bNevada did not submit 2013 National Prisoner Statistics (NPS) data, and Alaska did not submit sex-specific jurisdiction counts to NPS in 2013, so data for these states were imputed. See *Methodology*.
^cTotal and state estimates include imputed counts for Alaska, which did not submit 2014 NPS data. See *Methodology*.
 Source: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014.

TABLE 2
Prisoners under jurisdiction of state or federal correctional authorities, by sex, December 31, 2013 and 2014

Jurisdiction	2013			2014			Percent change, 2013–2014		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
U.S. total ^a	1,576,950	1,465,592	111,358	1,561,525	1,448,564	112,961	-1.0%	-1.2%	1.4%
Federal ^b	215,866	201,697	14,169	210,567	196,568	13,999	-2.5%	-2.5%	-1.2%
State ^a	1,361,084	1,263,895	97,189	1,350,958	1,251,996	98,962	-0.7%	-0.9%	1.8%
Alabama ^c	32,381	29,660	2,721	31,771	29,182	2,589	-1.9	-1.6	-4.9
Alaska ^{d,e,f}	5,081	4,450	631	5,216	4,568	648	:	:	:
Arizona ^c	41,177	37,402	3,775	42,259	38,295	3,964	2.6	2.4	5.0
Arkansas	17,235	15,904	1,331	17,874	16,476	1,398	3.7	3.6	5.0
California	135,981	129,684	6,297	136,088	129,706	6,382	0.1	0.0	1.3
Colorado	20,371	18,556	1,815	20,646	18,738	1,908	1.3	1.0	5.1
Connecticut ^{f,g}	17,563	16,328	1,235	16,636	15,510	1,126	:	:	:
Delaware ^f	7,004	6,405	599	6,955	6,361	594	-0.7	-0.7	-0.8
Florida	103,028	95,757	7,271	102,870	95,567	7,303	-0.2	-0.2	0.4
Georgia	54,004	50,445	3,559	52,949	49,438	3,511	-2.0	-2.0	-1.3
Hawaii ^f	5,632	4,972	660	5,866	5,198	668	4.2	4.5	1.2
Idaho ^c	8,242	7,176	1,066	8,117	7,080	1,037	-1.5	-1.3	-2.7
Illinois	48,653	45,737	2,916	48,278	45,390	2,888	-0.8	-0.8	-1.0
Indiana	29,913	27,078	2,835	29,271	26,396	2,875	-2.1	-2.5	1.4
Iowa	8,697	7,983	714	8,838	8,086	752	1.6	1.3	5.3
Kansas ^{c,g}	9,763	9,026	737	9,663	8,881	782	:	:	:
Kentucky	21,030	18,717	2,313	21,657	19,084	2,573	3.0	2.0	11.2
Louisiana	39,299	37,071	2,228	38,030	35,955	2,075	-3.2	-3.0	-6.9
Maine	2,173	2,013	160	2,242	2,063	179	3.2	2.5	11.9
Maryland	21,335	20,410	925	21,011	20,100	911	-1.5	-1.5	-1.5
Massachusetts	10,950	10,143	807	10,713	9,985	728	-2.2	-1.6	-9.8
Michigan	43,759	41,700	2,059	43,390	41,267	2,123	-0.8	-1.0	3.1
Minnesota	10,289	9,566	723	10,637	9,901	736	3.4	3.5	1.8
Mississippi	21,969	20,352	1,617	18,793	17,448	1,345	-14.5	-14.3	-16.8
Missouri	31,537	28,755	2,782	31,942	28,836	3,106	1.3	0.3	11.6
Montana	3,642	3,230	412	3,699	3,311	388	1.6	2.5	-5.8
Nebraska	5,026	4,656	370	5,441	5,001	440	8.3	7.4	18.9
Nevada ^h	/	/	/	12,537	11,452	1,085	:	:	:
New Hampshire	3,018	2,781	237	2,963	2,715	248	-1.8	-2.4	4.6
New Jersey	22,452	21,427	1,025	21,590	20,571	1,019	-3.8	-4.0	-0.6
New Mexico	6,931	6,276	655	7,021	6,348	673	1.3	1.1	2.7
New York	53,550	51,193	2,357	52,518	50,192	2,326	-1.9	-2.0	-1.3
North Carolina	36,922	34,430	2,492	37,096	34,455	2,641	0.5	0.1	6.0
North Dakota ^c	1,576	1,419	157	1,718	1,514	204	9.0	6.7	29.9
Ohio	51,729	47,579	4,150	51,519	47,311	4,208	-0.4	-0.6	1.4
Oklahoma	27,547	24,769	2,778	27,650	24,799	2,851	0.4	0.1	2.6
Oregon	15,517	14,212	1,305	15,075	13,799	1,276	-2.8	-2.9	-2.2
Pennsylvania ^c	51,422	48,760	2,662	50,694	47,936	2,758	-1.4	-1.7	3.6
Rhode Island ^f	3,361	3,169	192	3,359	3,201	158	-0.1	1.0	-17.7
South Carolina	22,060	20,669	1,391	21,401	20,032	1,369	-3.0	-3.1	-1.6
South Dakota ^c	3,682	3,240	442	3,608	3,199	409	-2.0	-1.3	-7.5
Tennessee	28,521	26,069	2,452	28,769	26,160	2,609	0.9	0.3	6.4
Texas	168,280	154,450	13,830	166,043	151,717	14,326	-1.3	-1.8	3.6
Utah ^c	7,077	6,415	662	7,026	6,364	662	-0.7	-0.8	0.0
Vermont ^f	2,078	1,924	154	1,979	1,823	156	-4.8	-5.2	1.3
Virginia	36,982	34,133	2,849	37,544	34,529	3,015	1.5	1.2	5.8
Washington	17,984	16,535	1,449	18,120	16,666	1,454	0.8	0.8	0.3
West Virginia	6,824	6,016	808	6,896	6,065	831	1.1	0.8	2.8
Wisconsin ^g	22,471	21,232	1,239	22,597	21,219	1,378	:	:	:
Wyoming	2,310	2,050	260	2,383	2,106	277	3.2	2.7	6.5

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.

/Not reported. Estimated count added into state and U.S. jurisdictional totals. See *Methodology*.

: Not calculated.

^aIncludes imputed counts for Alaska, which did not submit 2014 National Prisoner Statistics (NPS) Program data in time to be included in this report. See *Methodology*.

^bIncludes inmates held in nonsecure privately operated community corrections facilities and juveniles held in contract facilities.

^cState has updated 2013 population counts.

^dAlaska did not submit sex-specific jurisdiction counts in NPS in 2013. See *Methodology*.

^eAlaska did not submit 2014 NPS data in time for this report, but jurisdiction totals were obtained from a report to the state legislature. See *Methodology* for details on imputation of 2014 data.

^fPrisons and jails form one integrated system. Data include total jail and prison populations.

^gState has changed reporting methodology, so 2014 counts are not comparable to those published for earlier years. See *Jurisdiction notes*.

^hNevada did not submit 2013 NPS data in time for this report. See *Methodology* for details on imputation of 2013 data that were used in state and U.S. totals.

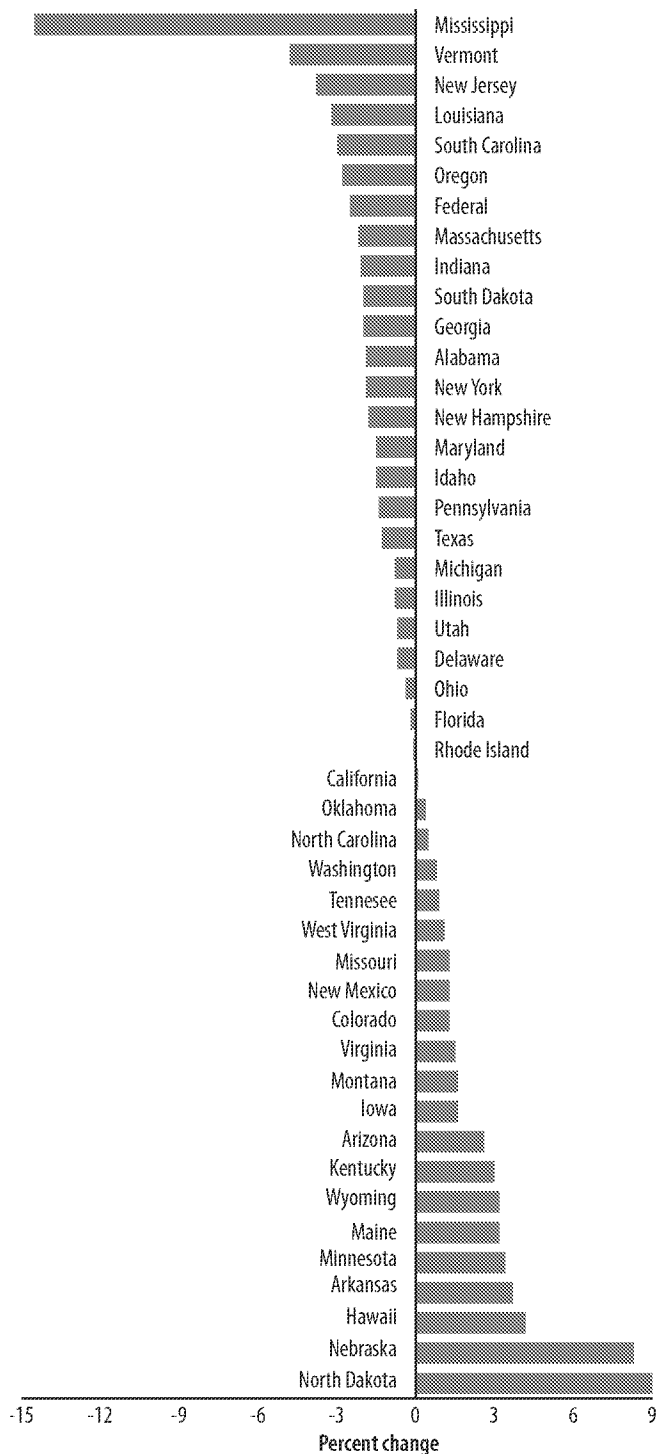
Source: Bureau of Justice Statistics, National Prisoner Statistics, 2013–2014.

Twenty-four states and the federal BOP showed decreases in total prison populations between yearend 2013 and 2014 (figure 3). Mississippi held 3,200 fewer prison inmates at yearend 2014 (down 15% from 2013), which resulted from new policies that encourage supervision of nonviolent offenders in the community instead of in prison. The Texas prison population, the second largest in the United States with 166,000 inmates at yearend 2014, declined by 2,200 prisoners (down 1%) from yearend 2013 (168,300). Louisiana, Georgia, and New York also had modest declines that amounted to between 1,000 and 1,300 fewer prisoners for each jurisdiction in 2014 than in 2013.

Most states that observed growth in their prison populations had smaller prison systems, including North Dakota, which increased its yearend 2013 population by 140 (up 9%) to 1,700 on December 31, 2014. Nebraska experienced an 8% increase in its prison population, from 5,000 prisoners in 2013 to 5,400 in 2014.

While females have represented approximately 7% of the total prison population over the past decade, the number of females under state or federal correctional jurisdiction increased by 1,600 inmates (up more than 1%) to 113,000 in 2014, the largest number of female prisoners since 2009. Sixteen states and the BOP observed decreases among their female prison populations, compared to 23 states and the BOP for males. Much of the growth took place in states with smaller prison systems so that modest increases in the number of imprisoned females caused large state-specific percent changes between 2013 and 2014. Missouri held 300 more women at yearend 2014 than in 2013 (up 12%), and Kentucky had an additional 260 female prisoners (up 11%). In comparison, from yearend 2013 to 2014, Texas held 500 additional women, an increase of almost 4%.

FIGURE 3
Percent change decline or increase in prisoners under the jurisdiction of state or federal correctional authorities, by state, 2013–2014



Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held. Counts based on all prisoners under the jurisdiction of state and federal correctional authorities. Alaska, Connecticut, Kansas, Nevada, and Wisconsin could not be calculated. See table 2 for detail.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2013–2014.

97% of prisoners under the jurisdiction of state and federal authorities were sentenced to more than 1 year in prison

From yearend 2013 to 2014, the number of persons in state or federal prison who were sentenced to more than 1 year declined by 11,800 (down slightly less than 1%) to 1,509,000 prisoners (table 3). Prisoners sentenced to more than 1 year made up 97% of the total prison population, while unsentenced inmates and those with terms of 1 year or less accounted for the remaining 3% (53,000 prisoners). The decreasing number of sentenced prisoners accounted for 76% of the change in the total jurisdictional population. State prisons housed 8,000 fewer sentenced inmates on December 31, 2014, for a total of 1,317,300 prisoners. The BOP had 191,400 sentenced prisoners at yearend 2014, 2% fewer than in 2013 (195,100).

The number of females in state or federal prison who were sentenced to more than 1 year increased by 1,900 prisoners (up nearly 2%) from 2013 (104,300 female prisoners) to 2014 (106,200). Sentenced female prisoners reached their

highest count in 2014 since 2008, when states and the BOP imprisoned 106,400 females sentenced to at least 1 year under correctional authority.

Twenty-two states and the BOP saw a decline in the number of prison inmates who had been sentenced to more than 1 year under correctional authority (table 4). The BOP (down 3,700 prisoners), Mississippi (down 2,900 prisoners), Texas (down 1,700), and Louisiana (down 1,300) had the largest decreases in the number of these prisoners in 2014. Among states with an increase in prison populations, Arizona imprisoned 40,200 sentenced inmates at yearend 2014, an increase of 1,100 prisoners from 2013. No other jurisdictions had increases of more than 1,000 sentenced prisoners during 2014.

As with the total jurisdiction population, 17 states and the BOP showed declines among sentenced female prisoners. Among states with an increase in sentenced female prisoners, Texas (up 700 females), Missouri (up 300), and Kentucky and North Carolina (up 200 each) made up 75% of the total change in the number of sentenced females from yearend 2013 to 2014.

TABLE 3

Sentenced prisoners under the jurisdiction of state or federal correctional authorities, December 31, 2004–2014

Year	Total	Federal ^a	State	Male	Female
2004	1,433,728	159,137	1,274,591	1,337,730	95,998
2005	1,462,866	166,173	1,296,693	1,364,178	98,688
2006	1,504,598	173,533	1,331,065	1,401,261	103,337
2007	1,532,851	179,204	1,353,647	1,427,088	105,763
2008	1,547,742	182,333	1,365,409	1,441,384	106,358
2009	1,553,574	187,886	1,365,688	1,448,239	105,335
2010	1,552,669	190,641	1,362,028	1,447,766	104,903
2011	1,538,847	197,050	1,341,797	1,435,141	103,706
2012	1,512,430	196,574	1,315,856	1,411,076	101,354
2013 ^b	1,520,403	195,098	1,325,305	1,416,102	104,301
2014 ^c	1,508,636	191,374	1,317,262	1,402,404	106,232
Percent change					
Average annual, 2004–2013	0.6%	2.0%	0.4%	0.6%	0.8%
2013–2014	-0.8	-1.9	-0.6	-1.0	1.9

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held. Counts are based on prisoners with sentences of more than 1 year under the jurisdiction of state or federal correctional officials.

^aIncludes inmates held in nonsecure privately operated community corrections facilities and juveniles held in contract facilities.

^bNevada did not submit 2013 National Prisoner Statistics (NPS) data, and Alaska did not submit sex-specific jurisdiction counts to NPS in 2013, so data for these states were imputed. See *Methodology* for imputation strategy.

^cTotal and state estimates include imputed counts for Alaska, which did not submit 2014 NPS data. See *Methodology* for imputation strategy.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014.

TABLE 4

Sentenced prisoners under jurisdiction of state or federal correctional authorities, by sex, December 31, 2013 and 2014

Jurisdiction	2013			2014			Percent change, 2013–2014		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
U.S. total ^a	1,520,403	1,416,102	104,301	1,508,636	1,402,404	106,232	-0.8%	-1.0%	1.9%
Federal ^b	195,098	182,378	12,720	191,374	178,814	12,560	-1.9%	-2.0%	-1.3%
State ^a	1,325,305	1,233,724	91,581	1,317,262	1,223,590	93,672	-0.6%	-0.8%	2.3%
Alabama ^c	31,354	28,787	2,567	30,766	28,324	2,442	-1.9	-1.6	-4.9
Alaska ^{d,e,f}	2,682	2,426	256	2,754	2,491	263	:	:	:
Arizona ^c	39,062	35,675	3,387	40,175	36,625	3,550	2.8	2.7	4.8
Arkansas	17,159	15,840	1,319	17,819	16,426	1,393	3.8	3.7	5.6
California	135,981	129,684	6,297	136,088	129,706	6,382	0.1	0.0	1.3
Colorado	20,371	18,556	1,815	20,646	18,738	1,908	1.3	1.0	5.1
Connecticut ^{f,g}	12,162	11,494	668	11,735	11,098	637	:	:	:
Delaware ^f	4,112	3,879	233	4,141	3,927	214	0.7	1.2	-8.2
Florida	103,028	95,757	7,271	102,870	95,567	7,303	-0.2	-0.2	0.4
Georgia	53,478	49,953	3,525	52,485	49,010	3,475	-1.9	-1.9	-1.4
Hawaii ^f	3,618	3,271	347	3,663	3,354	309	1.2	2.5	-11.0
Idaho ^c	8,242	7,176	1,066	8,039	7,013	1,026	-2.5	-2.3	-3.8
Illinois	48,653	45,737	2,916	48,278	45,390	2,888	-0.8	-0.8	-1.0
Indiana	29,905	27,070	2,835	29,261	26,386	2,875	-2.2	-2.5	1.4
Iowa	8,654	7,951	703	8,798	8,058	740	1.7	1.3	5.3
Kansas ^{c,g}	9,506	8,815	691	9,365	8,644	721	:	:	:
Kentucky	20,330	18,147	2,183	20,969	18,549	2,420	3.1	2.2	10.9
Louisiana	39,298	37,070	2,228	38,022	35,947	2,075	-3.2	-3.0	-6.9
Maine	1,972	1,836	136	2,030	1,888	142	2.9	2.8	4.4
Maryland	20,988	20,101	887	20,733	19,843	890	-1.2	-1.3	0.3
Massachusetts	9,643	9,200	443	9,486	9,060	426	-1.6	-1.5	-3.8
Michigan	43,704	41,645	2,059	43,359	41,236	2,123	-0.8	-1.0	3.1
Minnesota	10,289	9,566	723	10,637	9,901	736	3.4	3.5	1.8
Mississippi	20,742	19,337	1,405	17,876	16,679	1,197	-13.8	-13.7	-14.8
Missouri	31,537	28,755	2,782	31,938	28,832	3,106	1.3	0.3	11.6
Montana	3,642	3,230	412	3,699	3,311	388	1.6	2.5	-5.8
Nebraska	4,929	4,569	360	5,347	4,919	428	8.5	7.7	18.9
Nevada ^h	/	/	/	12,415	11,330	1,085	:	:	:
New Hampshire	2,848	2,636	212	2,915	2,671	244	2.4	1.3	15.1
New Jersey	22,452	21,427	1,025	21,590	20,571	1,019	-3.8	-4.0	-0.6
New Mexico	6,687	6,047	640	6,860	6,201	659	2.6	2.5	3.0
New York	53,428	51,091	2,337	52,399	50,091	2,308	-1.9	-2.0	-1.2
North Carolina	35,181	32,942	2,239	35,769	33,325	2,444	1.7	1.2	9.2
North Dakota ^c	1,507	1,358	149	1,603	1,416	187	6.4	4.3	25.5
Ohio	51,729	47,579	4,150	51,519	47,311	4,208	-0.4	-0.6	1.4
Oklahoma	27,173	24,431	2,742	27,261	24,460	2,801	0.3	0.1	2.2
Oregon	15,180	13,895	1,285	15,060	13,784	1,276	-0.8	-0.8	-0.7
Pennsylvania ^c	51,211	48,556	2,655	50,423	47,730	2,693	-1.5	-1.7	1.4
Rhode Island ^f	2,039	1,960	79	1,880	1,812	68	-7.8	-7.6	-13.9
South Carolina	21,443	20,147	1,296	20,830	19,545	1,285	-2.9	-3.0	-0.8
South Dakota ^c	3,672	3,231	441	3,605	3,197	408	-1.8	-1.1	-7.5
Tennessee	28,521	26,069	2,452	28,769	26,160	2,609	0.9	0.3	6.4
Texas	160,295	148,294	12,001	158,589	145,899	12,690	-1.1	-1.6	5.7
Utah ^c	7,072	6,410	662	7,024	6,362	662	-0.7	-0.7	0.0
Vermont ^f	1,575	1,479	96	1,508	1,403	105	-4.3	-5.1	9.4
Virginia	36,982	34,133	2,849	37,544	34,529	3,015	1.5	1.2	5.8
Washington	17,947	16,505	1,442	18,052	16,613	1,439	0.6	0.7	-0.2
West Virginia	6,812	6,011	801	6,881	6,053	828	1.0	0.7	3.4
Wisconsin ^g	21,285	20,116	1,169	21,404	20,099	1,305	:	:	:
Wyoming	2,310	2,050	260	2,383	2,106	277	3.2	2.7	6.5

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.

/Not reported. Estimated count added into state and U.S. jurisdictional totals. See *Methodology*.

: Not calculated.

^aIncludes imputed counts for Alaska, which did not submit 2014 National Prisoner Statistics (NPS) data. See *Methodology*.

^bIncludes inmates held in nonsecure privately operated community corrections facilities and juveniles held in contract facilities.

^cState updated 2013 population counts.

^dAlaska did not submit sex-specific jurisdiction counts in NPS in 2013. See *Methodology*.

^eAlaska did not submit 2014 NPS data, but jurisdiction totals were obtained from a report to the state legislature. See *Methodology*.

^fPrisons and jails form one integrated system. Data include total jail and prison populations.

^gState has changed reporting methodology, so 2014 counts are not comparable to those published for earlier years. See *Jurisdiction notes*.

^hNevada did not submit 2013 NPS data. See *Methodology* for details on imputation of 2013 data that were included in state and U.S. totals.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2013–2014.

The imprisonment rate in the United States continued to decline in 2014

At yearend 2014, the United States imprisoned 471 persons per 100,000 residents of all ages and 612 persons per 100,000 residents age 18 or older (table 5). Both statistics represent the lowest rate of imprisonment in more than a decade, and continue decreases that began in 2007 and 2008. More than 1% of adult U.S. males were in state or federal prison on December 31, 2014. The male imprisonment rate in 2014 (1,169 per 100,000 adult males) was lower than in 2013 (1,189 per 100,000). While the imprisonment rate for females was lower (65 per 100,000 female residents of all ages and 84 per 100,000 adult females), the rates for women increased from 2013.

Louisiana had the highest imprisonment rate for persons of all ages (816 per 100,000 state residents) and adults (1,072 inmates per 100,000 state residents age 18 or older) (table 6).

Oklahoma (928 per 100,000), Alabama (820 per 100,000), Texas (792 per 100,000), and Mississippi (788 per 100,000) had the next highest rates of imprisonment among persons age 18 or older. Maine imprisoned the fewest state residents per capita at yearend 2014 (153 per 100,000 residents of all ages or 189 per 100,000 adults), followed by Massachusetts (188 per 100,000 residents of all ages or 237 per 100,000 adult residents).

Although Louisiana imprisoned males at a higher rate than any other state on December 31, 2014 (1,577 per 100,000 male state residents of all ages), its imprisonment rate for females (87 per 100,000 female residents of all ages) was low compared to all other states. Oklahoma (142 per 100,000), Idaho (125 per 100,000), and Kentucky (108 per 100,000) had the highest female imprisonment rates at yearend 2014.

TABLE 5
Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities, December 31, 2004–2014

Year	Per 100,000 U.S. residents of all ages					Per 100,000 adult U.S. residents		
	Total ^a	Federal ^{a,b}	State ^a	Male ^a	Female ^a	Total ^c	Male ^c	Female ^c
2004	487	54	433	923	64	649	1,248	84
2005	492	56	436	932	65	655	1,257	86
2006	501	58	443	948	68	666	1,275	89
2007	506	59	447	955	69	670	1,282	90
2008	506	60	447	956	69	669	1,279	90
2009	504	61	443	952	67	665	1,271	88
2010	500	61	439	948	66	656	1,260	86
2011	492	63	429	932	65	644	1,236	84
2012	480	62	417	909	63	626	1,201	82
2013 ^d	477	61	416	903	65	621	1,189	83
2014 ^e	471	60	412	890	65	612	1,169	84
Percent change								
Average annual, 2004–2013	-0.2%	1.3%	-0.4%	-0.2%	0.1%	-0.4%	-0.5%	-0.2%
2013–2014	-1.3	-2.6	-1.1	-1.5	1.3	-1.5	-1.7	1.1

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held. Counts are based on prisoners with sentences of more than 1 year under the jurisdiction of state or federal correctional officials.

^aImprisonment rate per 100,000 U.S. residents of all ages.

^bIncludes inmates held in nonsecure privately operated community corrections facilities and juveniles held in contract facilities.

^cImprisonment rate per 100,000 U.S. residents age 18 or older.

^dNevada did not submit 2013 National Prisoner Statistics (NPS) data, and Alaska did not submit sex-specific jurisdiction counts to NPS in 2013, so data for these states were imputed. See *Methodology*.

^eTotal and state estimates include imputed counts for Alaska, which did not submit 2014 NPS data. See *Methodology*.

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014; U.S. Census Bureau, postcensal resident population estimates for January 1 of the following calendar year.

TABLE 6**Imprisonment rates for sentenced prisoners under jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, by sex, December 31, 2013 and 2014**

Jurisdiction	2013				2014			
	Total ^a	Male ^a	Female ^a	Total adult ^b	Total ^a	Male ^a	Female ^a	Total adult ^b
U.S. total ^c	477	903	65	621	471	890	65	612
Federal ^d	61	117	8	80	60	113	8	78
State ^c	416	787	57	541	412	777	58	534
Alabama ^e	647	1,226	103	840	633	1,203	97	820
Alaska ^{f,g,h}	364	626	73	488	374	644	75	501
Arizona ^e	584	1,074	101	771	593	1,089	104	780
Arkansas	579	1,088	87	761	599	1,125	92	786
California	352	676	32	462	349	670	33	456
Colorado	383	695	69	500	383	691	71	499
Connecticut ^{h,i}	338	655	36	432	326	632	35	415
Delaware ^h	442	861	49	566	440	863	44	563
Florida	522	992	72	656	513	976	71	644
Georgia	532	1,018	69	708	517	991	67	686
Hawaii ^h	256	457	50	327	257	466	44	328
Idaho ^e	507	882	131	690	489	852	125	663
Illinois	377	723	44	492	375	718	44	487
Indiana	454	835	85	598	442	810	86	581
Iowa	279	517	45	364	282	520	47	368
Kansas ^{e,i}	328	610	47	437	322	596	49	428
Kentucky	461	836	98	599	474	852	108	615
Louisiana	847	1,633	94	1,114	816	1,577	87	1,072
Maine	148	282	20	184	153	290	21	189
Maryland	352	696	29	455	346	683	29	447
Massachusetts	192	380	15	242	188	373	15	237
Michigan	441	856	41	570	437	846	42	563
Minnesota	189	354	26	247	194	364	27	254
Mississippi	693	1,329	91	918	597	1,146	78	788
Missouri	521	968	90	677	526	967	100	682
Montana	357	631	81	458	360	641	76	461
Nebraska	263	489	38	350	283	523	45	376
Nevada ^j	459	835	77	599	434	789	76	566
New Hampshire	215	403	32	270	219	407	36	274
New Jersey	252	492	22	325	241	470	22	311
New Mexico	320	585	61	423	329	601	63	433
New York	271	534	23	345	265	522	23	337
North Carolina	355	683	44	462	358	685	48	465
North Dakota ^e	206	362	42	266	214	369	51	278
Ohio	446	839	70	579	444	832	71	574
Oklahoma	703	1,276	140	932	700	1,269	142	928
Oregon	384	711	64	491	378	698	63	481
Pennsylvania ^e	400	777	41	508	394	762	41	499
Rhode Island ^h	193	384	15	243	178	354	12	223
South Carolina	446	863	53	576	429	828	51	552
South Dakota ^e	432	756	104	574	421	741	96	558
Tennessee	437	820	73	567	437	816	77	566
Texas	600	1,117	89	816	584	1,081	93	792
Utah ^e	242	436	46	350	237	427	45	342
Vermont ^h	251	479	30	312	241	454	33	298
Virginia	446	836	68	575	449	840	71	579
Washington	256	471	41	331	254	468	41	329
West Virginia	368	657	85	463	372	662	88	468
Wisconsin ⁱ	370	704	40	479	371	702	45	479
Wyoming	396	688	91	518	408	706	97	534

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.

^a Imprisonment rate per 100,000 U.S. residents of all ages.

^b Imprisonment rate per 100,000 U.S. residents age 18 or older.

^c Includes imputed counts for Alaska, which did not submit 2014 National Prisoner Statistics (NPS) data. See *Methodology*.

^d Includes inmates held in nonsecure privately operated community corrections facilities and juveniles held in contract facilities.

^e State has updated 2013 population counts.

^f Alaska did not submit sex-specific jurisdiction counts in NPS in 2013. See *Methodology*.

^g Alaska did not submit 2014 NPS data, but jurisdiction totals were obtained from a report to the state legislature. See *Methodology*.

^h Prisons and jails form one integrated system. Data include total jail and prison populations.

ⁱ State has changed reporting methodology, so 2014 rates are not comparable to those published for earlier years. See *Jurisdiction notes*.

^j Nevada did not submit 2013 NPS data in time for this report. See *Methodology* for details on imputation of 2013 data that were used in state and U.S. totals.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2013–2014; U.S. Census Bureau, postcensal resident population estimates for January 1 of the following calendar year.

A decline in admissions during 2014 led to the smaller federal prison population

The decrease in the federal prison population from yearend 2013 to yearend 2014 was driven by declining admissions rather than an increase in releases. The BOP admitted 2,800 fewer prisoners in 2014, a 5% decrease from admissions during 2013. During the same period, the number of releases from the BOP was nearly stable, with 300 fewer released prisoners in 2014 compared to 2013 (table 7). In comparison, state prisons admitted 500 fewer persons in 2014 than in 2013, but released 12,600 more prisoners (up 2%). In total, state and federal prisons admitted 626,600 persons during 2014, including 449,000 entries for newly convicted offenders. They released 636,300 inmates overall (figure 4, figure 5).

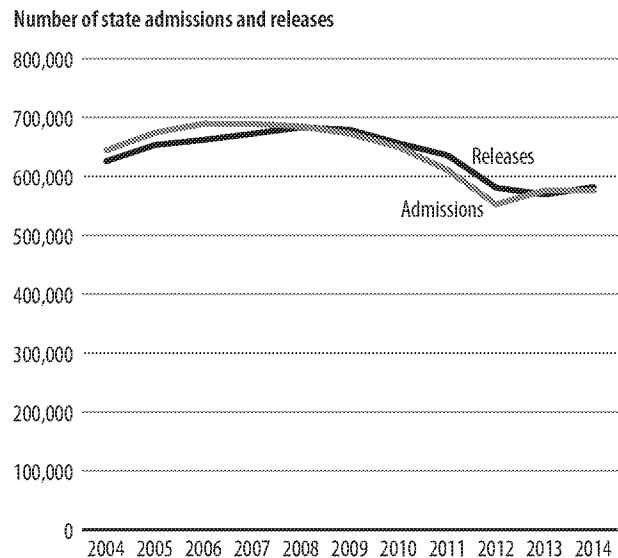
Admissions increased in 18 states, including a 34% rise in Hawaii, 26% in Oklahoma, 16% in Kentucky, and 14% in North Carolina. With the exception of Hawaii, these states also saw smaller increases in the number of persons released during 2014. After the BOP, Indiana had the largest decline in admissions during 2014, admitting 1,800 fewer inmates than in 2013 (down 10%). Mississippi admitted 19% fewer prisoners in 2014, a decline of 1,500 prison admissions from the previous year.

In 2014, new court commitments accounted for 91% of the BOP's total admissions, compared to 70% for state prisons. Parole violation admissions, which include all conditional release violators, made up the majority of the remaining admissions. Of states with the largest prison populations, Texas admitted 66% (50,000) of its inmates in 2014 on new court commitments, compared to 86% (33,500) for California and 97% (31,000) in Florida. Vermont, Washington, Idaho, and Arkansas admitted more than 50% of prisoners during 2014 on violations of post-custody supervision programs.

Twenty-one states increased the number of prison releases from 2013 to 2014, led by Texas (up 4%), Arkansas (up 35%), and California (up 6%). These three leading states accounted for 61% of the total increase in state prison releases. Seventy percent of all prison inmates released from state prisons in 2014 had post-custody community supervision conditions to fulfill. Maine, Massachusetts, Florida, Rhode Island, and New Jersey placed no post-custody supervision conditions on the majority of prisoners they released during 2014.*

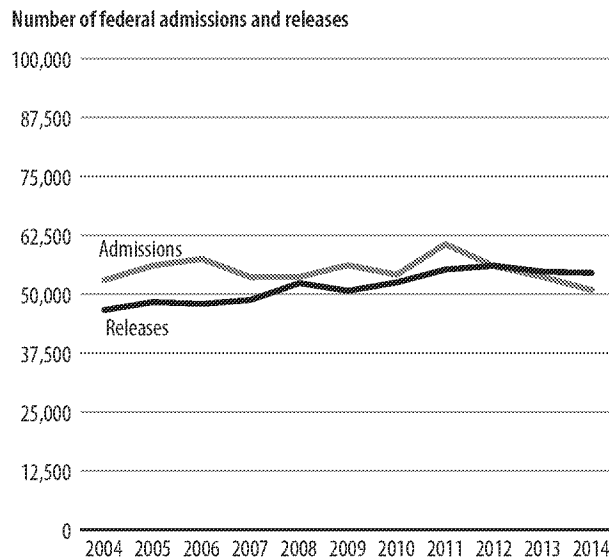
*The majority of releases from the federal prison population are reported as unconditional. Under the Sentencing Reform Act of 1984, the federal parole system was eliminated, but federal courts were allowed to impose a term of supervised release after imprisonment as part of an inmate's sentence. Because this supervised release term is not implemented under the jurisdiction of the federal prison system, the BOP reports prison releases as unconditional even though inmates may serve post-custody community supervision.

FIGURE 4
Admissions to and releases from state prison, 2004–2014



Note: Counts based on prisoners with a sentence of more than 1 year. Excludes transfers, escapes, and those absent without leave (AWOL), and includes other conditional release violators, returns from appeal or bond, and other admissions. See *Methodology*. See appendix table 1 for counts.
Source: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014.

FIGURE 5
Admissions to and releases from federal prison, 2004–2014



Note: Counts based on prisoners with a sentence of more than 1 year. Excludes transfers, escapes, and those absent without leave (AWOL), and includes other conditional release violators, returns from appeal or bond, and other admissions. See *Methodology*. See appendix table 2 for counts.
Source: Bureau of Justice Statistics, National Prisoner Statistics, 2004–2014.

TABLE 7

Admissions and releases of sentenced prisoners, 2013 and 2014

Jurisdiction	Admissions ^a					Releases ^b				
	2013 Total	2014 Total	Percent change, 2013-2014	2014 New court commitments ^c	2014 Parole violations ^{c,d}	2013 Total	2014 Total	Percent change, 2013-2014	2014 Unconditional ^{e,f}	2014 Conditional ^{e,g}
U.S. total ^c	629,962	626,644	-0.5%	448,993	164,225	623,990	636,346	2.0%	177,967	405,924
Federal ^h	53,664	50,865	-5.2%	46,145	4,719	54,785	54,529	-0.5%	53,245	431
State	576,298	575,779	-0.1%	402,848	159,506	569,205	581,817	2.2%	124,722	405,493
Alabama	11,265	10,912	-3.1	8,827	1,137	11,488	11,585	0.8	4,002	7,428
Alaska ^{c,j,k}	3,906	3,846	-1.5	/	/	3,774	3,774	:	2,004	1,744
Arizona	13,538	14,439	6.7	11,989	2,449	12,931	13,513	4.5	2,229	10,300
Arkansas ^l	8,987	9,435	5.0	4,218	5,217	6,541	8,812	34.7	597	8,156
California ^e	38,295	38,765	1.2	33,497	5,268	36,353	38,559	6.1	/	/
Colorado	10,137	10,144	0.1	5,275	4,867	10,220	9,869	-3.4	1,585	8,152
Connecticut ^{i,k}	5,492	5,487	:	4,532	879	5,177	5,968	:	2,936	3,017
Delaware ^l	3,142	3,349	6.6	2,711	610	4,251	4,222	-0.7	282	3,866
Florida	33,613	32,014	-4.8	30,984	114	32,855	32,754	-0.3	20,699	11,673
Georgia	19,478	18,455	-5.3	16,614	1,838	18,226	17,124	-6.0	7,157	9,847
Hawaii ^l	1,380	1,845	33.7	1,116	729	1,615	1,242	-23.1	306	635
Idaho ^l	3,719	4,597	:	1,570	3,012	3,761	4,501	19.7	513	3,962
Illinois	30,959	29,678	-4.1	20,769	8,835	31,370	30,055	-4.2	4,406	25,517
Indiana	18,881	17,086	-9.5	14,442	2,347	17,959	17,866	-0.5	2,351	15,445
Iowa	5,159	5,153	-0.1	3,711	1,423	5,202	5,005	-3.8	1,121	3,835
Kansas	5,220	5,683	8.9	4,278	1,338	5,133	5,554	8.2	1,707	3,826
Kentucky	15,834	18,385	16.1	10,613	7,657	16,871	17,731	5.1	3,282	14,337
Louisiana	16,770	16,376	-2.3	11,639	4,737	17,646	17,882	1.3	1,267	16,472
Maine	929	774	-16.7	586	188	971	1,031	6.2	620	409
Maryland ^m	9,223	9,223	:	5,579	3,640	9,504	9,466	:	1,306	8,075
Massachusetts	2,567	2,526	-1.6	2,268	224	2,855	2,654	-7.0	1,885	727
Michigan	14,417	13,834	-4.0	7,702	3,472	14,307	14,177	-0.9	873	11,155
Minnesota	7,687	7,866	2.3	5,095	2,771	7,808	7,642	-2.1	916	6,702
Mississippi	8,105	6,570	-18.9	5,075	1,367	8,201	9,442	15.1	1,173	8,162
Missouri	18,983	19,000	0.1	10,080	8,914	18,790	18,767	-0.1	1,525	17,115
Montana	2,382	2,448	2.8	1,888	560	2,347	2,387	1.7	272	2,099
Nebraska	2,922	2,705	-7.4	2,130	495	2,583	2,284	-11.6	793	1,475
Nevada ⁿ	/	5,876	:	4,488	925	/	5,838	:	2,107	3,330
New Hampshire	1,659	1,611	-2.9	658	770	1,633	1,562	-4.3	68	1,489
New Jersey	9,802	9,257	-5.6	6,827	2,430	10,766	10,275	-4.6	6,095	3,931
New Mexico	3,567	3,798	6.5	2,500	1,298	3,345	3,515	5.1	918	2,573
New York	22,740	21,572	-5.1	13,054	8,427	23,382	22,927	-1.9	2,435	20,206
North Carolina	14,077	16,016	13.8	13,671	2,345	13,829	15,264	10.4	4,406	10,771
North Dakota	1,222	1,142	-6.5	953	189	1,173	1,046	-10.8	139	901
Ohio	21,998	22,189	0.9	18,301	3,868	21,235	22,399	5.5	10,062	12,209
Oklahoma	8,019	10,095	25.9	6,943	3,152	7,374	8,654	17.4	4,195	4,349
Oregon	5,532	5,330	-3.7	3,701	1,461	5,048	5,432	7.6	13	5,240
Pennsylvania	20,455	20,084	-1.8	10,252	9,074	19,632	20,555	4.7	3,268	17,138
Rhode Island ^f	810	821	1.4	699	122	885	867	-2.0	638	224
South Carolina	6,431	6,283	-2.3	5,049	1,224	6,716	6,897	2.7	2,524	4,295
South Dakota ^k	1,842	2,266	:	1,073	539	1,820	2,413	:	303	1,648
Tennessee	13,803	14,987	8.6	8,911	6,055	16,348	15,556	-4.8	4,974	10,500
Texas	76,488	75,571	-1.2	49,825	24,482	74,093	77,277	4.3	10,661	61,933
Utah	3,094	2,922	-5.6	1,596	1,326	2,988	2,979	-0.3	988	1,967
Vermont ^l	1,858	1,715	-7.7	601	1,114	1,752	1,740	-0.7	274	1,459
Virginia	11,636	12,237	5.2	12,150	87	11,880	12,094	1.8	1,094	10,898
Washington	21,426	20,797	-2.9	7,642	13,153	20,861	20,898	0.2	2,233	18,609

Continued on the next page

TABLE 7 (continued)
Admissions and releases of sentenced prisoners, by jurisdiction, 2013 and 2014

Jurisdiction	Admissions ^a					Releases ^b				
	2013 Total	2014 Total	Percent change, 2013–2014	2014 New court commitments ^c	2014 Parole violations ^{c,d}	2013 Total	2014 Total	Percent change, 2013–2014	2014 Unconditional ^{e,f}	2014 Conditional ^{e,g}
West Virginia	3,573	3,544	-0.8%	1,885	1,217	3,780	3,468	-8.3%	1,004	2,001
Wisconsin ^k	7,343	6,134	:	4,129	1,975	5,475	5,433	:	252	5,105
Wyoming	1,004	937	-6.7	752	185	895	862	-3.7	264	586

Note: Counts based on prisoners with a sentence of more than 1 year.

/Not reported.

:Not calculated.

^aExcludes transfers, escapes, and those absent without leave (AWOL), and includes other conditional release violators, returns from appeal or bond, and other admissions. See *Methodology*.

^bExcludes transfers, escapes, and those AWOL, and includes deaths, releases to appeal or bond, and other releases. See *Methodology*.

^cU.S. and state totals by type of admission exclude counts for Alaska. See *Jurisdiction notes*.

^dIncludes all conditional release violators returned to prison for either violations of conditions of release or for new crimes.

^eU.S. and state totals by type of release exclude counts for California because the state was unable to report detailed information on releases. See *Jurisdiction notes*.

^fIncludes expirations of sentence, commutations, and other unconditional releases.

^gIncludes releases to probation, supervised mandatory releases, and other unspecified conditional releases.

^hThe Sentencing Reform Act of 1984 eliminated the federal parole system but allowed courts to impose a term of supervised release after imprisonment as part of an inmate's sentence. Some persons with unconditional releases from the Bureau of Prisons may be released to community supervision.

ⁱPrisons and jails form one integrated system. Data include total jail and prison populations.

^jAlaska did not submit 2014 National Prisoner Statistics (NPS) admission or release data. Release-type data for 2014 were obtained from data submitted by Alaska to the National Corrections Reporting Program.

^kCounts for 2014 admissions and releases are not comparable to earlier years due to a change in reporting methodology.

^lCounts for 2014 admissions are not comparable to earlier years due to a change in reporting methodology.

^mState did not submit admissions or release data in 2014 to NPS. See *Methodology*.

ⁿState did not submit 2013 NPS data. See *Methodology* for details on imputation of 2013 data.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2013–2014.

Nineteen jurisdictions were operating their prison facilities at more than 100% maximum capacity in 2014

The yearend 2014 custody populations of the BOP and 18 states exceeded the maximum measure of their prison facilities' capacity. The BOP and 28 states had more prisoners in custody than their minimum number of beds (table 8). BJS reports three different measures of capacity: the operational capacity, which is based on the ability of the staff, programs, and services to accommodate a certain size population; the rated capacity, which measures the number of beds assigned by a rating official to each facility; and the design capacity, which is the number of beds that the facility was originally designed to hold. Although many jurisdictions cannot report all three

types of capacity, most provide at least two types. Based on these data, BJS calculates the percent capacity of facilities based on the custody population for the largest (maximum) and smallest (minimum) capacity measures.

Prison facilities in Illinois held 48,300 inmates at yearend 2014, 150% of the rated capacity of 32,100 (maximum), and 171% of the design capacity of 28,200 (minimum). BOP facilities were officially rated to house 132,700 inmates, but 170,000 prisoners were in custody at yearend 2014, which was 128% of the maximum capacity reported. Other jurisdictions with more inmates housed than the maximum number of beds for which their facilities were designed, rated, or intended include Ohio (132%), Massachusetts (130%), and Nebraska (128%).

TABLE 8
Prison facility capacity, custody population, and percent capacity, December 31, 2014

Jurisdiction	Type of capacity measure			Custody population	Custody population as a percent of—	
	Rated	Operational	Design		Lowest capacity ^a	Highest capacity ^a
Federal ^b	132,731	...	...	169,840	128.0%	128.0%
State						
Alabama ^c	...	26,145	13,318	25,664	192.7	98.2
Alaska ^d	...	5,352	...	5,188	96.9	96.9
Arizona	37,681	42,961	37,681	35,181	93.4	81.9
Arkansas	15,450	15,429	15,529	15,250	98.8	98.2
California ^c	...	127,594	87,187	119,071	136.6	93.3
Colorado	...	14,502	14,502	16,687	115.1	115.1
Connecticut	/	/	/	16,167	/	/
Delaware ^c	5,649	5,210	4,161	6,730	161.7	119.1
Florida ^e	...	109,191	...	100,873	92.4	92.4
Georgia ^e	59,566	53,418	...	52,719	98.7	88.5
Hawaii	...	3,527	2,491	3,965	159.2	112.4
Idaho ^{c,e}	7,010	6,858	6,858	7,497	109.3	106.9
Illinois	32,095	32,095	28,212	48,278	171.1	150.4
Indiana	...	30,517	...	28,073	92.0	92.0
Iowa ^f	7,276	7,276	7,276	8,209	112.8	112.8
Kansas	9,180	9,233	9,164	9,539	104.1	103.3
Kentucky	12,164	11,590	11,925	12,114	104.5	99.6
Louisiana ^e	18,121	15,686	16,764	18,710	119.3	103.3
Maine	2,339	2,133	2,339	2,199	103.1	94.0
Maryland ^g	...	23,465	...	21,236	90.5	90.5
Massachusetts	...	...	8,029	10,447	130.1	130.1
Michigan ^{c,h}	44,919	43,939	...	43,359	98.7	96.5
Minnesota	...	9,454	...	9,576	101.3	101.3
Mississippi ⁱ	...	26,008	...	13,069	50.2	50.2
Missouri ^c	...	31,673	...	31,903	100.7	100.7
Montana	1,679	...	...	1,687	100.5	100.5
Nebraska ^c	...	4,094	3,275	5,228	159.6	127.7
Nevada	/	/	/	12,693	/	/
New Hampshire ^c	...	2,723	2,190	2,723	124.3	100.0
New Jersey	18,584	19,958	23,108	18,633	100.3	80.6
New Mexico	6,840	7,708	7,708	3,876	56.7	50.3
New York	51,480	51,868	50,960	52,362	102.8	101.0
North Carolina	...	43,815	37,503	37,348	99.6	85.2
North Dakota	1,479	1,479	1,479	1,325	89.6	89.6
Ohio	34,986	...	...	46,151	131.9	131.9
Oklahoma	16,529	18,638	16,529	19,126	115.7	102.6
Oregon	...	...	14,997	14,492	96.6	96.6
Pennsylvania	47,945	47,945	47,945	48,538	101.2	101.2
Rhode Island	3,989	3,774	3,973	3,133	83.0	78.5
South Carolina	...	23,269	...	20,948	90.0	90.0
South Dakota ^c	...	3,622	...	3,497	96.5	96.5
Tennessee	16,844	16,403	...	15,699	95.7	93.2
Texas ^c	159,583	153,331	159,583	139,879	91.2	87.7
Utah	...	7,191	7,431	5,307	73.8	71.4
Vermont	1,681	1,681	1,322	1,548	117.1	92.1
Virginia ⁱ	...	30,514	24,219	28,480	117.6	93.3
Washington ⁱ	...	16,744	...	17,180	102.6	102.6
West Virginia	4,647	5,923	5,097	5,867	126.3	99.1
Wisconsin ^c	...	22,918	17,181	22,572	131.4	98.5
Wyoming	2,288	2,288	2,407	2,114	92.4	87.8

...Not available. Specific type of capacity is not measured by state.

/Not reported.

^aPopulation counts are based on the number of inmates held in custody of facilities operated by the jurisdiction. Excludes inmates held in local jails, other states, or private facilities unless noted.

^bDue to differences in the dates when data were extracted, the federal custody count reported for the calculation of capacity excludes 3,990 inmates compared to the yearend custody data reported in the National Prisoner Statistics (NPS).

^cState defines capacity in a way that differs from BJS's definition. See *Jurisdiction notes*.

^dAlaska did not report 2014 capacity or custody population data to NPS. Estimates derived from a report to the state legislature. See *Methodology*.

^ePrivate facilities included in capacity and custody counts.

^fBoth capacity and custody counts exclude inmates in community-based work release facilities.

^gState did not report 2014 capacity counts to NPS. Data are from 2013.

^hCapacity counts include institution and camp net operating capacities and the population of community programs on December 31 because these programs do not have a fixed capacity.

ⁱState has changed reporting methodology, so 2014 capacity counts are not comparable to those published for earlier years. See *Jurisdiction notes*.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2014.

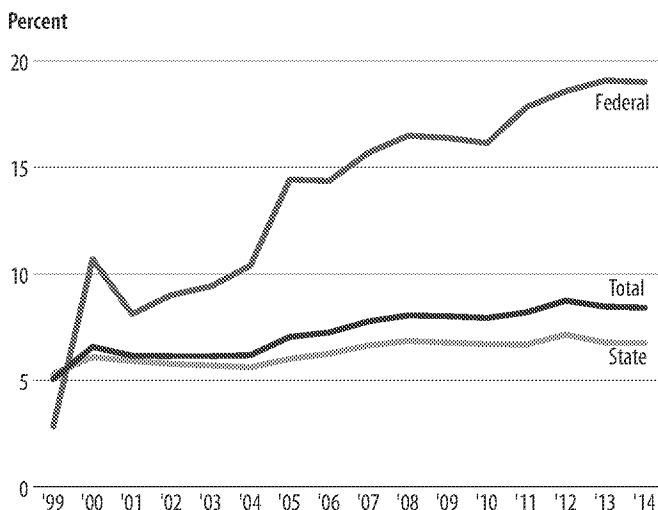
The number of prisoners held in private facilities declined in 2014

Of states with prison facilities operating at more than 100% maximum capacity, both Ohio and the BOP decreased the number of inmates held in private facilities. Illinois, Nebraska, and Massachusetts do not house any prisoners in private facilities. In 2014, 131,300 inmates were held in private prison facilities under the jurisdiction of 30 states and the BOP, a decrease of 2,100 prisoners from yearend 2013 (table 9). The federal prison system held 1,100 fewer prisoners in private prisons (down 3%), for a total of 40,000 or 19% of the BOP population. Idaho had the largest decline (down 77%) in private prisoners during 2014, as operations at a prison facility formerly run by a private entity were taken over by the state DOC.

Seven states housed at least 20% of their inmate population in private facilities at yearend 2014, including New Mexico (44% of the total state prison population), Montana (39%), Oklahoma (26%), and Hawaii (24%). Since 1999, when BJS began tracking the number of prisoners in private facilities at yearend on an annual basis through the National Prisoner Statistics (NPS), the size of this population has grown 90%, from 69,000 prisoners at yearend 1999 to 131,300 in 2014. The use of private prisons was at a maximum in 2012, when 137,200 (almost 9%) of the total U.S. prison population were housed in private facilities (figure 6).

Between 5% and 7% of state prison inmates were held in private facilities each year, while the BOP increasingly relied on facilities not managed by a state, federal, or local government to house inmates in recent years, including both secure and nonsecure facilities, and home confinement. In 1999, almost 3% of federal prison inmates were held in secure private facilities. This grew to more than 13% in 2012 and 2013, before declining in 2014 to slightly less than 13%. In 2014, 13,000 (32%) of the BOP's 40,000 privately supervised inmates were in nonsecure community corrections facilities or on home confinement, up from 6,100 in 2000, the first year the BOP reported this population to BJS (not shown).

FIGURE 6
Percent of total prisoners under state or federal jurisdiction in the custody of private prison facilities, December 31, 1999–2014



Note: Counts of private prisoners in the federal prison system include inmates held in nonsecure privately operated facilities, and prisoners on home confinement.
 Source: Bureau of Justice Statistics, National Prisoner Statistics, 1999–2014.

In 2014, states held 4,100 fewer prisoners in local jails than in 2013

At yearend 2014, almost 82,000 prisoners were held in the custody of local jails for 35 states and the BOP. This represented a 5% decline (down 3,900) from the 85,700 prisoners held in jail facilities in 2013. Fourteen states and the BOP increased the number of prisoners housed in local jails during 2014, while Oklahoma, Louisiana, and Texas held at least 1,000 fewer prison inmates in jail facilities than in 2013. Louisiana housed the most prisoners in local facilities, with 19,300 (51%) of the state's yearend 2014 prison population residing in jails.

TABLE 9
Prisoners held in the custody of private prisons and local jails, December 31, 2013 and 2014

Jurisdiction	Inmates held in private prisons ^a				Inmates held in local jails			
	2013	2014	Percent change 2013-2014	Percent of total jurisdiction, 2014	2013	2014	Percent change 2013-2014	Percent of total jurisdiction, 2014
U.S. total ^b	133,363	131,261	-1.6%	8.4%	85,662	81,738	-4.6%	5.2%
Federal ^b	41,159	40,017	-2.8%	19.0%	788	939	19.2%	0.4%
State ^a	92,204	91,244	-1.0%	6.8%	84,874	80,799	-4.8%	6.0%
Alabama	554	481	-13.2	1.5	2,090	1,702	-18.6	5.4
Alaska ^{c,d}	27	28	3.7	:	0	0	~	~
Arizona	6,405	6,955	8.6	16.5	0	0	~	~
Arkansas	0	0	~	~	2,916	2,600	-10.8	14.5
California	2,026	2,376	17.3	1.7	0	0	~	~
Colorado	3,898	3,782	-3.0	18.3	187	176	-5.9	0.9
Connecticut ^c	725	647	-10.8	3.9	0	0	~	~
Delaware ^c	0	0	~	~	0	0	~	~
Florida	11,801	12,395	5.0	12.0	1,175	1,104	-6.0	1.1
Georgia	7,900	7,901	0.0	14.9	4,887	4,946	1.2	9.3
Hawaii ^c	1,421	1,425	0.3	24.3	0	0	~	~
Idaho	2,745	639	-76.7	7.9	662	620	-6.3	7.6
Illinois	0	0	~	~	0	0	~	~
Indiana	4,438	4,420	-0.4	15.1	1,418	1,198	-15.5	4.1
Iowa	0	0	~	~	0	0	~	~
Kansas	95	105	10.5	1.1	3	90	2,900.0	0.9
Kentucky	0	0	~	~	8,213	8,966	9.2	41.4
Louisiana	3,158	3,142	-0.5	8.3	20,505	19,320	-5.8	50.8
Maine	0	0	~	~	65	26	-60.0	1.2
Maryland	29	30	3.4	0.1	130	95	-26.9	0.5
Massachusetts	0	0	~	~	329	279	-15.2	2.6
Michigan	0	0	~	~	55	31	-43.6	0.1
Minnesota	0	0	~	~	963	997	3.5	9.4
Mississippi	4,394	4,114	-6.4	21.9	6,378	5,568	-12.7	29.6
Missouri	0	0	~	~	0	0	~	~
Montana	1,459	1,432	-1.9	38.7	497	515	3.6	13.9
Nebraska	0	0	~	~	47	212	351.1	3.9
Nevada ^e	/	0	:	~	/	97	:	0.8
New Hampshire	0	0	~	~	41	69	68.3	2.3
New Jersey	2,735	2,761	1.0	12.8	119	110	-7.6	0.5
New Mexico	2,984	3,072	2.9	43.8	0	0	~	~
New York	0	0	~	~	10	8	-20.0	0.0
North Carolina	30	30	0.0	0.1	0	0	~	~
North Dakota	319	371	16.3	21.6	9	12	33.3	0.7
Ohio	5,487	5,370	-2.1	10.4	0	0	~	~
Oklahoma	7,051	7,367	4.5	26.3	2,406	1,079	-55.2	3.8
Oregon	0	0	~	~	5	0	-100.0	0.0
Pennsylvania	546	636	16.5	1.3	857	894	4.3	1.8
Rhode Island ^c	0	0	~	~	0	0	~	~
South Carolina	15	15	0.0	0.1	364	298	-18.1	1.4
South Dakota	16	10	-37.5	0.3	53	76	43.4	2.1
Tennessee	5,103	5,116	0.3	17.8	7,790	7,987	2.5	27.8
Texas	14,538	14,368	-1.2	8.7	12,527	11,395	-9.0	6.9
Utah	0	0	~	~	1,626	1,668	2.6	23.7
Vermont ^c	499	431	-13.6	21.8	0	0	~	~
Virginia	1,554	1,570	1.0	4.2	6,974	7,449	6.8	19.8
Washington	0	0	~	~	163	167	2.5	0.9
West Virginia	0	0	~	~	1,116	1,029	-7.8	14.9
Wisconsin	0	0	~	~	11	7	-36.4	0.0
Wyoming	252	255	1.2%	10.7%	16	9	-43.8	0.4

:Not calculated.

~Not applicable.

/Not reported.

^aIncludes prisoners held in the jurisdiction's own private facilities, as well as private facilities in another state.

^bIncludes federal prisoners held in nonsecure privately operated facilities (9,480), as well as prisoners on home confinement (3,473).

^cPrisons and jails form one integrated system. Data include total jail and prison populations.

^dState did not submit 2014 National Prisoner Statistics (NPS) data. See *Methodology*.

^eState did not submit 2013 NPS data. See *Methodology*.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2013-2014.

2.7% of black males and 1.1% of Hispanic males were sentenced to more than 1 year in state or federal prison at yearend 2014

An estimated 516,900 black males were in state or federal prison at yearend 2014, accounting for 37% of the male prison population (table 10, appendix table 3). White males made up 32% of the male prison population (453,500 prison inmates), followed by Hispanics (308,700 inmates or 22%). White females (53,100 prisoners) in state or federal prison at yearend 2014 outnumbered both black (22,600) and Hispanic (17,800) females.

As a percentage of residents of all ages at yearend 2014, 2.7% of black males (or 2,724 per 100,000 black male residents) and 1.1% of Hispanic males (1,090 per 100,000 Hispanic males) were serving sentences of at least 1 year in prison, compared to less than 0.5% of white males (465 per 100,000 white male residents). On December 31, 2014, black males had higher imprisonment rates than prisoners of other races or Hispanic origin within every age group. Imprisonment rates for black males were 3.8 to 10.5 times greater at each age group than

white males and 1.4 to 3.1 times greater than rates for Hispanic males. The largest disparity between white and black male prisoners occurred among inmates ages 18 to 19. Black males (1,072 prisoners per 100,000 black male residents ages 18 to 19) were more than 10 times more likely to be in state or federal prison than whites (102 per 100,000).

Imprisonment rates by race and Hispanic origin were highest for males ages 30 to 34 (6,412 per 100,000 black males, 2,457 per 100,000 Hispanic males, and 1,111 per 100,000 white males). More than 1% of white male residents ages 30 to 39 were in state or federal prison at yearend 2014. Black males exceeded 6% of their total U.S. population in prison for persons ages 30 to 39.

Female prisoners ages 30 to 34 had the highest imprisonment rates among black (264 per 100,000 black females of the same age), white (163 per 100,000), and Hispanic inmates (174 per 100,000). Black females were between 1.6 and 4.1 times more likely to be imprisoned than white females of any age group.

TABLE 10
Imprisonment rate of sentenced state and federal prisoners per 100,000 U.S. residents, by demographic characteristics, December 31, 2014

Age group	Total ^a	Male					Female				
		All male ^a	White ^b	Black ^b	Hispanic	Other ^b	All female ^a	White ^b	Black ^b	Hispanic	Other ^b
Total ^c	471	890	465	2,724	1,091	968	65	53	109	64	93
18-19	169	317	102	1,072	349	542	14	8	32	17	12
20-24	746	1,365	584	3,868	1,521	1,755	96	72	152	94	109
25-29	1,055	1,912	958	5,434	2,245	2,022	170	150	244	165	208
30-34	1,161	2,129	1,111	6,412	2,457	2,193	185	163	264	174	225
35-39	1,067	1,982	1,029	6,122	2,272	1,878	155	138	229	137	189
40-44	904	1,689	942	5,105	1,933	1,619	132	119	213	107	174
45-49	758	1,417	815	4,352	1,602	1,444	111	90	203	94	161
50-54	567	1,081	633	3,331	1,320	1,112	72	57	128	67	124
55-59	358	698	400	2,178	978	832	37	27	72	42	63
60-64	212	422	252	1,265	680	483	20	15	37	25	37
65 or older	72	158	109	418	299	208	5	4	8	7	12
Number of sentenced prisoners ^d	1,508,636	1,402,404	453,500	516,900	308,700	123,300	106,232	53,100	22,600	17,800	12,800

Note: Counts based on prisoners with sentences of more than 1 year under the jurisdiction of state or federal correctional authorities. Imprisonment rate is the number of prisoners under state or federal jurisdiction with a sentence of more than 1 year per 100,000 U.S. residents of corresponding sex, age, and race or Hispanic origin. Resident population estimates are from the U.S. Census Bureau for January 1, 2015. Alaska did not submit 2014 data to the National Prisoner Statistics (NPS), so totals include imputed counts for this state. See *Methodology*.

^aIncludes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.

^bExcludes persons of Hispanic or Latino origin.

^cIncludes persons age 17 or younger.

^dRace totals are rounded to the nearest 100 to accommodate differences in data collection techniques between jurisdictions.

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2014; Federal Justice Statistics Program, 2014; National Corrections Reporting Program, 2013; Survey of Inmates in State and Federal Correctional Facilities, 2004; and U.S. Census Bureau, postcensal resident population estimates for January 1, 2015.

Compared to violent and property offenders, inmates serving time for drug offenses in state prisons showed little racial disparity

More than half of all state prisoners on December 31, 2013 (the most recent date for which offense data are available) were serving sentences of at least 1 year for violent offenses on their current term of imprisonment (704,800 prisoners or 53%), including 165,600 persons for murder or nonnegligent manslaughter and 166,200 for rape or sexual assault (table 11, appendix table 4). A smaller percentage of females were sentenced for violent offenses (37%) than males (54%), although the proportion of those sentenced for murder was similar for males (13%) and females (11%) in state prisons. Almost 16% of state prisoners were convicted drug offenders (208,000 inmates), including 24% of all females in state prison (22,000 inmates) and 15% of all males in state prison (186,000 inmates).

The percentage of white (15%), black (16%), and Hispanic (15%) state prisoners sentenced for drug offenses were similar, but a smaller percentage of whites were in prison for violent offenses (48%) than blacks (57%) and Hispanics (59%). The number of whites (78,500 prisoners) serving time for rape or another sexual offense at yearend 2013 was more than the total of both blacks (39,700 prisoners) and Hispanics (37,300 prisoners) in state prison for these crimes. Twenty-five percent of all white prisoners under state jurisdiction were serving time for property offenses, compared to 16% of black prisoners and 14% of Hispanic prisoners. Almost half (48% or 24,400 prisoners) of blacks imprisoned in state facilities for public order offenses were sentenced for weapons crimes, which include carrying, exhibiting, firing, possessing, or selling a weapon. State prisons held an additional 13,900 Hispanic and 11,200 white prisoners sentenced for weapons crimes.

TABLE 11

Estimated percent of sentenced prisoners under state jurisdiction, by offense, sex, race, and Hispanic origin, December 31, 2013

Most serious offense	All inmates ^a	Male	Female	White ^b	Black ^b	Hispanic
Total	100%	100%	100%	100%	100%	100%
Violent	53.2%	54.4%	37.1%	47.8%	56.8%	59.2%
Murder ^c	12.5	12.6	11.2	9.6	13.7	14.2
Manslaughter	1.4	1.3	2.5	1.5	0.8	1.1
Rape/sexual assault	12.5	13.3	2.4	16.7	8.0	13.6
Robbery	13.7	14.0	8.8	8.0	19.9	13.5
Aggravated/simple assault	10.0	10.1	8.5	8.8	10.9	13.0
Other	3.1	3.1	3.7	3.2	3.5	3.7
Property	19.3%	18.6%	28.4%	25.1%	16.4%	13.5%
Burglary	10.5	10.7	7.6	12.4	9.7	8.3
Larceny-theft	3.8	3.4	9.0	5.7	3.5	2.1
Motor vehicle theft	0.8	0.8	0.8	1.1	0.5	1.0
Fraud	2.1	1.6	8.0	3.1	1.5	0.9
Other	2.1	2.0	3.0	2.9	1.3	1.2
Drug	15.7%	15.1%	24.0%	14.5%	16.1%	14.5%
Drug possession	3.6	3.4	6.2	3.8	3.8	4.2
Other ^d	12.1	11.7	17.8	10.7	12.3	10.4
Public order	11.0%	11.2%	9.2%	11.9%	10.3%	12.2%
Weapons	3.8	4.0	1.7	2.4	4.9	5.1
Driving under the influence	1.9	1.9	2.4	2.9	0.7	2.4
Other ^e	5.3	5.3	5.1	6.7	4.7	4.7
Other/unspecified^f	0.8%	0.8%	1.3%	0.7%	0.4%	0.5%
Total number of sentenced inmates^g	1,325,305	1,233,724	91,581	468,600	497,000	274,200

Note: Estimates are based on state prisoners with a sentence of more than 1 year under the jurisdiction of state correctional officials. Detail may not sum to total due to rounding and missing offense data. See *Methodology*.

^aIncludes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.

^bExcludes persons of Hispanic or Latino origin and persons of two or more races.

^cIncludes nonnegligent manslaughter.

^dIncludes trafficking and other drug offenses.

^eIncludes court offenses; commercialized vice, morals, and decency offenses; and liquor law violations and other public-order offenses.

^fIncludes juvenile offenses and other unspecified offense categories.

^gRace totals are rounded to the nearest 100 to accommodate differences in data collection techniques between jurisdictions.

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2013; National Corrections Reporting Program, 2013; and Survey of Inmates in State Correctional Facilities, 2004.

59% of females in federal prison were serving time for drug crimes

Fifty percent (95,800) of sentenced inmates in federal prison on September 30, 2014 (the most recent date for which federal offense data are available) were serving time for drug offenses (table 12, appendix table 5). In comparison to the 53% in state prisons, violent offenders represented 7% of the federal prison population (14,000 prisoners). Among female federal prisoners, 4% were convicted of violent

crimes in 2014. Public order offenders made up 36% of the BOP population, and 9% of federal prisoners (17,000) were serving time for immigration offenses. Among Hispanics in federal prisons, 26% were sentenced for immigration offenses (16,100 inmates), and 57% were sentenced for drug crimes (36,000 inmates). Fifty-three percent of black federal prisoners were convicted drug offenders in 2014, and 25% served sentences for weapons offenses.

TABLE 12

Estimated percent of sentenced prisoners under federal correctional authority, by most serious offense, sex, race, and Hispanic origin, September 30, 2014

Most serious offense	All inmates ^a	Male	Female	White ^b	Black ^b	Hispanic
Violent	7.3%	7.5%	4.4%	7.1%	9.9%	2.0%
Homicide ^c	1.5	1.5	1.3	0.7	2.4	0.3
Robbery	3.8	3.9	1.7	5.0	5.6	0.9
Other violent	2.1	2.2	1.4	1.5	2.0	0.8
Property	6.0%	5.2%	18.3%	10.0%	5.9%	2.7%
Burglary	0.2	0.2	0.2	0.2	0.4	0.0
Fraud	4.7	3.9	15.5	7.8	4.4	2.3
Other property	1.1	1.0	2.7	2.0	1.1	0.4
Drug^d	50.1%	49.5%	58.8%	40.3%	52.5%	56.9%
Public order	35.9%	37.1%	17.9%	41.2%	31.2%	38.0%
Immigration	8.9	9.3	3.7	1.2	0.4	25.5
Weapons	15.8	16.6	4.3	14.8	24.8	7.1
Other	11.1	11.2	9.8	25.3	6.1	5.4
Other/unspecified^e	0.7%	0.7%	0.6%	1.4%	0.5%	0.4%
Total number of sentenced inmates^f	192,663	180,140	12,523	51,600	71,300	63,700

Note: Counts are based on sentenced prisoners under federal jurisdiction, regardless of sentence length. Detail may not sum to total due to rounding and missing offense data. See *Methodology*.

^aIncludes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.

^bExcludes persons of Hispanic or Latino origin and persons of two or more races.

^cIncludes murder, negligent, and nonnegligent manslaughter.

^dIncludes trafficking, possession, and other drug offenses.

^eIncludes offenses not classified.

^fIncludes sentenced inmates under federal jurisdiction, regardless of sentence length.

Source: Bureau of Justice Statistics, Federal Justice Statistics Program, 2014.

More than 40% of personnel held under military jurisdiction had committed violent offenses

The U.S. military held 1,100 persons sentenced to at least 1 year or 1,400 persons of all sentence lengths under the jurisdiction of military correctional authorities at yearend 2014 (table 13). The sentenced population increased by slightly more than 1% from 2013. More than half (54% or 580) of the

prisoners had served in the U.S. Army before imprisonment. U.S. Air Force personnel made up an additional 18% of the sentenced military confined population (200 persons). The Army had custody of 67% of all military personnel sentenced to more than 1 year on December 31, 2014, with an additional 32% held in the custody of the U.S. Navy.

TABLE 13
Prisoners under military jurisdiction, by branch of service, December 31, 2013 and 2014

	Total population ^a			Sentenced population ^b		
	2013	2014	Percent change, 2013-2014	2013	2014	Percent change, 2013-2014
Total number of prisoners	1,421	1,409	-0.8%	1,056	1,070	1.3%
Military branch of service						
Air Force	287	246	-14.3%	215	194	-9.8%
Army	685	692	1.0	552	576	4.3
Marine Corps	241	230	-4.6	139	134	-3.6
Navy	195	218	11.8	145	152	4.8
Coast Guard	13	23	76.9	5	14	:
In custody of—						
Air Force	37	34	-8.1%	4	5	:
Army	817	825	1.0	690	714	3.5%
Marine Corps	65	78	20.0	2	13	:
Navy	502	472	-6.0	360	338	-6.1

: Not calculated.

^aIncludes all prisoners under military jurisdiction, regardless of conviction status or sentence length.

^bIncludes prisoners sentenced to more than 1 year under military jurisdiction.

Source: Bureau of Justice Statistics, based on data from the Office of the Under Secretary for Defense for Personnel and Readiness, U.S. Department of Defense, 2013-2014.

Of military personnel with known offense data sentenced to any term of imprisonment under military jurisdiction, 43% had committed violent offenses, including 24% for violent sexual offenses and 8% each for murder and assault (table 14). An additional 37% had committed nonviolent sexual offenses, including sexual misconduct. The Navy had

the highest percentage of violent offenders (including violent sexual offenders), making up 47% of all its convicted and imprisoned personnel, compared to 45% for the Army, 39% for the Air Force, and 31% for U.S. Marine personnel. More than 75% of convicted naval personnel were serving time for sexual offenses, including 34% for rape or sexual assault.

TABLE 14

Percent of prisoners under military correctional authority with sentences of any length, by most serious offense and military branch of service, December 31, 2014

Most serious offense	Total ^a	Air Force	Army	Marine Corps	Navy
Total	100%	100%	100%	100%	100%
Sexual	61.7%	68.6%	56.7%	55.5%	75.8%
Violent	24.4	27.1	22.0	18.9	33.5
Nonviolent ^b	37.2	41.5	34.6	36.6	42.3
Other violent	18.2%	12.3%	23.4%	12.2%	13.2%
Murder ^c	7.8	3.8	10.2	6.7	6.0
Manslaughter	0.6	0.4	0.6	0.6	1.1
Robbery	0.3	0.0	0.6	0.0	0.0
Aggravated/simple assault	8.0	7.6	9.9	4.3	4.9
Other violent	1.4	0.4	2.1	0.6	1.1
Property	5.0%	2.5%	4.9%	14.0%	0.5%
Burglary	0.6	0.4	0.9	0.0	0.0
Larceny-theft	3.1	1.7	2.8	8.5	0.5
Motor vehicle theft	0.0	0.0	0.0	0.0	0.0
Fraud	0.2	0.0	0.4	0.0	0.0
Other property	1.2	0.4	0.7	5.5	0.0
Drug^d	6.5%	13.6%	4.2%	11.0%	1.6%
Public order	0.2%	0.0%	0.3%	0.0%	0.0%
Military offenses	2.8%	0.4%	2.4%	3.7%	6.0%
Other/unspecified	5.6%	2.5%	8.1%	3.7%	2.7%
Total number of prisoners	1,268	236	667	164	182

Note: Counts based on prisoners sentenced to any length of time under military correctional authority. Does not include pretrial detainees. Coast Guard offense distribution not shown due to too few cases.

^aIncludes prisoners who served in the Coast Guard (not shown separately).

^bIncludes sexual harassment, indecent exposure and other acts, prostitution, stalking, and other nonviolent sexual misconduct.

^cIncludes nonnegligent manslaughter.

^dIncludes possession, use, trafficking, and other drug crimes.

Source: Bureau of Justice Statistics, based on data from the Office of the Under Secretary for Defense for Personnel and Readiness, U.S. Department of Defense, 2014.

National Prisoner Statistics (NPS) Program jurisdiction notes

Alabama—Prisons have not been rated recently for official capacity, but the majority of Alabama prisons are operating in a state of overcrowding. Currently, 26,145 beds are in operation. This number represents the physical capacity for inmates but is not based on staffing, programs, and services. Operational capacity differs from the Bureau of Justice Statistics (BJS) definition.

Alaska—Alaska did not submit 2014 NPS data. BJS based 2014 jurisdiction and custody counts on a state report, *2015 Recidivism Reduction Plan: Cost-Effective Solutions to Slow Prison Population Growth and Reduce Recidivism* (http://www.legis.state.ak.us/basis/get_documents.asp?session=29&docid=1372), which indicated that the prison population on January 23, 2015, was 5,216 prisoners, which was 2.65% higher than the reported 2013 NPS total jurisdiction population.

Alaska submitted total custody and jurisdiction counts and total admissions and releases for 2013 NPS data. None of the 2013 counts were broken down by sex, so the sex distribution from the 2012 NPS data submitted by Alaska was used in 2013. BJS assumed that the distribution of inmates under custody and jurisdiction across sentence lengths (e.g., more than 1 year, 1 year or less, or unsentenced) was the same in 2014 as in 2013. BJS assumed that the percentage of inmates in privately operated facilities, local facilities, federal facilities, and out-of-state facilities was the same in 2014 as in 2013. BJS applied the racial distribution of offenders from the 2013 National Corrections Reporting Program (NCRP) custody records submitted by Alaska to 2014 counts to obtain the 2014 offender racial distribution. BJS assumed that the increase in the 2014 jurisdiction counts was due to an increase in admissions and that there was no change in the number of releases from 2013 to 2014.

No information was available on the distribution by admission type, so BJS categorized all admissions as *Other admissions*. BJS assumed that the distribution by release type in 2014 was the same distribution that Alaska reported in the 2013 NCRP release records. BJS based 2014 operational capacity on the same 2015 state report, which indicated that the Department of Corrections (DOC) has 5,352 beds. BJS assumed that the percentage of beds for males and females in 2014 was the same as previously reported in the 2012 NPS survey. BJS also assumed that the percentages of offenders age 17 or younger and those who were not U.S. citizens were the same in 2014 as in 2013.

Arizona—Jurisdiction counts are based on custody data and inmates in contracted beds, but do not include inmates held in other jurisdictions because Arizona receives an equal number of inmates to house from other jurisdictions. In 2014, Arizona classified persons returned to prison from deportation as transfer admissions. In 2013, these persons had been included in the *Other admissions* category. Other admissions include the return of an inmate erroneously released. Other unconditional

releases include inmates released by the court. Other conditional releases include releases onto other community supervision programs. Other releases include persons released to deportation.

Arkansas—Other conditional releases include those made to boot camps.

California—Due to a high-level data conversion project by the California Department of Corrections and Rehabilitation (CDCR), the movement data used to report detailed counts of admissions and releases were not available for this report's publication. CDCR was able to differentiate between new court commitment and parole violation admissions, but was not able to provide any other detailed breakdown of other admission types or any release types. Custody counts include California out-of-state correctional facility contracted beds (COCF), community correctional facility (CCF) private contract beds, and private work furlough inmates. Jurisdiction counts for inmates with maximum sentences of more than 1 year include felons who are temporarily absent, such as in court, in jail, or in a hospital. The majority of temporarily absent inmates are absent for fewer than 30 days. Jurisdiction counts for unsentenced inmates include civil addicts who are enrolled for treatment and are not serving a criminal conviction sentence, but are under the jurisdiction of CDCR. California is unable to differentiate between inmates held in federal facilities and those held in other states' facilities. The sum of offenders by race reported by California in 2014 does not match the total jurisdiction count because of differences in the data systems from which the data were extracted. Changes in design capacity are based on information from an annual facilities planning and management report.

Colorado—Jurisdiction and custody counts include a small, undetermined number of inmates with a maximum sentence of 1 year or less, as well as 225 males and 8 females who are part of the Youthful Offender System. Admission and release data for inmates who are absent without leave (AWOL) or who have escaped are estimated. Other admissions include returns from the Colorado State Hospital. Other releases include discharges from both the probation and youthful offender systems. Design and operational capacities do not include the privately run facilities in Colorado.

Connecticut—Prisons and jails form one integrated system. All NPS data include jail and prison populations. Connecticut changed the way it reports inmates under jurisdiction in 2014, excluding parolees who were counted in previous NPS data and including Connecticut inmates in the custody of another state. Jurisdiction, admission, and release counts from earlier years are not comparable to 2014 data. New court commitment admissions include inmates admitted on accused status, but who received a sentence later in 2014. Counts of other types of admissions and releases include persons with legitimate types of prison entries and exits that do not match BJS categories. Legislation in July 1995 abolished the capacity

law, making a facility's capacity a fluid number based on the needs of the department. The needs are dictated by security issues, populations, court decrees, legal mandates, staffing, and physical plant areas of facilities that serve other purposes or have been decommissioned. The actual capacity of a facility is subject to change.

Delaware—Prisons and jails form one integrated system. All NPS data include jail and prison populations. Capacity counts include the halfway houses under the DOC.

Federal Bureau of Prisons (BOP)—Data reflect inmates under BOP jurisdiction on December 27, 2014. Jurisdiction counts include inmates housed in secure private facilities where the BOP had a direct contract with a private operator, and inmates housed in secure facilities where there was a subcontract with a private provider at a local government facility. Jurisdiction counts also include inmates housed in jail or short-term detention and others held in state-operated or other nonfederal secure facilities.

Counts include 9,480 inmates (8,181 males and 1,299 females) held in nonsecure privately operated community corrections centers or halfway houses and 3,473 offenders on home confinement (3,006 males and 467 females). A total of 63 male and 4 female juveniles were held in contract facilities; these inmates were included in the jurisdiction totals but excluded from the counts of private, locally operated, or federally operated facilities. Some of these juveniles are under the jurisdiction of U.S. probation but are being housed in the custody of the BOP in contract facilities. Due to information system configuration, Asians and Native Hawaiians or other Pacific Islanders are combined, and inmates of Hispanic origin are included in the race categories. On December 27, 2014, the BOP held 68,128 male and 4,363 female inmates of Hispanic origin. Other admissions include hospitalization and treatment. Parole violation counts combine those with and without a new sentence. Expirations of sentence include good-conduct releases that usually have a separate and distinct term of supervision, and releases from the residential drug abuse treatment program. Other releases include court-ordered terminations, compassionate release, and releases based on the amount of time served. The BOP population on December 31, 2014, was 169,840 inmates (excluding contracted and private facilities), and the rated capacity on that date was 132,731. The crowding rate was 28%.

Florida—In 2014, three inmates received other unconditional releases through vacated sentences. Other conditional releases include provisional release supervision, conditional medical release, program supervision, mandatory conditional, and parole reinstatement. Other releases include exits due to fraudulent court orders. Because the count of noncitizen inmates is based on citizenship status, as opposed to the method employed prior to 2013 which made the determination based on country of birth, 2014 statistics are comparable only to 2013.

Georgia—Females are not housed in privately operated correctional facilities in Georgia. Subtotals of race, sex, sentence length for jurisdiction, and custody counts were adjusted by the Georgia DOC using interpolation to match the overall totals. Counts of admissions and releases were adjusted using interpolation to balance the jurisdictional populations on January 1, 2014, and December 31, 2014.

Hawaii—Prisons and jails form one integrated system. All NPS data include jail and prison populations. In custody and jurisdiction counts, sentenced felon probationers and probation violators are included with the counts of prisoners with a total maximum sentence of 1 year or less. Jurisdiction counts include dual-jurisdiction (state of Hawaii or federal) inmates currently housed in federal facilities and in contracted federal detention center beds. Hawaii does not have a rated capacity for its integrated prison and jail system. Information on foreign nationals held in correctional facilities was based on self-reports by inmates.

Idaho—Due to improvements in data extraction methods, Idaho shows substantial changes in the counts of new court commitment, parole violation, and other conditional release violation admissions from previous years. Idaho defines rated capacity as 100% of maximum capacity. In 2014, the Idaho DOC took over operation of a prison that had previously been operated by a private corporation.

Illinois—All population counts are based on jurisdiction. Jurisdiction and custody population and admission and release counts for inmates with maximum sentences of more than 1 year include an undetermined number of inmates with a 1-year sentence. Counts of escape admissions and releases include one escape from a minimum security facility, with the remaining escapes occurring at adult transition centers. Other admission and release types include an undetermined number of transfers to other jurisdictions, and the net difference between long-term admissions and release movements not reported in other categories but required to balance yearend populations.

Indiana—Other types of admissions include inmates on active supervision or who were admitted for prior charges. Indiana reported changes to its 2013 admissions counts during 2014. See the CSAT-Prisoners web tool (<http://www.bjs.gov/index.cfm?ty=nps>) for updated information.

Iowa—In 2009, the Iowa DOC began including offenders on work release, the operating while intoxicated population, and Iowa inmates housed in out-of-state prisons in its jurisdiction counts. Iowa data included in BJS reports prior to 2009 were custody counts only. The admission and release data quality and methodology were updated in 2013; therefore, changes from previous years' counts may reflect these updates. Counts of AWOL admissions and releases are of the work release and operating while intoxicated populations. Escape admissions and releases are of the prison population only. Transfer admissions include those entering from other jurisdictions with an Iowa prison sentence. Other conditional releases include sex offenders released to special sentences.

Kansas—Custody and jurisdiction counts reported for 2014 are not comparable to previous years' counts. Prior to 2014, actual time of incarceration, instead of sentence length, was used to differentiate persons sentenced to 1 year or less from those sentenced to serve more than 1 year. The number of conditional releases will fluctuate from year to year. Kansas DOC considers releases to be any time an individual leaves a facility to return to the community, enter another program, or make a court appearance.

Kentucky—Other types of admissions include special admissions. Other types of conditional prison releases include exits to home incarceration.

Louisiana—Jurisdiction and capacity counts are correct as of December 30, 2014. Other types of unconditional releases include court orders and releases for good time with no supervision. Other conditional release types include reinstatement to probation. Other types of release include supervised and compassionate releases.

Maine—Counts of inmates age 17 or younger reflect only those held in adult correctional facilities.

Maryland—Due to an information systems upgrade, Maryland was able to provide only custody, jurisdiction, private prison, and local facility counts to BJS in 2014. BJS assumed that the percentage of offenders in federal facilities and in other states' facilities was the same in 2014 as in 2013. Likewise, BJS assumed that the offender distribution by race, prison capacity, percentage of offenders age 17 or younger, and the percentage of non-U.S. citizens were the same in 2014 as in 2013. Because the system used to report Maryland data in 2013 did not capture Hispanic origin, BJS could not impute the number of Hispanics under state jurisdiction. Based on the decrease in the jurisdiction population from 2013 to 2014, BJS assumed that the total number of admissions was the same in 2014 as in 2013 and adjusted the number of releases for 2014 to balance the population size change. The distribution of admission and release types were assumed to be the same in 2014 as in 2013. Because the system used to report Maryland data in 2013 did not distinguish between AWOL and escape releases, BJS could only impute the total of AWOL and escape releases for 2014.

Massachusetts—By law, offenders in Massachusetts may be sentenced to terms of up to 2.5 years in locally operated jails and correctional institutions. This population is excluded from the state count but is included in published population counts and rates for local jails and correctional institutions. Jurisdiction counts exclude approximately 2,630 inmates (2,511 males and 119 females) in the county system (local jails and houses of correction) who are serving a sentence of more than 1 year, but these inmates are included in imprisonment rate calculations at the request of the Massachusetts DOC. Jurisdiction and custody counts may include a small but undetermined number of inmates who were remanded to court; transferred to the custody of another state, federal, or

locally operated system; or subsequently released. In 2014, there was a continued increase in inmates transferred to local jails prior to their release from prison as part of a step-down initiative for reentry. Other types of admissions include returns from court release. Other unconditional releases include court releases.

Michigan—Due to an information systems upgrade, the Michigan DOC had to modify its statistical techniques to obtain much of the data reported in this survey. The numbers reported are solidly in line with previous trends which have remained stable over several years, but some detailed measures, including type of admission and race, were estimated based on previous trends. Michigan's database system treats Hispanic as an ethnicity rather than a race. Because this is currently an optional field, the numbers for Hispanics are significantly underreported, and the state included them in the white race category. Releases to appeal or bond, and admissions of inmates returning from appeal or bond, are not disaggregated by length of time out to court. These counts represent the net difference between all movements to and from court. Operational capacity is institutional net capacity.

Minnesota—Jurisdiction counts include inmates temporarily housed in local jails, on work release, or on community work crew programs. The count of inmates under the jurisdiction of the Minnesota DOC in the custody of federal and other states' facilities increased from 2013 to 2014 due to database upgrades. Admissions and releases due to AWOL or escape, returns from or releases to appeal or bond, and releases because of transfer are not included in Minnesota's database file. Minnesota measures only operational capacity.

Mississippi—Mississippi's prison population decreased in 2014 because the state parole board released more nonviolent offenders and placed some on house arrest. These actions demonstrate that the Mississippi DOC is moving more toward community-based supervision rather than imprisonment. Jurisdiction counts of local facilities include both local county jails and county regional facilities. Violators of parole and conditional release are not distinguished by their sentence status in the Mississippi file. Other types of admission and release data include corrections to data because of a lag in processing. Total operational capacity on December 31, 2014, was 26,008.

Missouri—Offenders reported to have a total maximum sentence of 1 year or less have a sentence of exactly 1 year. Other types of unconditional releases include resentenced completions, court-ordered discharges, and compensation. Other types of conditional releases include parole board holdover returns. The Missouri DOC does not have the design capacity of its older prisons, nor does it update design capacity for prison extensions or improvements. Missouri does not use a rated capacity. The state defines operational capacity as the number of beds available, including those temporarily offline. Noncitizen data are based on self-reported place of birth.

Nebraska—By statute, inmates are housed where they are sentenced by the judge and are not housed in local jails or by another state to ease prison crowding. Other admissions and other conditional releases reflect movements in the population of the reentry furlough program. Nebraska defines operational capacity as its stress capacity, which is 125% of design capacity for designated facilities. The total design and operational capacities for institutions that house females include one female multicustody facility. The department operates two coed facilities that represent a design capacity of 290 and are counted in the male design and operational capacities.

Nevada—Other admission types in 2014 included safekeepers and inmates located out of state serving concurrent sentences for Nevada and another state. Nevada did not submit NPS data in 2013. See *Methodology in Prisoners in 2013* (BJS web, September 2014, NCJ 247282) for a description of the 2013 data imputation procedure.

New Hampshire—Other admission types include admissions from probation. Other conditional releases include releases to home confinement. New Hampshire's operating capacity is defined as the inmate population on any given day.

New Jersey—Population counts for inmates with a maximum sentence of more than 1 year include inmates with sentences of a year. The New Jersey DOC has no jurisdiction over inmates with sentences of less than 1 year or over unsentenced inmates. Reporting of other conditional releases includes those to an intensive supervision program, while other types of unconditional releases include vacated and amended sentences ordered by the courts. New Jersey data for escapes do not differentiate between inmates disappeared from confined walls and those who disappear while out of institutions. Other releases include inmates brought too soon from the county jails into the state prison system then released back to the county jails, and other transfers.

New Mexico—New Mexico does not include its inmates housed in other states under the interstate compact agreement in its total jurisdiction count. According to BJS definitions, these inmates should be included in the total state jurisdiction and were in this report. The count of noncitizens includes inmates in both state-run and private facilities.

New York—Other admissions include the return to prison of persons erroneously discharged.

North Carolina—As of December 1, 2011, North Carolina prisons no longer house misdemeanor offenders with sentences of less than 180 days. Captured escapees are not considered a prison admission type in North Carolina, and escape is not considered a type of prison release. Supervised mandatory releases are post-release offenders. Post-release supervision is defined as a reintegration program for serious offenders who have served extensive prison terms. This form of supervision was created by the Structured Sentencing Act of 1993. Rated capacity is not available.

North Dakota—In 2013, North Dakota erroneously added females housed in private facilities into their custody count. Data presented in this report have been updated.

Ohio—Population counts for inmates with a maximum sentence of more than 1 year include an undetermined number of inmates with a sentence of 1 year or less. Admissions of parole violators without a new sentence include only formally revoked violators. Other unconditional releases include vacated sentences. Escapes include nonconfinement escapes. Returns and conditional releases involving transitional-control inmates are reported only after movement from confinement to a terminal release status occurs. The count of noncitizens excludes inmates housed in privately operated facilities.

Oklahoma—In March 2014, an initiative was made to relieve county jail backups and to house the offenders in DOC facilities, which has resulted in increases to the number of admissions and releases and to the prison population. Jurisdiction counts include offenders in a DOC jail program, those in court, escapees in the custody of local jails, and those sentenced to the DOC but not yet in custody. Prior to 2013, those not yet in custody were not included in the counts. Most inmates with sentences of less than 1 year were part of the Oklahoma Delayed Sentencing Program for Young Adults. Offenders in the custody of other states are mostly escapees. Only DOC facilities are included in the capacity counts. Noncitizen status is determined by country of birth.

Oregon—Most offenders with a maximum sentence of less than 1 year remain under the custody of local counties rather than the Oregon DOC. Oregon does not recognize rated capacity.

Pennsylvania—Other types of unconditional releases include vacated sentences and convictions. Other releases include releases to the state hospital.

Rhode Island—Prisons and jails form one integrated system. All NPS data include jail and prison populations. Jurisdiction counts include inmates who have dual jurisdiction, or those serving Rhode Island sentences out of state while also serving that state's sentence. The Rhode Island data system records Hispanic origin as a race rather than an ethnicity and does not capture Native Hawaiian and Other Pacific Islanders or persons identifying as two or more races, including those who may identify themselves as Hispanic second to another race. Prison admissions classified as escape returns include admissions under home confinement, serving out of state, and minimum-security facilities. Rhode Island DOC's data system cannot differentiate between parole violation admissions with and without new sentences. Other types of unconditional releases consist of court-ordered discharges, while other types of conditional releases include discharge to the Institute for Mental Health.

South Carolina—The December 31, 2014, custody count of unsentenced individuals includes Interstate Compact Commission inmates. As of July 1, 2003, the South Carolina Department of Corrections (SCDC) began releasing inmates due for release and housed in SCDC institutions on the first day of each month. Since January 1, 2015, was a holiday, inmates eligible for release on January 1 were released on December 31, 2014. Therefore, the inmate count was at its lowest point for the month on December 31, 2014. All inmates in private facilities in South Carolina were housed in private medical facilities. The local facilities holding inmates on December 31, 2014, included designated facilities and persons AWOL to county or local facilities. South Carolina does not have a specific race code to designate persons identifying as two or more races. These individuals are included in other specific race groups or labeled as other race. Other types of unconditional releases consist of remands. Conditional release counts include inmates released under community supervision after serving 85% of their sentence under truth in sentencing. Other release types include persons who are resentenced. There are two paroling authorities within the adult correctional system in South Carolina. The Intensive Supervision Administrative Release Authority of SCDC assumed Youthful Offender Act (YOA) Parole Board duties on February 1, 2013; prior to that, the Youthful Offender Branch of SCDC handled YOA paroles. SCDC paroled 1,098 offenders sentenced under the YOA, and the South Carolina Department of Probation, Parole, and Pardon Services paroled 628 non-YOA sentenced offenders. South Carolina uses the operational capacity concept in its management reports and other requested surveys.

South Dakota—Custody and jurisdiction counts of inmates serving a maximum sentence of 1 year or less include those under the sentence of probation who, as a condition of probation, must serve up to 180 days in state prison. In 2014, South Dakota updated its 2013 jurisdiction counts to include offenders serving concurrent sentences elsewhere. South Dakota does not separate discretionary and presumptive parole releases. Parole detainees are now included in the counts of other admission and other release types. Prior to 2014, these persons had not been included. The operational capacity reported is planned capacity. South Dakota does not have rated or design capacities. The reporting system for the South Dakota DOC does not have a category for inmates of two or more races. These inmates are included in the counts of other race prisoners.

Texas—Offenders in custody were all offenders serving time in a facility owned and operated by the Texas Department of Criminal Justice at the time of data collection. Jurisdiction counts include offenders in custody and those held in privately operated prisons, intermediate-sanction facilities, substance abuse felony punishment facilities, and halfway houses; offenders temporarily released to a county for less than 30 days; and offenders awaiting paperwork for transfer to state-funded custody. Capacities exclude county jail beds because they do not have a minimum or maximum number of beds available for paper-ready and bench-warrant inmates.

Admissions and releases include offenders received into an intermediate-sanction facility, which is a sanction in lieu of revocation. These offenders were counted in the parole violator category, although these were not revocations. Other conditional releases include discretionary mandatory releases. Other admission and other release types include transfers between divisions and adjustments. Executions are included in other releases.

Utah—Other types of unconditional release include discharges of cases or inmate holds.

Vermont—Prisons and jails form one integrated system. All NPS data include jail and prison populations. Vermont does not have the ability to record persons identifying as two or more races. Other types of conditional releases include furlough reintegration. Other releases include vacated sentences.

Virginia—Jurisdiction counts were for December 31, 2014. As of September 1, 1998, the state is responsible for inmates with a sentence of 1 year or more, or a sentence of 12 months plus 1 day. Prior to September 1, 1998, the state had been responsible for a 1-year sentence, while local authorities were responsible for sentences of 12 months or less. Prior to 2013, the count of inmates housed in local facilities was taken from Compensation Board reports. Starting in 2013, these counts were obtained from DOC data. Pacific Islanders are included in the Asian race category. Admissions and releases are preliminary fiscal year 2014 figures. Other types of conditional releases include conditional pardons or clemency, conditional release of a sexually violent predator, and geriatric parole. Other releases include authorized temporary and court-ordered releases. In prior years, the Virginia DOC reported capacity under its definition of authorized capacity, which included aspects of both the BJS definition of rated capacity and took into account the number of inmates that could be accommodated based on staff, programs, services, and design. In 2014, the agency reviewed how it was reporting capacity and determined that for this survey, it would report capacity under the definitions of operational and design to be consistent with capacity figures reported in other documents. The figures do not include 35 beds assigned to institutional hospitals that cannot be designated as only male or only female and does not include Detention and Diversion Centers.

Washington—The counting rule for offenders under Washington DOC custody changed in 2014 with the addition of several different facility codes that had previously been excluded, including those in violator facilities and work release programs. Jurisdiction counting methods did not change. Offenders sentenced to 1 year or less and unsentenced offenders generally reside in county jails, but revisions to law allow certain inmates with sentences of less than 1 year to be housed in prison. These inmates are included in the total jurisdiction counts. Native Hawaiians and Pacific Islanders are included in the Asian race category. Admissions and releases increased due to the implementation of swift and certain sanctions for violation behavior, where an offender is arrested

on the spot for violations and is sanctioned to 1 to 3 days of confinement. Other unconditional releases include vacated sentences.

West Virginia—Other types of admissions and releases included those to and from the Anthony Center for Young Adults and Diagnostics. Other types of unconditional releases included court-ordered releases.

Wisconsin—Custody measures include inmates without Wisconsin sentences who were physically housed in a Wisconsin prison. Jurisdiction measures include inmates with Wisconsin sentences, regardless of where they are physically located. Counts for 2014 were calculated using the same methodology as in 2013, but because the data were extracted in January 2015 (compared to April 2014 for the 2013 data), the values are not comparable because there were more inmates with unknown sentence lengths earlier in the year. Sentence length for custody and jurisdiction counts was determined by calculating the time between an inmate's admission date and the inmate's maximum discharge date. If the maximum discharge date was not recorded, the inmate's mandatory release date was used. This may not accurately reflect whether the inmate was initially sentenced to 1 year

or less or more than 1 year. Unsentenced inmates were those who had not yet had data entered reflecting their mandatory release date and maximum discharge date. Some of these unsentenced inmates may have been sentenced, but the DOC was unable to determine the sentence length at the time they responded to NPS. This mainly affected probation offenders in the Milwaukee facility on temporary hold. Sentence length for admissions was calculated as the time between an inmate's admission date and the inmate's maximum discharge date, or mandatory release date if the maximum discharge date was not available. Other admissions include temporary holds, alternatives to revocation, persons admitted under the corrections compact, and erroneous releases. Sentence length for prison releases was calculated as the time between an inmate's admission date and the actual release date, so this may not accurately reflect whether the inmate was sentenced to more than 1 year. As with the custody and jurisdiction counts, the early extraction of the 2014 data compared to the 2013 data resulted in fewer inmates admitted and released with known sentence lengths; therefore, the numbers are not comparable between years. Other releases include temporary holds and release after erroneous admissions. Native Hawaiian and Pacific Islander inmates are included in the Asian category.

Terms and definitions

Adult imprisonment rate—The number of prisoners under state or federal jurisdiction sentenced to more than 1 year per 100,000 U.S. residents age 18 or older.

Average annual change—Average (mean) annual change across a specific period.

Capacity, design—The number of inmates that planners or architects intended for a facility.

Capacity, highest—The maximum number of beds reported across the three capacity measures: design capacity, operational capacity, and rated capacity.

Capacity, lowest—The minimum number of beds across the three capacity measures: design capacity, operational capacity, and rated capacity.

Capacity, operational—The number of inmates that can be accommodated based on a facility's staff, existing programs, and services.

Capacity, rated—The number of beds or inmates assigned by a rating official to institutions within a jurisdiction.

Conditional releases—Includes discretionary parole, mandatory parole, post-custody probation, and other unspecified conditional releases.

Conditional release violators—Re-admission to prison of persons released to discretionary parole, mandatory parole, post-custody probation, and other unspecified conditional releases.

Custody—Prisoners held in the physical custody of state or federal prisons or local jails, regardless of sentence length or the authority having jurisdiction.

Imprisonment rate—The number of prisoners under state or federal jurisdiction sentenced to more than 1 year per 100,000 U.S. residents of all ages.

Inmate—A person incarcerated in a local jail, state prison, federal prison, or a private facility under contract to federal, state, or local authorities.

Jail—A confinement facility usually administered by a local law enforcement agency that is intended for adults, but sometimes holds juveniles, for confinement before and after adjudication. Such facilities include jails and city or county correctional centers; special jail facilities, such as medical treatment or release centers; halfway houses; work farms; and temporary holding or lockup facilities that are part of the jail's combined function. Inmates sentenced to jail facilities usually have a sentence of 1 year or less. Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont operate integrated systems, which combine prisons and jails.

Jurisdiction—The legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.

New court commitments—Admissions into prison of offenders convicted and sentenced by a court, usually to a term of more than 1 year, including probation violators and persons with a split sentence to incarceration followed by court-ordered probation or parole.

Parole violators—All conditional release violators returned to prison for either violating conditions of release or for new crimes.

Prison—A long-term confinement facility, run by a state or the federal government, that typically holds felons and offenders with sentences of more than 1 year. However, sentence length may vary by state. Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont operate integrated systems, which combine prisons and jails.

Prisoner—An individual confined in a correctional facility under the legal authority (jurisdiction) of state or federal correctional officials.

Sentenced prisoner—A prisoner sentenced to more than 1 year. This excludes persons sentenced to 1 year or less and unsentenced inmates.

Supervised mandatory releases—Conditional release with post-custody supervision generally occurring in jurisdictions using determinate sentencing statutes.

Unconditional releases—Expirations of sentences, commutations, and other unspecified unconditional releases.

Methodology

Started in 1926 under a mandate from Congress, the National Prisoner Statistics (NPS) Program collects annual data on prisoners at yearend. The Bureau of Justice Statistics (BJS) sponsors the survey, and the U.S. Census Bureau serves as the data collection agent. BJS depends entirely on voluntary participation by state departments of corrections (DOC) and the Federal Bureau of Prisons (BOP) for NPS data.

The NPS distinguishes between inmates in custody and prisoners under jurisdiction. To have custody of a prisoner, a state or the BOP must hold that inmate in one of its facilities. To have jurisdiction over a prisoner, the state or BOP must have legal authority over that prisoner, regardless of where the prisoner is incarcerated or supervised. Some states were unable to provide counts that distinguish between custody and jurisdiction. (See *Jurisdiction notes* to determine which states did not distinguish between custody and jurisdiction counts.)

The NPS jurisdiction counts include persons held in prisons, penitentiaries, correctional facilities, halfway houses, boot camps, farms, training or treatment centers, and hospitals. Counts also include prisoners who were temporarily absent (less than 30 days), in court, or on work release; housed in privately operated facilities, local jails, or other state or federal facilities; and serving concurrent sentences for more than one correctional authority.

The NPS custody counts include all inmates held within a respondent's facilities, including inmates housed for other correctional facilities. The custody counts exclude inmates held in local jails and in other jurisdictions. With a few exceptions, the NPS custody counts exclude inmates held in privately operated facilities.

Respondents to NPS surveys are permitted to update prior counts of prisoners held in custody and under jurisdiction. Some statistics on jurisdiction and sentenced prison populations for prior years have been updated in this report. All tables showing data based on jurisdiction counts, including tables of imprisonment rates, were based on the updated and most recently available data that respondents provided.

Admissions include new court commitments, parole violator returns, and other conditional release violator returns; transfers from other jurisdictions; returns of prisoners who were absent without leave (AWOL), with or without a new sentence; escape returns, with or without a new sentence; returns from appeal or bond, and other admissions. For reporting purposes, BJS admission counts exclude transfers from other jurisdictions, AWOL returns, and escape returns.

Releases include unconditional releases (e.g., expirations of sentence or commutations), conditional releases (e.g., probations, supervised mandatory releases, or discretionary paroles), deaths, AWOLs, escapes from confinement, transfers to other jurisdictions, releases to appeal or bond, and other releases. For reporting purposes, BJS release counts exclude AWOLs, escapes, and transfers to other jurisdictions.

The NPS has historically included counts of inmates in the combined jail and prison systems in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont. The District of Columbia has not operated a prison system since yearend 2001. Felons sentenced under the District of Columbia criminal code are housed in federal facilities. Jail inmates in the District of Columbia are included in the Annual Survey of Jails. Some previously published prisoner counts and the percentage change in population include jail inmates in the District of Columbia for 2001, the last year of collection. Additional information about the NPS, including the data collection instrument, is available on the BJS website.

Data on prisoners under the jurisdiction of U.S. territorial correctional authorities is collected separately from the state and federal NPS data, and U.S. totals in this report do not include territorial counts. Two territories, American Samoa and the U.S. Virgin Islands, did not provide 2014 data for NPS, so older years' data are shown in appendix table 7.

Nonreporting states

The Alaska state DOC did not respond to the 2014 NPS survey. BJS based 2014 jurisdiction and custody counts on a state report—*2015 Recidivism Reduction Plan: Cost-Effective Solutions to Slow Prison Population Growth and Reduce Recidivism* (http://www.legis.state.ak.us/basis/get_documents.asp?session=29&docid=1372)—that indicated that the January 23, 2015, prison population was 5,216 prisoners. BJS assumed that the increase in the 2014 jurisdiction counts was due to an increase in admissions and that there was no change in the number of releases from 2013 to 2014. For more details, see *Jurisdiction notes*.

Military correctional data

BJS obtains an annual aggregate count of service personnel under military jurisdiction from the Office of the Under Secretary of Defense for Personnel and Readiness, along with limited demographic and offense data. The Department of Defense disaggregates these data by the branch in which inmates served, the branch having physical custody of the inmate, and whether the inmate was an officer or enlisted.

Estimating yearend counts of prison population by age, sex, and race or Hispanic origin

National-level estimates of the number of persons by race under the jurisdiction of state prisons on December 31, 2014, were based on an adjustment of NPS counts to comply with Office of Management and Budget (OMB) definitions of race and Hispanic origin. OMB defines persons of Hispanic or Latino origin as a separate category. Race categories are defined exclusive of Hispanic origin. OMB adopted guidelines for collecting these data in 1997, requiring the collection of data on Hispanic origin in addition to data on race.

Not all NPS providers' information systems categorize race and Hispanic origin in this way. In 1991, the earliest time point in the analysis, only a few states were able to report information on Hispanic origin separately from race. BJS adjusted the NPS data on race and Hispanic origin by the ratio of the relative distribution of prisoners by race and Hispanic origin in self-report inmate surveys that use OMB categories for race to the relative distribution of prisoners by race and Hispanic origin in the NPS data. For this report, the 2004 Survey of Inmates in State Correctional Facilities was used to calculate the ratio used for statistics on racial distributions in 2014. The ratio obtained by comparing the within-year relative distributions by race and Hispanic origin was then multiplied by the NPS distribution in a year to generate the estimate of persons by race and Hispanic origin.

Estimates of the total number of sentenced prisoners by age, sex, race, and Hispanic origin on December 31, 2014, were generated by creating separate totals for federal and state prisons. For the federal estimates, each sex and race count that BOP reported to the NPS was multiplied by the ratio of the age category count within the sex and race combination in the Federal Justice Statistics Program (FJSP) to the FJSP total count within the sex and race combination (e.g., FJSP white males ages 18 to 19 divided by FJSP white males). The resulting product yielded the FJSP-adjusted NPS counts for each sex and race combination by age group (e.g., white male prisoners ages 18 to 19 in the federal prison system). State prison age distributions for the NPS use a similar sex and race ratio adjustment based on individual-level data from the National Corrections Reporting Program (NCRP). State and federal estimates were added together to obtain national estimates for yearend prison populations.

Estimating imprisonment rates by age, sex, and race or Hispanic origin

BJS calculated age-specific imprisonment rates for each age and sex and race group by dividing the estimated number of sentenced prisoners within each age group under jurisdiction on December 31, 2014, by the estimated number of U.S. residents in each age group on January 1, 2015. BJS multiplied the result by 100,000 and rounded to the nearest whole number. Totals by sex include all prisoners and U.S. residents, regardless of race or Hispanic origin.

Estimating offense distribution in the state and federal prison populations by age, sex, and race or Hispanic origin

BJS employed a ratio adjustment method to weight the individual-level race and Hispanic origin or sex-specific offense data from the NCRP to the state prison control totals

for sex and the estimated race or Hispanic origin from the NPS, which yielded a national offense distribution for state prisoners. Inmates missing offense data were excluded from the analysis prior to the weighting. Because data submission for the NCRP typically lags behind that of the NPS, state offense distribution estimates are published for the previous calendar year.

Data presented in table 12 and appendix table 5 are drawn from FJSP and are limited to inmates sentenced to more than 1 year in federal custody. The data are further limited to inmates sentenced on U.S. district court commitments, District of Columbia superior court commitments, and those returned to federal custody following violations of probation (both federal and District of Columbia), parole, supervised release, or mandatory release. Due to these methodological differences, the estimates in table 12 and appendix table 5 will differ from previously published federal offense distributions presented in the FJSP web tool (<http://www.bjs.gov/fjsrc/>) or *Federal Justice Statistics* bulletins and statistical tables (<http://www.bjs.gov/index.cfm?ty=tp&tid=6>). Since FJSP is a custody collection, the total count of prisoners in table 12 and appendix table 5 will differ from the jurisdiction count of prisoners reported to NPS.

Prison capacities

State and federal correctional authorities provide three measures of their facilities' capacity: design capacity, operational capacity, and rated capacity. Estimates of the prison populations as a percentage of capacity are based on a state or federal custody population. In general, state capacity and custody counts exclude inmates held in private facilities, although five states include prisoners held in private facilities as part of the capacity of their prison systems: Florida, Georgia, Idaho, Louisiana, and Mississippi. For these states, prison population as a percentage of capacity includes inmates held in the states' private facilities.

Noncitizen inmates

BJS asks state DOCs and the BOP to report the number of persons in their custody who were not citizens of the United States on December 31. While the intention is for jurisdictions to report based on inmates' current citizenship status, a number of jurisdictions cannot provide that information, and instead report country of birth to NPS. These states are noted in appendix table 6. As this is a custody count, noncitizens held in private prison facilities or local jails under the jurisdiction of state or federal correctional authorities are not included.

APPENDIX TABLE 1**Admissions to and releases from state prison, 2004-2014**

Year	Admissions	Releases
2004	644,084	625,578
2005	674,084	653,309
2006	689,536	661,954
2007	689,257	672,397
2008	684,987	683,303
2009	672,533	679,029
2010	649,677	656,190
2011	610,917	635,833
2012	552,504	580,679
2013	576,298	569,205
2014	575,779	581,817

Note: Counts based on prisoners with a sentence of more than 1 year. Excludes transfers, escapes, and those absent without leave (AWOL), and includes other conditional release violators, returns from appeal or bond, and other admissions. See *Methodology*.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2014–2014.

APPENDIX TABLE 2**Admissions to and releases from federal prison, 2004-2014**

Year	Admissions	Releases
2004	52,982	46,624
2005	56,057	48,323
2006	57,495	47,920
2007	53,618	48,764
2008	53,662	52,348
2009	56,153	50,720
2010	54,121	52,487
2011	60,634	55,239
2012	55,938	56,037
2013	53,664	54,785
2014	50,865	54,529

Note: Counts based on prisoners with a sentence of more than 1 year. Excludes transfers, escapes, and those absent without leave (AWOL), and includes other conditional release violators, returns from appeal or bond, and other admissions. See *Methodology*.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2014–2014.

APPENDIX TABLE 3**Percent of sentenced prisoners under jurisdiction of state or federal correctional authorities, by age, sex, race, and Hispanic origin, December 31, 2014**

Age group	Total ^a	Male					Female				
		All male ^a	White ^b	Black ^b	Hispanic	Other ^b	All female ^a	White ^b	Black ^b	Hispanic	Other ^b
Total ^f	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
18–19	1.0%	1.0%	0.5%	1.3%	1.1%	1.7%	0.6%	0.4%	0.9%	1.1%	0.0%
20–24	11.3	11.4	8.3	13.0	12.3	14.8	10.0	8.3	11.5	12.4	8.6
25–29	15.5	15.4	13.5	15.8	17.2	16.9	17.5	17.3	16.8	19.7	18.0
30–34	16.6	16.5	15.2	16.4	18.5	17.4	18.6	18.8	16.8	20.8	18.8
35–39	14.2	14.2	13.1	14.4	15.8	13.5	14.7	14.7	13.7	15.7	14.8
40–44	12.2	12.2	12.6	11.9	12.4	11.4	12.8	13.4	12.8	11.2	13.3
45–49	10.5	10.4	11.8	10.3	9.1	9.1	10.9	11.1	12.4	9.0	10.9
50–54	8.5	8.5	10.5	8.2	6.4	6.7	7.7	8.1	8.4	5.6	7.8
55–59	5.1	5.2	6.6	4.9	3.7	4.4	3.9	4.0	4.4	2.8	3.9
60–64	2.7	2.7	3.7	2.2	1.9	2.1	1.8	2.1	1.8	1.1	1.6
65 or older	2.3	2.3	3.9	1.3	1.5	1.9	1.2	1.5	0.9	0.6	1.6
Number of sentenced prisoners ^d	1,508,636	1,402,404	453,500	516,900	308,700	123,300	106,232	53,100	22,600	17,800	12,800

Note: Counts based on prisoners with sentences of more than 1 year under the jurisdiction of state or federal correctional officials. Alaska did not submit 2014 data to the National Prisoner Statistics (NPS), so totals include imputed counts for this state. See *Methodology*.

^aIncludes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.

^bExcludes persons of Hispanic or Latino origin.

^cIncludes persons age 17 or younger.

^dRace totals are rounded to the nearest 100 to accommodate differences in data collection techniques between jurisdictions.

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2014; Federal Justice Statistics Program, 2014; National Corrections Reporting Program, 2013; and Survey of Inmates in State and Federal Correctional Facilities, 2004.

APPENDIX TABLE 4**Estimated number of sentenced prisoners under state jurisdiction, by offense, sex, race, and Hispanic origin, December 31, 2013**

Most serious offense	All inmates ^a	Male	Female	White ^b	Black ^b	Hispanic
Total^c	1,325,305	1,233,724	91,581	468,600	497,000	274,200
Violent	704,800	670,900	34,000	223,900	282,100	162,300
Murder ^d	165,600	155,300	10,300	45,100	68,300	39,000
Manslaughter	18,000	15,700	2,300	6,800	3,800	3,100
Rape/sexual assault	166,200	164,100	2,200	78,500	39,700	37,300
Robbery	181,100	173,100	8,100	37,500	98,800	37,100
Aggravated or simple assault	132,400	124,600	7,800	41,100	54,300	35,700
Other violent	41,400	38,000	3,400	14,800	17,200	10,000
Property	255,600	229,500	26,000	117,700	81,700	37,100
Burglary	139,500	132,500	7,000	58,100	48,000	22,700
Larceny-theft	50,200	41,900	8,200	26,500	17,400	5,900
Motor vehicle theft	10,700	10,000	700	4,900	2,500	2,600
Fraud	27,300	19,900	7,300	14,400	7,600	2,500
Other property	28,000	25,200	2,800	13,800	6,300	3,400
Drug	208,000	186,000	22,000	67,800	79,900	39,900
Drug possession	47,400	41,700	5,700	17,700	18,800	11,400
Other drug ^e	160,500	144,300	16,300	50,000	61,100	28,400
Public order	146,300	137,900	8,400	56,000	51,100	33,400
Weapons	51,000	49,400	1,600	11,200	24,400	13,900
Driving under the influence	25,500	23,300	2,200	13,500	3,400	6,700
Other public order ^f	69,900	65,200	4,600	31,300	23,300	12,900
Other/unspecified^g	10,600	9,400	1,200	3,300	2,100	1,400

Note: Estimates are based on state prisoners with a sentence of more than 1 year under the jurisdiction of state correctional officials. Detail may not sum to total due to rounding and missing offense data. See *Methodology*.

^aIncludes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.

^bExcludes persons of Hispanic or Latino origin.

^cRace totals are rounded to the nearest 100 to accommodate differences in data collection techniques between jurisdictions.

^dIncludes nonnegligent manslaughter.

^eIncludes trafficking and other drug offenses.

^fIncludes court offenses; commercialized vice, morals, and decency offenses; and liquor law violations and other public-order offenses.

^gIncludes juvenile offenses and other unspecified offense categories.

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2014; National Corrections Reporting Program, 2013; and Survey of Inmates in State Correctional Facilities, 2004.

APPENDIX TABLE 5**Estimated sentenced prisoners under federal correctional authority, by most serious offense, sex, and race, September 30, 2014**

Most serious offense	All inmates ^a	Male	Female	White ^b	Black ^b	Hispanic
Total^{c,d}	192,663	180,140	12,523	51,600	71,300	63,700
Violent	14,100	13,600	600	3,700	7,100	1,300
Homicide ^e	2,800	2,600	200	400	1,700	200
Robbery	7,300	7,100	200	2,600	4,000	600
Other violent	4,000	3,900	200	800	1,400	500
Property	11,600	9,300	2,300	5,100	4,200	1,700
Burglary	400	400	0	100	300	0
Fraud	9,000	7,100	1,900	4,000	3,100	1,500
Other property	2,200	1,800	300	1,000	800	300
Drug^f	96,500	89,100	7,400	20,800	37,400	36,300
Public order	69,100	66,800	2,200	21,300	22,200	24,200
Immigration	17,200	16,700	500	600	300	16,300
Weapons	30,500	30,000	500	7,600	17,700	4,500
Other	21,400	20,200	1,200	13,000	4,300	3,400
Other/unspecified^g	1,400	1,300	100	700	300	200

Note: Counts are based on sentenced prisoners under federal jurisdiction regardless of sentence length. Detail may not sum to total due to rounding and missing data. See *Methodology*.

^aIncludes American Indians and Alaska Natives; Asians; Native Hawaiians and other Pacific Islanders; and persons of two or more races.

^bExcludes persons of Hispanic or Latino origin and persons of two or more races.

^cIncludes all sentenced inmates under federal jurisdiction regardless of sentence length.

^dRace totals are rounded to the nearest 100 to accommodate differences in data collection techniques between jurisdictions.

^eIncludes murder, negligent, and nonnegligent manslaughter.

^fIncludes trafficking, possession, and other drug offenses.

^gIncludes offenses not classified.

Source: Bureau of Justice Statistics, Federal Justice Statistics Program, 2014.

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APPENDIX TABLE 6**Reported state and federal noncitizen inmates and inmates age 17 or younger, by jurisdiction, December 31, 2014**

Jurisdiction	Noncitizen inmates ^a			Inmates age 17 or younger		
	Total	Male	Female	Total	Male	Female
U.S. total ^b	67,837	64,565	3,272	1,035	1,005	30
Federal ^c	23,532	21,667	1,865	0	0	0
State ^b	44,305	42,898	1,407	1,035	1,005	30
Alabama	80	77	3	0	0	0
Alaska ^{d,e}	/	/	/	/	/	/
Arizona	4,743	4,609	134	56	55	1
Arkansas	118	114	4	11	11	0
California	/	/	/	0	0	0
Colorado ^f	1,525	1,473	52	3	3	0
Connecticut ^d	523	511	12	84	83	1
Delaware ^d	330	312	18	3	3	0
Florida	7,199	6,937	262	126	122	4
Georgia	2,450	2,335	115	96	94	2
Hawaii ^{d,g}	145	140	5	0	0	0
Idaho	216	210	6	0	0	0
Illinois	1,813	1,767	46	18	17	1
Indiana	633	623	10	42	40	2
Iowa	152	150	2	5	4	1
Kansas	337	331	6	1	1	0
Kentucky	255	237	18	0	0	0
Louisiana	149	143	6	18	18	0
Maine	0	0	0	0	0	0
Maryland ^{f,h}	623	600	23	22	18	4
Massachusetts ^g	699	672	27	0	0	0
Michigan	490	485	5	90	89	1
Minnesota	634	599	35	10	10	0
Mississippi	37	29	8	19	19	0
Missouri ^{f,g}	510	475	35	12	11	1
Montana	18	18	0	1	1	0
Nebraska	220	219	1	22	22	0
Nevada	0	0	0	9	9	0
New Hampshire	96	90	6	0	0	0
New Jersey	1,335	1,307	28	7	7	0
New Mexico	142	136	6	0	0	0
New York ^f	4,142	4,022	120	97	94	3
North Carolina	1,370	1,342	28	85	82	3
North Dakota	18	15	3	0	0	0
Ohio	495	480	15	24	23	1
Oklahoma ^f	0	0	0	7	7	0
Oregon	0	0	0	0	0	0
Pennsylvania	1,051	1,025	26	29	29	0
Rhode Island ^d	65	64	1	2	2	0
South Carolina	484	465	19	24	23	1
South Dakota	80	77	3	0	0	0
Tennessee ^f	274	263	11	13	13	0
Texas	8,682	8,423	259	69	66	3
Utah	202	200	2	1	1	0
Vermont ^d	18	17	1	0	0	0
Virginia	601	582	19	9	9	0
Washington	775	760	15	1	1	0
West Virginia	23	22	1	0	0	0
Wisconsin	500	490	10	18	17	1
Wyoming	53	52	1	1	1	0

Note: The definition of non-U.S. citizen varies across jurisdictions. Use caution when interpreting these statistics. See *Methodology*.

/Not reported.

^aUnless otherwise noted, BJS assumes that noncitizens are identified by individual jurisdictions as persons with citizenship of a country other than the United States as of December 31, 2014.

^bTotal U.S. and state counts of noncitizen inmates for 2014 will be lower than expected due to the exclusion of California data. California was unable to report the number of noncitizen inmates in 2013 or 2014.

^cThe count of noncitizens for the federal Bureau of Prisons excludes noncitizen inmates housed in private contract facilities. The federal Bureau of Prisons holds inmates age 17 or younger in private contract facilities; 67 such inmates were housed in contract facilities in 2014.

^dPrisons and jails form one integrated system. Data include total jail and prison populations.

^eState did not submit 2014 National Prisoner Statistics (NPS) data. Counts could not be imputed because state did not submit data for these measures to NPS in 2013.

^fNon-U.S. citizens are defined as foreign-born.

^gCitizenship based on inmate self-report.

^hState did not submit 2014 NPS data for these measures. Counts imputed based on percentage of noncitizen inmates and inmates age 17 or younger in 2013. See *Methodology*.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2014.

APPENDIX TABLE 7**Prisoners under the jurisdiction or in the custody of U.S. territories and commonwealths and prison facility capacity, December 31, 2014**

Jurisdiction	Jurisdiction population		Custody population Total	Capacity		
	Total ^a	Sentenced to more than 1 year ^a		Rated	Operational	Design
Total	12,257	10,634	14,045			
American Samoa ^b	/	/	212	/	/	/
Guam	721	316	754	443	...	443
Commonwealth of the Northern Mariana Islands	175	143	175	559	272	559
Commonwealth of Puerto Rico	10,692	9,797	12,327	13,832	13,832	14,632
U.S. Virgin Islands ^c	669	378	577	468	355	550

Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held. Custody refers to the physical location where the prisoner is held.

... Not available. Specific type of capacity is not measured by territory.

/Not reported.

^aDoes not include counts for American Samoa.

^bAmerican Samoa has not submitted National Prisoner Statistics (NPS) data since 2011. The data presented here were located in the *2013 American Samoa Statistical Yearbook* (<http://doc.as.gov/wp-content/uploads/2011/06/2013-Statistical-Yearbook-Final-Draft.pdf>) and represent the number of persons in custody as of December 2013.

^cThe U.S. Virgin Islands did not submit 2014 NPS data and had inconsistent 2013 data. Data used are from 2012.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2014.



The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for measuring crime, criminal victimization, criminal offenders, victims of crime, correlates of crime, and the operation of criminal and civil justice systems at the federal, state, tribal, and local levels. BJS collects, analyzes, and disseminates reliable and valid statistics on crime and justice systems in the United States, supports improvements to state and local criminal justice information systems, and participates with national and international organizations to develop and recommend national standards for justice statistics. William J. Sabol is director.

This report was written by E. Ann Carson, Todd Minton, Danielle Kaeble, Zhen Zeng, and Jennifer Bronson verified the report.

Lynne McConnell and Jill Thomas edited the report. Tina Dorsey produced the report.

September 2015, NCJ 248955



NCJ248955

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EXHIBIT D

July 20, 2015

By Email Correspondence

Karen Humes, Chief
Population Division
U.S. Census Bureau, Room 5H174
Department of Commerce
Washington, D.C. 20233

RE: 2020 Decennial Census Residence Rule and Residence Situations
Docket Number 150409353-5353-01

Dear Ms. Humes:

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.


¹ See *Notice and Request for Comment*, 80 Fed. Reg. 28950 (rel. May 20, 2015) (the “Public Notice”).

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.

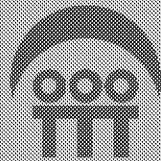
Thank you this opportunity to provide comments on this very important criminal justice matter.

Respectfully submitted,

By: 

Lee G. Petro
3000 Connecticut Avenue, N.W.
Washington, DC 20008
(703) 798-2001

² *Incarcerated Parents and Their Children*, Bureau of Justice Statistics (Aug. 2000) (www.bjs.gov/content/pub/pdf/iptc.pdf).



North Lawndale Employment Network

Drugs, Crime, and Consequences

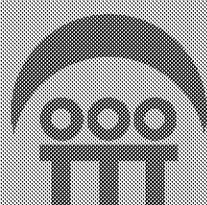
Arrests and Incarceration
in North Lawndale

*Written by
Lise McKean and Jody Raphael
Center for Impact Research*

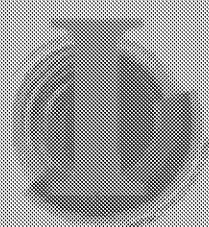
October 2002

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The North Lawndale Employment Network and the Center for Impact Research would like to thank the Woods Fund of Chicago for providing the support to make this research project and report possible. The North Lawndale Employment Network would also like to thank the Annie E. Casey Foundation for providing program support for the Ex-offender Employment Service Network.



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The Alternatives to Incarceration Project

The North Lawndale Employment Network (NLEN) and the Center for Impact Research (CIR) are partnering on the Alternatives to Incarceration Project. This project conducted research to document the high rates of involvement in the criminal justice system of North Lawndale adults as there is no single data set that provides this information. To provide a context for the figures, CIR interviewed participants and staff of NLEN's Ex-offender Employment Services Network (EESN) to better understand the circumstances related to criminal activity. The project's second phase will entail research, including working with community advocates as court watchers to determine the extent to which sentencing alternatives are available to and used by low-income, minority offenders. The research process will provide information for planning an advocacy campaign and will build the capacity of community leadership to promote alternatives to incarceration for non-violent drug-related offenses.

North Lawndale Employment Network (NLEN) is a partnership of community-based organizations, economic development agencies, and businesses working together to meet the workforce development needs of North Lawndale residents and employers. As an intermediary, NLEN works with over 100 committed organizations to address the range of employment and economic development issues through a collaborative approach. NLEN seeks to enable North Lawndale residents to secure jobs that pay family-supporting wages and offer opportunities for advancement, help employers within and outside of North Lawndale to recruit and retain qualified employees from among North Lawndale residents, build the capacity of and cooperation among organizations that provide employment and training services to North Lawndale residents and employers, and advocate for public policies and employer practices that expand employment opportunities for North Lawndale residents and foster economic development of the community.

NLEN programs include the EESN, a health care career initiative, an out-of-school youth job readiness and skills training program, an Individual Development Account (IDA) collaborative, employer partnerships for client placements, business and employer attraction and retention, AmeriCorps program coordination for other local agencies, a community resource job center that is under development, and partner agency capacity building activities. In addition to coordinating and providing services, NLEN advocates for public policy that supports effective workforce development activities, especially in the area of ex-offender reentry.

NLEN's Ex-offender Employment Service Network (EESN) is a partnership of local organizations that, together, offer

support services, training, and job placement for ex-offenders in North Lawndale and surrounding communities. EESN offers clients a broad range of services, including anger management training, basic skills training, case management, childcare, clothing/food, drug testing, substance abuse treatment, family reunification, financial education and credit counseling, job placement, legal services, mental health treatment, occupational skills training, post-placement and retention support, resources and identification cards, and peer counseling. In the three years since it began, the EESN has served more than 600 returning offenders.

Center for Impact Research (CIR) is an independent nonprofit policy research center at the forefront in the fight against poverty. Its mission is to improve the social and economic conditions of the poor through grass-roots research aimed at identifying innovative policy strategies that address the needs of low-income women, men, and children. CIR projects result in new poverty solutions crafted in collaboration with low-income persons, community-based organizations, and governmental agencies.

CIR undertakes its mission through two key activities: applied research and innovative practice.

CIR conducts research and demonstration projects and provides technical assistance and training at the grass-roots level to promote public policies that more accurately reflect the needs/interests of low-income people.

CIR brings together researchers and practitioners, community activists and organizers, policy makers, public service workers, and funders to inform the field and to develop new approaches to address systemic issues of poverty.

CIR's focus on key poverty issues and action-oriented research changes attitudes, policies, and lives. CIR's research led directly to the adoption of the Family Violence Option in the 1996 federal welfare reform legislation, to the Illinois State Board of Education's improvements to the Chicago GED testing system, to the creation of the U.S. Department of Labor's Chicago Sweatshop Task Force, and to the establishment of the Prostitution Alternatives Roundtable. CIR's Teen Project led to the establishment of on-site domestic violence services at two Illinois Department of Human Services Teen Parent Services sites and to the appointment and training of teen specialists in each local welfare office.

CIR focuses its efforts in three policy centers: the working poor, violence and poverty, and teen girls.

EXECUTIVE SUMMARY

The North Lawndale Employment Network (NLEN) commissioned the Center for Impact Research (CIR) to prepare this report. NLEN is made up of a coalition of groups and agencies in the North Lawndale community and works to reduce poverty through the full employment of North Lawndale residents.

City, county, and state governmental entities provided the data on arrests, sentencing, parole, and probation that are presented in this report. To complement the data on arrests and sentencing and learn about the specific situations of ex-offenders in Chicago's North Lawndale community, CIR interviewed staff, consultants, and participants in the Ex-Offender Employment Service Network (EESN) program of NLEN. These interviews provide a contextual framework for the North Lawndale data, particularly about how drug addiction is implicated in crime.

NLEN will use the information in this report to advocate for community-based services that individuals need to successfully negotiate re-entry to the community from incarceration, and to advocate for alternatives to incarceration.

SERVICE NEEDS OF EX-OFFENDERS

The interviews with EESN staff and participants reveal that before and after arrest and incarceration, this population of ex-offenders struggles with drug addiction, poverty, low levels of education, unemployment, unstable housing, and homelessness. However, intensive case management and substance abuse treatment programs combined with job readiness training can break the cycle of addiction, crime, and incarceration and lead to positive results for ex-offenders. All of the staff agreed that the current level of resources are inadequate for meeting the needs of ex-offenders for stable housing, adequate nutrition, employment, substance abuse treatment, and family reunification. Staff members said that there is a need for more community corrections programs and adult transition centers, and better case management for those on parole and probation.

Both EESN staff and participants spoke at great length about the destructive impact of substance abuse on individuals and the community and how drug sales and use are implicated in much of the criminal activity in North Lawndale. One staff

person said, "this is a drug habituated environment. People become desensitized by constant exposure to the drug users and drug related crime. Drugs are a major cause of the downward spiral of individuals and communities." Staff and participants emphasized that more resources must be directed toward services for at-risk children. Speaking from their own experience, participants also spoke of the need for parents to be actively involved in the daily lives of their children and the negative consequences of the lack of parental or adult attention and guidance.

NORTH LAWDALE ADULTS IN THE CRIMINAL JUSTICE SYSTEM

New Involvement in Criminal Justice System in 2001

Sentenced to the Department of Corrections	2,442
Sentenced to Probation	3,857
Total	6,299
Percentage of total North Lawndale population 2000	up to 24%

Total Adults Involved in the Criminal Justice System in 2001

Sentenced to Department of Corrections	2,442
Sentenced to Probation	3,857
On Parole	2,487
Still Serving Time at DOC (approximately)	9,893
Still on Probation	3,458

Total North Lawndale individuals in criminal justice system*	22,137
Percentage of all North Lawndale adults in criminal justice system	up to 57%

* The data provided are not unduplicated. The total may be an overstatement in that there might be duplication in an undetermined number of cases.

RECOMMENDATIONS

It has been widely recognized that low-income communities have high rates of involvement in the criminal justice system. The magnitude of this involvement is clearly delineated by the data in this report: nearly one-quarter of North Lawndale's adult population became involved in the criminal justice system in 2001, and nearly three-fifths of all North Lawndale adults in 2001 were on probation, parole, sentenced to prison, or incarcerated. In order to address this issue through policy changes on sentencing and by increasing the resources and services for ex-offenders, NLEN plans to continue and expand its efforts directed at:

- Increasing public awareness about the interconnected problems of substance abuse, crime, unemployment, and poverty.
- Increasing awareness among government and community agencies of the need for pre- and post-release services.
- Advocating for basic reforms within the Illinois Department of Corrections in order to improve the employment prospects of ex-offenders.
- Advocating for increasing transitional services for the incarcerated and post-incarcerated.
- Advocating for wider implementation and ongoing improvements in community-based employment services for ex-offenders, with continued participation of NLEN in the Best Practices subcommittee of the State Workforce Board's Taskforce on Ex-offender Employability.
- Advocating for alternatives to incarceration for non-violent, drug-related crimes.

Further research needs to be conducted to assess the complex consequences of so many adults being involved in the criminal justice system and of the large numbers of ex-offenders returning to the community from prison. Effective advocacy for alternatives to incarceration for non-violent offenses requires accurate information not only on the need for alternatives, but also on the forms these alternatives might take, and the resources necessary to support them.

Authorization of sentencing alternatives is the first step; however implementation requires allocation of adequate resources. For example, Illinois HB 1961 provides Cook County judges with the authority to sentence women detained in Cook County Jail for certain nonviolent felony offenses to a pilot Residential Treatment and Transition Center rather than

state prison. As yet, no funds have been allocated to support the pilot Center. NLEN is planning to work with the police, courts, the Department of Corrections, legislators, community organizations, and funders to build support for a demonstration project in North Lawndale that offers an alternative to incarceration for non-violent offenses.

DRUGS, CRIME, AND CONSEQUENCES: ARRESTS AND INCARCERATION IN NORTH LAWDALE

The North Lawndale Employment Network (NLEN) commissioned the Center for Impact Research (CIR) to prepare this report.¹ NLEN is made up of a coalition of groups and agencies in the North Lawndale community and works to reduce poverty through the full employment of North Lawndale residents. City, county, and state governmental entities provided the data on arrests, sentencing, parole, and probation that are presented in this report. They all had to undertake special data runs to produce the information specific to the North Lawndale community, and ultimately did so without cost to NLEN. To complement the data on arrests and sentencing and to learn about the specific situations of ex-offenders in Chicago's North Lawndale community, CIR interviewed staff, consultants, and participants in the Ex-Offender Employment Service Network (EESN) program of NLEN. These interviews provide a contextual framework for the North Lawndale data, particularly about how drug addiction is implicated in crime. NLEN will use the information in this report to advocate for community-based services that individuals need to successfully negotiate re-entry to the community from incarceration, and to develop new strategies and to advocate for alternatives to incarceration.

NUMBER OF NORTH LAWDALE ADULTS INVOLVED IN THE CRIMINAL JUSTICE SYSTEM EACH YEAR

According to the 2000 Census, there were 25,819 persons in the North Lawndale community 18 years of age and older. Of these, 41% were men and 59% were women. However, this is not a true picture of the number of adults in the North Lawndale community because the Census does not count those individuals who are incarcerated and out of the community at the time of the survey. When we factor in the approximate number of adults from the North Lawndale community incarcerated at the time of the Census, the total adult population rises to 38,819.

North Lawndale residents, 18 years of age and older, are involved in the criminal justice system in one of five major ways:

- Arrest
- Incarceration with the Department of Corrections
- Parole after discharge from confinement
- Return to the Department of Corrections due to parole violations
- Probation through the Circuit Court of Cook County

Arrests

We gathered information from the Chicago Police Department about the number of arrests in North Lawndale for 1999 and 2000. North Lawndale straddles two police districts, District 10 and District 11. The community is part of nine police beats, 1011, 1013, 1021, 1023, 1131, 1132, 1133, 1134, and 1135. The department was able to provide us with information on the number of arrests in the nine beats.

This arrest information covers all arrests made in the police beats comprising the North Lawndale community — that is, anyone arrested in the neighborhood is included, regardless of whether he or she lives in the neighborhood. The department is not able to sort arrests by home address. Nor do the arrest figures provide an unduplicated number of individuals arrested in the community, but rather they tally the total number of arrests within a given year.

Number of arrests According to the Chicago Police Department, there were 17,059 arrests made in the North Lawndale community in 1999, and 15,927 in 2000 of men and women over 18 years old.

Type of crime Table 1 on the following page shows the five major crime categories making up 75% of all arrests in North Lawndale.

Narcotics Narcotics-related arrests represented the most frequently occurring arrests, with 31% in 1999 and 27% in 2000. Within the narcotics category, possession of a controlled

¹ This research report was made possible with the support of a grant from the Woods Fund of Chicago.

TABLE 1
NORTH LAWDALE ARREST CRIME CATEGORIES¹

Crime	1999	% of arrests	2000	% of arrests
Narcotics	5,258	30.8%	4,357	27.4%
Battery	3,345	19.6%	3,193	20.0%
Theft	2,075	12.2%	2,037	12.8%
Criminal damage	1,261	7.4%	1,353	8.5%
Assault	928	5.4%	1,012	6.4%
Other	4,228	24.6%	3,975	24.9%

the conditions of parole and are returned to the Department of Corrections. This section of the report reviews data for each of these dispositions.

It is important to note that there could be some duplication in the figures presented below. For example, a North Lawndale resident already on probation for

substance was the most common arrest, accounting for 76% of all narcotics arrests in 1999 and 79.6% in 2000. The substances most commonly seen in all narcotics-related arrests were crack cocaine (34.5% of all narcotics arrests in 1999 and 34.3% in 2000), and heroin (26.7% of all narcotics arrests in 1999 and 26.2% in 2000).

Gender and age The Chicago Police Department provided data on gender and age for 11,163 arrests in 2000 (traffic offenses were excluded). Seventeen percent of individuals 18 years of age and older who were arrested were women, and 83% were men. Almost 47% of adults arrested were between the ages of 25 and 44, and 29% were between the ages of 18 and 25, with the remaining 24% over the age of 44.

Convictions

In 2000, 6,559 persons 18 years of age and older residing in North Lawndale were convicted of crime and remanded in some way to one aspect of the criminal justice system; in 2001 the figure was 6,299. (Smaller numbers only paid fines and these cases are not included here.) As there were 25,819 persons 18 years of age and older in North Lawndale at the time of the 2000 Census, approximately 24% of North Lawndale adults were convicted in 2001 in the criminal justice system for cases carrying higher sentences than fines. Convicted persons in Cook County are sentenced to the Department of Corrections or given two different forms of probation, one served at the Department of Adult Probation, and the other at the Department of Social Services. After serving time in a Department of Correction institution for the original conviction, persons are discharged to the community but remain on parole. Large percentages of those on parole violate

one offense may be sentenced and remanded to the Department of Corrections for another crime in the same year. Although the number of times this occurs within a given year may be low, given the different management information systems of each entity, it was not possible to cheaply and easily ascertain any duplications. We caution, therefore, that the numbers and percentages provided may be overstating to some extent an unknown number of unduplicated individuals involved in the criminal justice system during any given year.

Department of Corrections

Table 2 below provides details on the number of North Lawndale residents who are committed to the Department of Corrections, the type of offense, and the average length of the sentence for each of the preceding four years. The Department of Corrections divides the crimes committed into three main categories: offenses against persons, such as assault and battery; drug crimes; and those involving property, such as theft.

The 2,442 individuals from North Lawndale sentenced to the Department of Corrections in 2001 represented about 12% of the Department's yearly intake of new prisoners for the entire state. This was about 8% of North Lawndale's adult population sentenced to the Department of Corrections in 2001, with an average sentence length of between 3.6 and 4.3 years.

Large percentages of North Lawndale residents released from the Department of Corrections to parole then violate parole conditions and are returned to the Department of

¹ Battery is defined as intentionally or knowingly causing bodily harm to another; assault is conduct which places another in reasonable apprehension of receiving a battery; and criminal damage is knowingly damaging any property of another without consent. Narcotics-related offenses include possession and sale.

TABLE 2
ILLINOIS DEPARTMENT OF CORRECTIONS
NORTH LAWNSDALE COMMUNITY*
OFFENSE TYPE AND AVERAGE SENTENCE LENGTH
 1998-2002 (through March)

	1998		1999		2000		2001		2002	
	Number	Avg. Sentence(years)	Number	Avg. Sentence(years)	Number	Avg. Sentence(years)	Number	Avg. Sentence(years)	Number	Avg. Sentence(years)
Person	458	7.1	402	7.0	286	6.0	243	6.8	39	6.9
Property	670	3.8	596	4.0	504	3.5	458	3.5	95	3.7
Drug	1,981	3.7	1,909	3.3	1,675	3.0	1,672	3.1	287	3.1
Sex	33	10.8	53	3.8	57	3.8	56	5.0	21	3.5
Other	14	2.6	19	2.9	15	2.6	13	2.4	18	2.5
Total	3,156	4.3	2,979	4.1	2,537	3.5	2,442	3.6	460	3.5

*North Lawnsdale community includes zip codes 60609, 60612, 60644, and 60650.

Corrections. Data about parole violations will be discussed below under "Parole."

As demonstrated by Table 2, drug offenses represent the large majority of all sentences to the Department of Correction. The data over a four-year period between 1998 and 2001 show that the percentage of drug-related incarcerations has steadily risen, from 62% in 1998 to a high of 68% in 2001.

Probation

Cases on probation are referred to two different departments of the Circuit Court. According to the Adult Probation Department of the Circuit Court of Cook County, 2,752 individuals from North Lawnsdale were sentenced to probation in 2000 and 2,818 in 2001. Typically, 95% of all the probation cases were felonies. The Social Service Department of the Circuit Court also reports that 1,270 persons from North Lawnsdale in 2000 and 1,039 in 2001 were referred to the Social Service Department. That department primarily supervises misdemeanor and traffic offenders, with the bulk of cases involving driving under the influence and domestic violence.

In all, 4,022 North Lawnsdale residents were sentenced to probation in 2000 and 3,857 in 2001.

About 65% of the persons on probation remain on probation for 13 to 24 months, and another 21% for 25 to 36 months.

Parole

The Department of Corrections informed us that in August 2001 there were 2,487 parolees 18 years of age or older in the North Lawnsdale community. Sixty-four percent had served time for drug-related crimes and 86% were male. According to the Department of Corrections, approximately 45% of all those on parole fail to meet the conditions of parole and are returned to prison to serve the remaining time of their sentence.

Data Summary: North Lawnsdale Adults in the Criminal Justice System in 2001

In this final section we summarize the data that we have presented. We break the data down into the number of individuals who entered the criminal justice system in 2001, and then we present a chart adding new arrivals to those already involved in the system. We caution again that these numbers might be overstatements since there might be duplication in an undetermined number of cases.

The fact that the Census shows that 60% of the persons over age 18 are female may reflect the fact that almost 10,000 adults, mostly males, were absent from the community as they were incarcerated at the time of the Census. In the 1990 Census, the breakdown of the total population was 46.4% male and 53.6% female, perhaps reflecting the fact that fewer males were incarcerated than are the case today.

NORTH LAWNDALE ADULTS IN THE CRIMINAL JUSTICE SYSTEM

New Involvement in Criminal Justice System in 2001

Sentenced to the Department of Corrections	2,442
Sentenced to Probation	3,857
Total	6,299
Percentage of total North Lawndale population 2000	up to 24%

Total Adults Involved in the Criminal Justice System in 2001

Sentenced to Department of Corrections	2,442
Sentenced to Probation	3,857
On Parole	2,487
Still Serving Time at DOC (approximately)	9,893
Still on Probation	3,458
Total North Lawndale individuals in criminal justice system*	22,137
Percentage of all North Lawndale adults in criminal justice system ¹	up to 57%

* The data provided are not unduplicated. The total may be an overstatement in that there might be duplication in an undetermined number of cases.

INTERVIEWS WITH EX-OFFENDERS AND SERVICE PROVIDERS

To complement the data on arrests and sentencing and learn about the specific situations of ex-offenders in Chicago's North Lawndale community, CIR interviewed staff, consultants, and participants in the Ex-Offender Employment Service Network (EESN) program of the North Lawndale Employment Network (NLEN). These interviews provide a contextual framework for the North Lawndale data, particularly about how drug addiction is implicated in crime. They also provide information necessary for developing further research to assess the need for alternatives to incarceration for nonviolent offenders who need mental health and substance abuse treatment. The interviews reveal that before and after arrest and incarceration, this population struggles with drug addiction, poverty, low levels of education, unemployment, unstable housing, and homelessness. However, intensive case management and substance abuse treatment programs combined with job readiness training can break the cycle of addiction, crime, and incarceration and lead to positive results for ex-offenders.

CIR interviewed three EESN program staff who themselves are ex-offenders and two consultant instructors, both of whom are mental health professionals; of the five, four are men and one is a woman.⁴ They spoke about the goals and content of the twenty-two day EESN course and their general observations on participants and the program's impact on them. They were also asked more specific questions such as the extent to which drug use and sales are involved in non-violent and violent arrests and convictions and the range of criminal activities related to drug use. EESN staff commented on

the role of gang activities as well as their assessment of issues related to drug use and mental health, literacy and educational levels, and housing and homelessness. They also discussed measures to prevent members of this community from becoming involved in drugs and crime and to assist ex-offenders in rebuilding their lives after incarceration.

After obtaining an overview of the program and participant population from the interviews with EESN staff, CIR interviewed eight EESN participants. These participants were selected with the assistance of the EESN program manager to represent a range of ages and situations. In pre-interview conversations, potential interviewees were told that the interviews would be confidential and they would be remunerated \$20. CIR explained that we were working with NLEN to provide information that could be used to advocate for treatment options and alternatives to incarceration for non-violent offenders.

About 75% of EESN participants are male and the majority are African-American. Five of the participants interviewed are men and three are women; seven are African-American and one is Puerto Rican. The age range of 31 to 44-years-

¹ The figure is computed by dividing the number of individuals in the criminal justice system by the number of persons over 18 in North Lawndale. For the latter figure, the denominator, we added to the Census figure the number of individuals already serving time at the Department of Corrections who were not included in the Census count.

⁴ In the discussion of the interviews, "EESN staff" includes the program manager, EESN instructors, and consultant instructors.

old is also representative of EESN participants. Two interviewees had been recently released on parole and were currently enrolled in EESN classes. The other six had completed the EESN course within the past six months and were still accessing EESN support services. Three were working and two were looking for employment; three were still on parole. Participants were asked about their family background, current living arrangements, education and employment history, drug and alcohol use, involvement in activities that led to arrest, experience with the criminal justice system, service needs, and suggestions on preventative measures. The life experiences of all but one of the interviewees led them to talk at greatest length about their drug addiction and recovery and their arrest and incarceration history.

Arrests and Incarceration

Staff members were asked to comment on the North Lawndale statistics for arrests, sentencing, and types of crimes. Staff members said that for the most part property crimes such as burglary and theft were commonly motivated by addicts trying to get money to buy drugs. One staff person who lives in North Lawndale noted that selling drugs has become a top money-making activity for gangs and has driven up drug activity. Another staff member estimated that prior to their arrests, at least 40% of participants received their primary source of income from drug sales. Charges for drug possession are often made in conjunction with arrests for other crimes.

Like the majority of EESN participants, those who were interviewed were repeat offenders; some had more than 20 years of history with the criminal justice system. Three had been juvenile offenders and several had been involved with gangs. Most participants talked readily and at length about their offenses, the disposition of their cases, and their time on probation, in prison, and on parole. The only man who was reluctant to talk had been incarcerated when he was 18 and had served 12 years for his involvement in a gang murder. He gravely stated the circumstances of the offense

... crimes such as burglary and theft were commonly motivated by addicts trying to get money to buy drugs.

and added, "I was a young kid who made a wrong turn." The offenses of the other participants included drug possession and sales, retail theft, robbery, burglary, domestic violence, and weapons violations. The women said that they first had become involved in criminal activities—drug sales, possession, prostitution, retail theft—after they became addicted to heroin and cocaine.

One man said that he first got into trouble as a teenager when he joined a gang and dropped out of high school: "My turning point was when I was 13 or 14 and I started with a street gang. I was anxious to know about what goes on on the streets. I already knew what goes on at home." Another man talked about starting to smoke marijuana during his early teens and getting into trouble at school: "I worked on my rebellious image." But he also had a paper route "which really got my attention. The hustling and all. It gave me money for smoking and drinking." He spent time in foster care and juvenile homes throughout his youth. When his family moved to the Cabrini Green public housing project, he joined a gang and started getting in more serious trouble: "first I was sent to work camp but then they sent me behind the wall for threatening a prison officer." After his release, he continued with the gang and just before he turned 18, he was shot in both legs during a gang fight. He recovered from the gunshot wounds and over the next 16 years, he was in and out of prison for new offenses as well as for probation and parole violations. During one prison sentence, he started using heroin. He recalled "constantly getting into trouble" while in prison. It was only during his most recent incarceration that he resolved to change his life and he entered a drug treatment program.

One woman said that she started going to jail when she was selling drugs to support her addiction to heroin and cocaine. During this period she was also living in abandoned buildings. Her last conviction was three years ago and she was released on 30 months probation. After she had been in treatment, the length of her probation was reduced: "This was encouraging to me."

One man spent three years during his late thirties in housing projects on the south side. He was addicted to heroin. His arrests or "cases" involved retail theft and later narcotics possession. One day he was hit in the face by a rifle butt during an attack by an enemy gang and ended up unconscious in the hospital. After his most recent arrest a few years ago, he was brought to the Cook County Narcotics Court. The judge placed him on probation with mandated treatment and drug testing. He said that he is grateful that the judge encouraged him to go into treatment but he knows that the judge is strict; if he violates his probation and uses drugs, he will be sent to prison.

After recounting a lengthy history of juvenile offenses, another man said that his first adult offense was sexual assault of a prostitute, whom he attacked because "I wanted to rob her but she didn't have any money. There was no penetration but I know it's still wrong. It's something I really regret." He said that he was addicted to heroin and cocaine when he went into prison but was not offered drug treatment during his three years of incarceration. After his release he lived with his sister, who helped him find a job at a restaurant. He started using cocaine again as soon as he completed parole and later had several convictions for retail theft, using the money he made from selling the stolen goods to buy drugs. The most recent conviction was last year, when he was sentenced to six months in prison. He has since entered treatment.

One woman said that she had her first case at age twenty-one when she was arrested for selling drugs. Throughout her years of addiction to heroin in the decade since then, she has had many convictions for retail theft, selling what she stole for drug money. When she was sentenced to six months in prison for retail theft in 2000, she was on the waiting list for a substance abuse treatment program. She entered treatment after her release.

Background of EESN Participants

Staff members estimated that 85% to 95% of participants are repeat offenders; participants who are first-time offenders are usually women. One of the staff members said that participants enroll in the program because they are

"sick and tired of being sick and tired." Participants are generally between 30 and 50 years old and the desire not to go to prison motivates them to enroll. "The older you get, the harder prison life becomes. Once you're 25 or 30, in prison other men start calling you 'pops'."

EESN staff members had a variety of perspectives on the interrelationships among crime, poverty, drugs, family background, and the community setting. Staff members agreed that economic conditions on the West side contribute to the high arrest and incarceration rates in North Lawndale. One staff member noted that the scarcity of employment opportunities in this community "leads to hopelessness and crime." Another staff person stated that most ex-offenders committed desperate acts in specific situations because of a lapse of judgment. He added that many of these acts are related to the compulsions of drug addiction. Other desperate acts are related to loss of emotional control by people ill-equipped to handle anger and frustration in domestic and social situations. Environmental stresses compounded by a lack of communication skills contribute to this violence. He also said that the daily struggles of poverty are far removed from the daily life of the mainstream and many ex-offenders lack the social and personal living skills to be mainstream: "Daily life for many in this community consists of doing something wrong or illegal or not doing much at all." In his view, the omnipresence of crime in impoverished communities desensitizes people to criminal activities. For many ex-offenders, "it is not so much they try to break laws but the struggle for survival requires conformity to a non-mainstream system."

Accordingly, this staff member finds the concept of rehabilitation to be flawed because it presupposes "a return to the mainstream for many people who have never been in the mainstream." Furthermore, incarceration adds a larger burden to this process because "prison life reinforces everything subcultural." In his experience, programs for ex-offenders need to assist in "restructuring" them so that they are in better accord with mainstream society. These programs should also address ex-offenders' lack of direction and absence of positive role models, which can be

particularly acute at the time of release. Another staff person said that the EESN program is designed to "get people on a positive track" and to help them overcome the beliefs and negative behaviors they learned at home and in the community.

Seven of the EESN participants interviewed by CIR grew up in the Chicago area, including three who spent some of their childhood in public housing projects. One of the interviewees grew up in Puerto Rico and New Jersey and was 35 years old when he came to Chicago. Many of them recounted their childhood as being marked by disruptive changes of caregivers and residence, unavailable or absent parents, and early exposure to alcohol and drugs.

One participant, a 31-year-old woman, dated the start of her troubles to her junior year in high school when she moved from suburban Harvey to Chicago so that her mother could take care of her ill grandmother in North Lawndale. She said that before the move, "I loved school. I was always on the honor roll. My old school was a real school where you learned things. At the Chicago school people only hung out. I began to cut classes, which I never did at my old school. I met my children's father when I was 17. He was five years older than me. I became pregnant and didn't graduate high school."

About growing up on the West side, a 31-year-old man recounted: "We had a good family, my brother and I were honor roll students." When he was in eighth grade, he won a scholarship to the Joel Hall dance school: "I loved to dance and in grammar school I was in theater." He said that as he became older, "I had no place in my neighborhood to show my talent except at home. Later I showed it on the streets." When he was 18, he was sentenced to twelve years imprisonment for a gang-related crime.

Thinking back on his upbringing, a 44-year-old man began with the appraisal: "I'm from a dysfunctional family." He was born in Mississippi and moved to Chicago when he was eight

to live with his stepfather. Later he lived with his grandparents. He left high school during his junior year.

In another interview, a 37-year-old man talked about the anger he felt when he was nine and he had to move with his mother to the Cabrini Green public housing project. Prior to that he was being raised primarily by his great-aunt on Chicago's West side: "I had a lot of anger and resentment and animosity about leaving my great-aunt and all my friends. And there was a lot of negative activities going on in the projects." He recollected that his mother kept him involved in school activities and that she "was strict and enforced a lot of rules. Other kids could do things but not us." However, because she worked so much, his mother was "hardly ever home."

A 35-year-old woman said that when she was growing up on the West side of Chicago with her mother and older and younger brothers, she never had a relationship with her father. After her grandmother passed away when she was ten, "basically we were by ourselves. We had a lot of time to get in trouble. My mother wasn't a bad person. She worked the 3 to 11 shift and just wasn't around." When she was fifteen she had her first baby and left school after ninth grade "because I didn't have a babysitter." Her mother

moved the family to California but it didn't work out and they moved back to Chicago after one month.

A 43-year-old man said that his family moved to New Jersey from Puerto Rico when he was seven. His mother remarried when he was ten and he lived with her and his step-father. His father remained in Puerto Rico with

his girlfriend and their children. Two of his brothers stayed in Puerto Rico; their involvement with drugs and gangs resulted in the death of one and imprisonment of the other. Another brother living in New Jersey became addicted to heroin and died from AIDS. He noted that his father and uncles were "social drinkers" and not drug users. During high school, his girlfriend became pregnant and he dropped out and started working full-time. Until he became addicted

"Basically we were by ourselves. We had a lot of time to get in trouble. My mother wasn't a bad person. She worked the 3 to 11 shift and just wasn't around."

to heroin in his mid-thirties, he had steady employment as a delivery driver.

Born in Gary to a single mother from Little Rock, a 41-year-old man said that at the age of five he and his brother were placed in a foster home in Hammond. He recalled his foster parents as being strict and religious; his foster father worked and his foster mother was at home: "They made sure we went to school and gave us a good structure." Occasionally, his mother visited, bringing them presents. When he was 14, his mother regained custody of him and his brother and they went to Chicago to live with their mother and sister in the Cabrini Green housing project. About his move to the projects he said: "They're dangerous and there's too many people living there. The months I was there seemed like a lifetime." After about six months, they moved to Uptown, a low-income neighborhood on the North side. Living with his mother was very different from his earlier years with his foster parents: "My mother would leave us alone. She was into the club scene. She never had a husband or a steady boyfriend. After my foster father, I never had a father figure to guide me and my mother was never there. I took to the streets when I got lonely." He was suspended during his first year of high school. When he didn't return after his suspension, "my mother didn't try to keep me in school."

A 34-year-old woman spoke about her difficulties with her mother during her childhood in Chicago: "My mother never treated me like her other children. She didn't pay any attention to me and was harder on me. This made me become quiet and closed. I hardly talked to anyone." She lived with her mother, two half-brothers, and half-sister in the Hilliard Homes public housing project on the South side. She recalled that her father was very affectionate to her but she rarely saw him after her parents split up when she was nine. She finished high school and was seventeen when her first child was born. Later she lived with her children in Stateway Gardens, another South side housing project: "It was horrible and dangerous all the time. I'd take my kids to

the playground and have to run to cover them when the gang shootings started."

Participants' Children

With the exception of one man who was to become a father for the first time in a couple of months, all of the other participants are parents. Of the four men who are fathers, two of them live with their children and their children's mother. One man spoke with great pride about his son who is a college graduate and army officer; another was worried about his drug-dealer son.

The women all had given birth to their first child when they were teens. One has six children, another five, another three. These mothers lost custody of all of their children due to their drug addiction and incarceration.⁵ In some instances they lost all parental rights and their children were adopted without their knowledge or consent. These women's children are in the custody of family members, typically maternal and paternal grandmothers and aunts. For some women, family disputes make the difficult process of regaining custody even harder. One woman noted that her maternal aunt, who has custody of two of her children, is resisting returning them to her because her mother and aunt are feuding. Disrupted relationships with their children and loss of custody are painful issues for all three mothers. All of them expressed determination to improve their lives so that they could be positive role models for their children.

One woman recalled: "When I was using, I just couldn't see that I wasn't taking care of my children. You think you're there taking care of them but you're not really there." Another woman described the circumstances of losing her young children after she became addicted to drugs: "Everything started going real bad. I was very unmanageable. The only thing I lived for was to get high. I tried to hide it but it was obvious because of the way I was carrying myself. I felt ashamed. I wasn't taking care of my kids properly." This woman has regained custody of one child and is attempting to reunite with two

*EESN participants who
are mothers... are
highly motivated to
build positive
relationships with
their children.*

⁵ In contrast to these three women, an EESN staff member noted that the majority of the women EESN participants do have custody of their children

others. The third woman who was interviewed also recounted with sadness her similar experience: "It was hardest when the children were removed from my custody. I couldn't shake the pain and started to use more."

An EESN staff person said that for ex-offenders, particularly those who are mothers, it is important to learn more about issues related to children and family relationships. Some parents may have lost custody of their children well before their incarceration. After release others become reunited with their children or attempt to regain custody. He observed that EESN participants who are mothers—regardless of whether they have custody—are highly motivated to build positive relationships with their children. "Bridging the gap" in these relationships is important to their self-esteem. He also commented that child care does not seem to be a substantial obstacle for participants who are custodial mothers, possibly because other family members already had been providing care during the woman's incarceration.

Housing and Homelessness

All of the EESN staff stated that ex-offenders face serious difficulties in finding and maintaining stable and safe housing, which results in their high risk and high rate of homelessness. One staff member estimated that at least one-third of participants have problems with their living arrangements. He also said that homelessness can be difficult to document and is likely to be more prevalent than it appears. Furthermore, even when EESN participants have a place to stay, their living arrangements can be "shaky." Many ex-offenders are "living with one foot in the house and one foot in the street." They also may face pressure to contribute money to the household where they are staying, money that they often do not have. Another staff member commented that participants want to hide their housing difficulties: "Some give a relative's address and won't tell you that they don't have a home. It's embarrassing for them."

EESN staff agreed that participants with good living arrangements are more likely to do well and complete the

program. One staff member emphasized: "Homelessness is a huge issue and housing is the first need. It's key for eating, hygiene, and stability. Participants need a stable environment to succeed." Another staff member illustrated that housing problems increase during the cold with the example that "they can't sleep on their sister's or aunt's back porch in winter." When participants become homeless and seek assistance, EESN staff members make referrals to shelters and transitional homes.

... ex-offenders face serious difficulties in finding and maintaining stable and safe housing...

One staff member noted that it is not uncommon for women to have more trouble than men in "getting back into the family" after release from incarceration: "Family members don't show the same good will to women."

He said mothers and grandmothers are happy to get sons and grandsons back and are hopeful for them. However, possibly because of issues around the custody and care of children, mothers and grandmothers are less welcoming to ex-offenders who are mothers: "Men are seen as a potential asset. It's good to have a man around the house. Women, especially if they have children are seen more as a liability."

The current living arrangements of the eight EESN participants who were interviewed include: one man and one woman with their mothers; one woman with her mother and one of her children; one man with his father; two men with their children and their children's mother; one woman with her fiancé; and one man in a transitional home. Those who were living back in their old neighborhoods expressed the need to be vigilant against associating with people from their past who are still involved with crime and drugs. One man said: "Right now my family is taking care of me. I'm living at my mom's house and I try to avoid my old contacts." One woman who was recently released said that except for coming to EESN class, she avoids going out because she doesn't know whom she might meet on the street.

One participant said he was saving money so he could move out of his father's home and rent a small apartment for himself. The man living in the transitional home with

fourteen other men spoke positively of the year that he has spent there: "We are like a family away from the family. There's no arguing—if you have a two-liter bottle of soda, you share it." His low monthly rent of \$130 has allowed him to save \$1,000 in past six months for his expenses when he moves out to a studio apartment in a couple of months.

Another man expressed concern about the stability of his living arrangements. He lives with his partner of twenty years and their three children: "Sometimes she throws me out." Two years ago he was sent by the court to a substance abuse treatment program after he was arrested for domestic violence. Thinking aloud about the possibility of being thrown out again, he said: "I don't know what I'd do. Maybe I'd have to go into some kind of transitional home. I'm forty-one-years old, I don't want to live with my mother and I can't live with my sister because she has her family and kids."

Educational and Literacy Levels

Although a small percentage of EESN participants have had some post-secondary education, the majority do not have a high school degree or GED. Commenting on the women in the program, one staff member said: "Many don't have their GED but they're smart and they read a lot." A staff member with extensive experience as a literacy volunteer said that most participants have adequate literacy levels for the class and are motivated to learn. He speculated that since the program is voluntary, those with low literacy levels are not likely to enroll because "they want to hide their secret." He added that with EESN's new contract with the Illinois Department of Corrections (IDOC), which expands enrollment, they may begin to see more participants with learning disabilities and low levels of literacy. In order to evaluate the educational level of participants and make appropriate referrals, EESN is planning to administer the TABE (Test Adult Basic Education) to all participants.

Staff members agreed that low educational levels and lack of job skills are barriers to employment for many participants. The lower their literacy and educational levels,

the more difficult it is for participants to advance within the program and find stable employment. Another staff member said that educational and literacy levels are becoming more of an issue among employers who want to be sure that employees can read well enough to understand posted materials such as safety guidelines and OSHA regulations. EESN refers participants to adult education and GED classes.

But for participants who start at the fourth or fifth grade level, it can take four or five years to pass the GED. Committing so much time to classes is difficult, especially with the pressure to earn money and meet family responsibilities.

"Many participants are completely unprepared for employment. They have no idea of the kind of behavior expected in the workplace."

Of the eight participants who were interviewed, only one had completed high school. Five had no high school degree or GED; one man completed his

GED and two Associates degrees during his twelve years in prison, where he also earned certificates in computer training, custodial work, and food services; one man studied for his GED while in prison but was released before he took the test. One woman, who had completed her GED while in prison and was recently released, beamed as she said: "I just got my GED certificate in the mail. I'm real smart."

Both staff and participants lamented the extent to which the Illinois Department of Corrections (IDOC) has reduced the availability of educational services to inmates. One staff member said that the trend over the past five years has been to limit access to education and give priority to younger prisoners and those with shorter sentences. With its focus on the GED, IDOC has eliminated many opportunities for post-secondary education. One participant who had dropped out of high school commented on trying for his GED in prison: "The way it's set up now is changed from the 1980s. Being a four-time loser, they put me on the bottom of the list. After a while I got into some ABE (adult basic education) and then pre-GED, but lost interest and then was released."

Employment Experience

The majority of EESN participants have limited employment experience. Some have never worked a regular job and have practically no employment history. One staff person said: "Many participants are completely unprepared for employment. They have no idea of the kind of behavior expected in the workplace. They're playing ping pong when corporate America plays live tackle football."

The participants who were interviewed had a range of past experience in low-wage employment such as housekeeping, fast food, retail, telemarketing, and hospital food service. Two of the men had worked steady jobs before being incarcerated, one as a forklift operator, the other driving a delivery truck. All of them expressed the desire and determination to either find a job or move to a better job. For example, one man said: "Everywhere I go I fill out applications." Several of the interviewed participants were placed in jobs after completing the EESN program. One man and woman were working on the assembly line at a North Lawndale factory, where they can become eligible for union membership and benefits after 90 days employment. One man working part-time at Walgreens can become eligible for benefits after 6 months and has asked to be scheduled for more hours. Another man was working a part-time job at a fast food restaurant without benefits, where his parole officer had referred him; he also applied to work a second job at a factory.

Two men were unemployed and actively looking for work. One had recently resigned from a position at a suburban warehouse, with a daily commute of nearly four hours: "I'm a certified forklift operator and worked in warehouses for many years. I've been a supervisor and foreman in the past. But now after 6 months in federal prison it's hard to find a job." Two women were enrolled in EESN class and were not yet employed.

Each of the participants expressed specific occupational interests. One woman who was enrolled in the program at the time of her interview said: "I like numbers. I'm very good at any kind of math. I would like to work in accounting

or bookkeeping if I can." The woman, who had completed high school and had taken some college courses, was hoping to enroll in classes "to learn more about computers." The man who had completed his GED and two Associates degrees while in prison and had found a job in factory said that he would like to work with youth: "I would like to give back. I would like to be a youth counselor and develop a program to help kids stay in school and stay away from drugs." He also recalled his childhood interest in theatre and said: "I'm still interested in drama but I have never told anyone else. You're the first one I've told. I'd like to be in a sitcom." Another participant also expressed an interest in working with youth as a drug counselor but said that he would need to first get his GED and then an Associates degree. A man in his forties who has worked delivering meals in hospitals wanted to get his GED and then attend a trade school for "something like computer repair. I want to find a career for the rest of my life."

Substance Abuse, Addiction, and Treatment

A large proportion of EESN participants have histories of substance abuse and addiction. One staff person estimated the figure to be 75%. Many participants have been through court-mandated or voluntary treatment programs. While they are enrolled in EESN classes, participants are tested for drugs. If they test positively, EESN will not place them in a job until they test negatively. EESN staff are also vigilant for indications of alcohol use, and one staff member said that he sees many signs of it among participants. Those with drug and alcohol problems are referred to treatment centers.

Both EESN staff and participants spoke at great length about the destructive impact of substance abuse on individuals and the community and how drug sales and use are implicated in so much of the criminal activity in North Lawndale. One staff person said: "This is a drug habituated environment. People become desensitized by constant exposure to the drug users and drug related crime. Drugs are a major cause of the downward spiral of individuals and communities." He stated that drugs motivate much of the

*"I want to find a career for
the rest of my life."*

community's criminal activity: "In an overwhelming number of cases—at least 90%—drugs or alcohol are involved." And alcohol is frequently related to crimes involving violence. However, he noted that the role of drugs and alcohol is usually not cited in crime reports unless it is specifically a drug crime. Drug addiction leads to involvement in a range of criminal activities, including selling drugs, theft, burglary, and robbery.

Another staff member said that alcohol or drug use is implicated in 100% of the crimes in the 6 to 12 hour period before the crime: "Drugs are the engine that's driving all the crime." He also said that addicts take just about any risk to obtain money for drugs, including armed robbery, prostitution, and burglary. In referring to prostitution, women sometimes tell him: "You don't know all the things that I've done to get my drugs." A different staff member noted that women who are arrested for drug possession and for retail theft often say: "The desire for drugs pushes me into crimes I'd never commit if I was sober." According to another staff person: "Drug use is so common that it's become normal within the community." In these circumstances, women turn to selling drugs as "another way to get money for family expenses." Given the difficulties ex-offenders face in finding regular paid employment, one staff person said that some begin or return to selling drugs because it offers one of the few readily available avenues of making money.

One of the EESN mental health consultants said that participants report having started to use alcohol as young as eight or nine years old, with 13 to 15 the average age. Few participants admit to problems with alcohol or to being an alcoholic although some have been in treatment programs. He noted that participants refer to past alcohol abuse with comments such as "it may have been a problem but I slowed it down." He does not hear people say that they no longer drink because they had an alcohol problem in the past. Participants talk about having started drug use, typically smoking marijuana, between ages 13 and 17 years old. He noted that "marijuana is the drug of choice for the young. Many are already using alcohol. Later they start trying harder drugs, around the ages of 18 to 21. Rock

cocaine is the favorite followed by heroin—inhaling cocaine, inhaling heroin, then injecting."

EESN staff agree that among the ex-offender population, drug use primarily relates to emotional and psychological issues, with drugs being used as a form of self-medication for depression and anxiety. In the words of one staff member: "Drug use for self-medication is very common. People are going after a state of numbness." The depression and anxiety arise from the distress caused by difficult home and social environments, lack of education and job skills, and "negative self-assessment." As one of the EESN mental health consultants put it: "There are horrible childhood histories among this population and the reasons for depression and anxiety as adults are related to being mismanaged as a child." Such histories include physical, sexual, and emotional abuse as well as neglect and abandonment by parents and other caregivers. In these conditions, it is not uncommon for "youth to turn to the streets for support" and for those in pain to seek relief through "the soothing effects of drugs." In a similar vein, another of the EESN staff related drug use to social and economic conditions: "When all around you is despair, you look for something to give relief from hopelessness. And drugs are so easy to find. Someone around you will bring them to you. People will come under their influence when they are at their weakest, most vulnerable, and neediest."

All the participants who were interviewed—except the man who was incarcerated at age 18 for a long sentence—are recovering from long-term addiction to crack cocaine and heroin. All of them had their own particular constellation of circumstances leading to drug addiction: young women whose drug-addicted partners introduced them to heroin; a man who first started using heroin in prison; a man who worked a regular job and used cocaine on weekends; and a man who became addicted after first using heroin in his mid-30s. As their addictions took hold, they all became enmeshed in criminal activities.

One woman recounted the circumstances leading to her addiction: "I was so stressed from my husband I started using drugs. I never used any drugs or alcohol before. My

husband used heroin and got me started on it." She spoke about how her life spiraled out of control with her growing addiction: "When you're on drugs, eventually you do things you never thought you would. I even tried prostitution. But it was too scary. I was beat up three times and so many girls who do it are found dead. I began to sell drugs." Another participant said that he started using heroin when he was in prison in the 1980s: "I got the drug habit in prison and when I was released it was plentiful on the streets." One man started using crack cocaine when he was thirty; he was a weekend user for thirteen years until he was arrested and imprisoned for fraud. When recalling how her mother and aunt often went out in the evenings and that they liked to drink and smoke marijuana, one woman recovering from heroin addiction commented: "I thought that growing up was about going out and having fun. I grew up around adults using drugs and became attracted to that lifestyle."

One man spoke at length about how desperate his life became when addiction to heroin took it over at age 37: "The drugs really messed me up. My friend told me not to try heroin, he knew it would be bad for me. I didn't know I would get a habit." When he later moved to Chicago, he first slept in alleys next to dumpsters and later rented a room in another heroin user's apartment in a housing project on the South side. For several years he worked in the projects as a lookout for drug dealers: "The big drug dealers are addicted to money, not drugs. They have big houses in the suburbs and drive Lincoln Navigators." During these years, he was involved in other criminal activities as well: "I started stealing, robbing, and doing what I need for my habit."

A man with a twenty-year history of addiction to cocaine and heroin said: "Drugs really destroy lives, not only in our neighborhood. Drugs do not discriminate. It doesn't matter if you're black or white. I lost all of my jobs because of my addiction." He started smoking marijuana when he was fifteen and later tried "acid and powder." He spoke of his youthful ignorance: "Being that age I didn't know what I was getting into. I got locked up because of drugs. I didn't

find out until I was locked up that the guys I was hanging with were Black Souls [gang members]. I didn't get involved with the gang until I was in prison but let the gang go after my release." He started using cocaine again as soon as he completed parole. However, he never dealt or sold drugs: "I knew the consequences. I was just a user." In reflecting on what may have led to his drug use he said: "We turn to drugs because of our pain. Drugs are addictive and people who are hopeless and depressed use them. I know I'm not a bad person but the drugs make me do bad things."

Like other participants, one woman noted the toll that drug addiction has taken on other family members; her sister is also in recovery from addiction to heroin and her brother is still using it. She started using drugs when she was about 21, first trying marijuana and crack cocaine. Later because "my boyfriend used heroin, one day I tried it. You think you're having fun and then you're an addict." About her life as an addict she said: "When you're an addict, it's a nonstop process of getting, using, and getting more."

Staff agreed that treatment is key to supporting participants in overcoming and recovering from addiction, particularly given the physiological addiction that results from alcohol, cocaine, and heroin use, which makes cessation extremely difficult without treatment. For many in this population, the criminal justice system and prison are the most common places where they encounter treatment opportunities. Staff noted that motivations for treatment vary: some may enter treatment programs in prison thinking that they will have better conditions than the general prison population and it is a way to "lighten their sentence." Others enter because they want to "quit for good."

However, available openings for treatment programs both inside and outside prison do not meet the need. And the quality and comprehensiveness of available programs is uneven. Given the difficulty that many ex-offenders with histories of addiction face in sustaining sobriety, and the number of occasions they may need to return to treatment,

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readily available treatment opportunities and options are essential for supporting them in their recovery. Transitional homes for ex-offenders after their release also are important resources for this population and provide continuing support to those who were in treatment while in prison. A number of EESN participants are mandated to continue substance abuse counseling during their period of parole.

Just as each person who was interviewed has his or her own account of addiction, each has a particular story of treatment, relapses, and recovery. Some have been in recovery for a few weeks, others for several years. One man minced no words: "Fighting drug addiction is like a war." One woman said treatment taught her that "drugs are a slow suicide. When you're in recovery, you find out what's really going on. I was sexually abused and raped. Drugs themselves are not the problem."

About her experience with treatment, another woman said: "I had a problem and didn't know how to deal with it." She said that she never asked for treatment when she was in jail but as soon as she went to prison, she entered a treatment program. She participated in the program for nine months: "I found out a lot about myself. I had a lot of anger. I talked about the things I always held inside. I had bad things happen to me. I had my throat slashed, my husband abused me, my parents split up." She contrasted the first time she was released from prison with her most recent release, coming out after having been in treatment: "The first time I got out of prison, I didn't have any plans. Because of Gateway [treatment program], I knew I would need help when I got out. It was wonderful. At the time I didn't think of it as helping but I know it did."

One man talked about having been "pushed into treatment in the past by his mother and his fiancée." He went back to drugs and was incarcerated for 12 years: "This time was real different. I had got so tired. I got in touch with myself in county jail. I asked for help and I got in Gateway and involved myself wholeheartedly. I shared with the group and there I found God. I accepted Jesus Christ. As a kid I had heard about him but with things around me being the way they were, I didn't know he existed. Before I had so much

fear within about what someone else would think. I did a lot of fellowship and witnessing. I wasn't self-centered anymore. I was thinking for others." He continues to attend NA and AA meetings. He describes his sponsor as being "like a mentor. He's been clean 14 years and is working. And he's a landlord, father, and grandfather. If I have a problem outside of the meeting, I talk to him."

One woman said that she had been in and out of treatment programs for years. Most recently, at the end of parole she was convicted again and sent for treatment for six months. She spent three months in an in-patient program and three months in outpatient treatment for her heroin addiction: "This changed my life around. I was sick and tired of being in and out of jail and really tired of using drugs. I asked God to help me remove this obsession." She tries to go to meetings but it is more difficult now that she is working 2 p.m. to 10 p.m. She met her fiancé at an AA meeting: "he's made 12 years and I made 3 years on July 27."

One participant said that he was living on the East coast when his mother read about a treatment program in Chicago and put him on a bus to send him to the program. When he arrived, he did not go for treatment but instead spent the next five years on the streets as an addict. He never had any treatment during his numerous stays in Cook County Jail. Looking back on the ravages of his addiction, he said: "When I was caught by police in 1999, I was a dead man walking. I laugh now when I think about it." He now co-leads an NA meeting and lives in a transitional home, which requires that he attend at least 5 meetings per week. He also has a mentor from AA. He expressed delight in his new life in recovery and his involvement with his recovery groups: "In AA and NA groups people say, 'keep coming back, it works if it's working.' In group we become like psychologists. We can tell what others are feeling. We're like therapists."

Another man said that he had been a cocaine and heroin addict for 20 years before he first entered a treatment program. However, seven months after the program, "I went back to my old ways, being with the wrong people and started using again. I wanted to change but didn't know

how." After being arrested for a domestic violence offense, the court sent him to a 30-day in-patient program. Again he started using after being released from treatment. At the time he first enrolled in EESN he was still using and was referred to another treatment center, where "the program manager at that center is the guy I started shooting heroin with in the 1970s." In the past year, he went through that treatment program and then returned to the EESN program and completed it.

One woman said that she struggled with heroin addiction for over ten years. The first time she tried to stop using, she had a three-day detoxification treatment but no follow up and was soon back to using. She spoke about her current methadone treatment program, which she started two years ago: "I went into treatment because I was so tired. I was tired of living just to get a bag. My kids are getting older and I want to be a good role model." She feels this treatment is helping her change her life: "It keeps me from the desire for heroin. I'm down to a small dosage now. I go to meetings often—whenever I feel like I need it—to keep from using again." She lives with her fiancé, a recovering addict who has not used drugs for three years and is a deacon at his church: "He turned his life around too."

Other Mental Health Issues

Staff members agreed that working with participants on mental health issues requires sensitivity to the relationship between perceptions that equate mental health problems with "being crazy" and widespread resistance to counseling in this community. One staff member said that the anger management component of the EESN curriculum is the "Trojan horse" that introduces participants to mental health issues and therapy. The instructor of this course, who also conducts mental health assessments of participants, said that the two most common psychological problems among these ex-offenders are depression and adjustment disorder with mood and anxiety symptoms. He noted that some also exhibit personality features related to anti-social conduct, which was the basis of their survival in the past on the streets and in prison. He also observed that although participants generally profess to be in good health, there is

some denial about alcoholism. Another staff member commented that participants often start the program feeling discouraged and have low self-esteem; he sees "young people who already feel disappointed with themselves"

The anger management instructor said the goals of the course are to educate participants about emotions with a focus on anger and to reorient participants to how they feel by introducing them to new thought processes. The class also provides an introduction to a group psychotherapy experience. By speaking and listening to others in a group setting, participants begin to dispel silence, isolation, and shame about painful experiences from their past, especially experiences of abuse. In this setting, participants also examine relationships with their parents, partners, and children. Over half of the participants express an interest in receiving counseling at the conclusion of the class. However, despite follow-up contacts, a small proportion of participants actually make use of these free counseling services. These services are also available to those participants who are mandated by the terms of their parole to continue to receive counseling or substance abuse treatment.

Many participants face issues related to domestic violence. Two men had been arrested for domestic violence offenses. One staff member estimated at least 80% of female ex-offenders are victims of domestic violence. Of the participants who were interviewed, three women spoke of being abused in the past. One participant said that she is currently trying to help her young niece who is a victim: "My niece now has a two-week-old baby and is abused by the baby's father. She has an order of protection. She's a CNA [certified nursing assistant] and is really stressed out. I try to help her and tell her about domestic violence and how it hurt me."

Service Needs of Ex-Offenders

Staff and participants discussed features of the prison system that create barriers to receiving services that prepare ex-offenders for their release, particularly the scarcity of openings in educational and treatment programs. The lack of services is compounded by the constant movement of inmates within the prison system, which means that those

who are on a waiting list for classes or treatment programs are placed at the bottom of another waiting list when they are moved. Some participants said that when they finally started in a treatment or educational program, they were moved or released before completing it. According to the Department of Corrections, the movement of inmates is necessitated by changes in their security status; the Department attempts to ensure that inmates who are in treatment programs continue them after moving to a different facility, but inmates on waiting lists face even longer waits after they are moved. One staff member also expressed concern about the large number of young women who are medicated, which keeps them dependent on drugs and can disqualify them for work release.

The EESN offers job readiness and employment sector training to ex-offenders to attach them to the labor market quickly while providing them with the pre- and post-placement support and case management they need to keep a job and move forward on a career pathway. In their interviews, the participants uniformly spoke with enthusiasm and appreciation for the EESN program, the dedication of the staff, and the support of other participants. Several commented on how meaningful and inspiring it was to have ex-offenders on the EESN staff.

One of the participants said that at EESN, "people there were just like me. I didn't have a fear of rejection anymore. I didn't mind sitting in the room sharing. And the instructors were very helpful. I knew one of them from his reputation when he was in prison. To see him now inspired me." Speaking of another staff member, one participant said: "I heard of that gentleman when he was doing time. He really brightens me. He goes out of the way to help. He's really concerned."

Another man said with a smile: "I'm glad I found this program. I was crazy when I was using drugs. Back in my madness, all around me were drugs and guns. The program has opened many doors for me. People really care. I have nothing but good to say about the program." Two other participants spoke about the program with similar

enthusiasm. One said: "I'm very grateful for the EESN program. It enlightened me on the things I'm using on the job." And the other commented: "I'm glad they're here, I need the support."

Several of the participants mentioned having been in other employment programs, but they found the EESN program more effective since it focuses on ex-offender issues. One man who had been to two other programs before enrolling in EESN said: "Of all of the programs, this is the one that really helped me. The staff are really inspiring. They understand and go deeper; they find out what's really going on. The program builds my level of confidence." He also commented that the curriculum's emphasis on communication skills and how to get along with people has especially helped him. Another man said that since taking the class he knows he must continue to "work on my thinking problem." Speaking about the class materials being developed and piloted by EESN that focus on the emotional and social issues of female ex-offenders, one woman said that it fits her circumstances: "It's really our lives in that book we use in class."

Participants said that the job placement phase was particularly useful because it prepares them well for interviews and because EESN refers them to employers who hire ex-offenders. One man said that before EESN, he did not know what to say in interviews. Now with training and practice, he felt ready for his interviews: "I can hold my head up high and I wasn't worried." Another man said that the resume-writing class helped him make a resume that includes skills he gained from prison jobs.

... the younger participants are generally "less ready" to change their lives than older ones...

One staff member said that to succeed in the EESN program, participants need a network of people who support and encourage them—family members, friends, and church, recovery and self-help groups. He also felt that more information was needed about "the gap of loneliness" that ex-offenders face after their release from prison and the extent to which it may be a factor in the recidivism that results from taking up with former contacts. The staff member who developed the class

materials for women said that they could benefit from mentors, particularly for guidance on issues related to their children and their fears about their children getting into trouble. Better information about community resources and referrals to services for food and clothing would also benefit participants. Staff also noted that the younger participants are generally "less ready" to change their lives than older ones: "The younger they are, the more willing they still are to do the crazy stuff." However, even for the younger ones, "a little of the class might sink in. It may be helpful for later."

In talking about the services that were helping them or other services they might need, participants concurred with staff that need was greatest for stable and safe housing, financial resources, family counseling, mentoring, and substance abuse treatment. One woman said: "My biggest problem is letting go of the anger against my kids' father. He hurt me and he hurt my kids. I have to forgive him." One man felt that people with past drug problems needed more help while they were going through the program. He said he stayed drug free throughout the EESN program but he was afraid that as soon as he started working and earning money, he would start using drugs again.

Another participant was burdened with serious financial problems. His family had to use his retirement money to pay bills while he was in prison and he was filing for bankruptcy because of his wife's medical bills from her pregnancy and the birth of their child. He also mentioned fighting with his wife over disciplining their children. One man said that his current problem was "dealing with women." Both were reminded of EESN's free counseling service. One woman said that she was staying in touch with some of her past treatment counselors and would like a mentor with whom she could discuss her problems. A woman who had talked at length about losing the custody of her children said that a support group for ex-offenders who are noncustodial

mothers might be useful: "Maybe it would help to talk with others like me. Children need their mother. We love them like no one else can."

The staff all stated that the current level of resources are inadequate for meeting the needs of ex-offenders for housing, adequate nutrition, employment, substance abuse treatment, and family reunification. They agreed that these needs are particularly great following release from prison. One staff member described this volatile period: "For ex-offenders, the transition from imprisonment is like the space shuttle coming in from outer space— it's hot on re-entry." Another staff member felt that not all ex-offenders are ready to

enter programs like EESN immediately after their release. He said that many of those who have just been released are "scared to death. Half have never had a regular job; many have no work skills and low verbal skills. They're struggling with fear and desperation and are content being cared for."

Staff members said that there is a need for more community corrections programs and adult transition centers, and better case management for those on parole and probation. These and other services would help to "build bridges for ex-offenders from prison back to the community." When discussing alternatives to incarceration, one staff member said that these programs needed more effective screening tools as well as more outcome and evaluation data. He added: "These alternatives are not for everyone. Some people need to serve time."

Prevention

All of the instructors agreed that more resources must be directed toward services for at-risk children. One staff person emphasized the need for more "positive programming early on to expose and motivate children to become involved in other lifestyles and to provide attractive alternatives to gangs, drugs, and violence. There must be more community support for the healthy social and educational development of children." He said that 10 to 13 is the typical age range when boys join gangs—"looking to

... the current level of resources are inadequate for meeting the needs of ex-offenders for housing, adequate nutrition, employment, substance abuse treatment, and family reunification.

get in where I fit in." He added that by the time gang members are 25-years-old, they begin to regret being in the gang and most are completely out by age 35.

Speaking from their own experience, participants also agreed about the need for community-based programs to educate children and youth about drugs and gangs and their consequences and alternatives. They emphasized the need for parents and other caregivers to be actively involved in the daily lives of children and the negative consequences of the lack of such involvement. When asked about what she thought might have helped her in the past, one woman said: "I needed someone to counsel me about drugs and domestic violence. I needed to know how to deal with the pressure. I'm the only one in my family that used drugs. I didn't know about drugs. No one in my family knew about drugs." She added that she thought young people today were better informed about drugs than she was, but that they need interesting and fun programs to keep them off the streets and out of trouble.

In reflecting on what might have helped him as a teen, one man said: "When I was a kid, I didn't know I had another choice, a better choice. My mom told me but I thought she didn't know." In order to reach at-risk youth, he believes that "kids need to hear from people who have been there. You have to give it to them raw. Tell young people about the dangers and what you know based on your own experience. Tell them that friends aren't what they appear. You are going to pay. You need to be honest. They need to learn that for the wrong things you do, you're going to receive consequences."

One woman thought that she might have been helped if she were better informed about heroin and crack cocaine. She also considered the possibility that "it would have helped me if my mother had been there showing us, guiding us." She paused for a moment and then added: "But who's to say?" One of the men felt that the unavailability of parents and particularly fathers, increased the risk of drug use by children and teens: "They need someone to provide guidance

and tell them the consequences of using drugs. A lot of kids don't have support, there are no parents at home. Boys need father figures and mentors."

A third woman speculated: "Maybe kids are more educated now about drugs. I didn't know nothing. Prevention starts at home and needs to follow up at school. Programs should be required because the kids need to know what drugs do. If I knew what the drugs did to you and the toll they take, it might have stopped me." She emphasized: "Parents need to talk to kids. My mother never talked to me about nothing. I talk to my kids about drugs. I have to—my 7-year-old thinks the gangbangers are cool." She thought that it might also be possible to warn children and teens about the dangers of drugs through "good films."

Follow-up with Participants

EESN continues to provide services to participants after they complete the program. However, as participants frequently move and may not have working telephones, it can be difficult for staff to maintain contact after they complete or leave the program. After completing the class and the initial job placement period, it is up to the participant to maintain the contact necessary for receiving additional services. Participants are eligible to continue to receive transportation passes during their first 90 days of employment, which also encourages them to maintain contact with project staff. Others contact the staff for advice about resolving on-the-job difficulties and for employment leads.

Two months after their interviews with CIR, two participants had completed the EESN class. Three were still employed at the same job, and two of them had completed 90 days. The two men who were unemployed had since found jobs; one as a night watchman in North Lawndale and the other as a factory worker at a plant on the South side.

One participant, who had never worked before in his life and was working part-time at the time of his interview, had since started a second job at a factory. However, he did not

... more resources must be directed toward services for at-risk children.

know about a past arrest warrant, which had been issued in another state before his incarceration in Illinois. As a result, on a recent visit to that state to see his children, he was arrested, put in jail, and has lost both of his jobs. An EESN staff member commented that this arrest for a past offense was particularly unfortunate since the participant was working so hard to turn his life around and was staying out of trouble. He also commented that more information is needed about the issue of unresolved past arrest warrants, speculating that they might contribute to the numbers of EESN participants who drop out during the class or suddenly discontinue with placement services.

CONCLUSION

It has been widely recognized that low-income communities have high rates of involvement in the criminal justice system. The magnitude of this involvement is clearly delineated by the data in this report: nearly one-quarter of North Lawndale's adult population became involved in the criminal justice system in 2001, and nearly three-fifths of all North Lawndale adults in 2001 were on probation, parole, sentenced to prison, or incarcerated. In order to address this issue through policy changes on sentencing and by increasing the resources and services for ex-offenders, NLEN plans to continue and expand its efforts directed at:

- Increasing public awareness about the interconnected problems of substance abuse, crime, unemployment, and poverty.
- Increasing awareness among government and community agencies of the need for pre- and post-release services.
- Advocating for basic reforms within the Illinois Department of Corrections in order to improve the employment prospects of ex-offenders.
- Advocating for increasing transitional services for the incarcerated and post-incarcerated.
- Advocating for wider implementation and ongoing improvements in community-based employment services for ex-offenders, with continued participation of NLEN in the Best Practices subcommittee of the State Workforce Board's Taskforce on Ex-offender Employability.
- Advocating for alternatives to incarceration for non-violent, drug-related crimes.

Further research needs to be conducted to assess the complex consequences of so many adults being involved in the criminal justice system and of the large numbers of ex-offenders returning to the community from prison. Effective advocacy for alternatives to incarceration for non-violent offenses requires accurate information not only on the need for alternatives, but also on the forms these alternatives might take, and the resources necessary to support them.

Authorization of sentencing alternatives is the first step; however implementation requires allocation of adequate resources. For example, Illinois HB 1961 provides Cook County judges with the authority to sentence women detained in Cook County Jail for certain nonviolent felony offenses to a pilot Residential Treatment and Transition Center rather than state prison. As yet, no funds have been allocated to support the pilot Center. NLEN is planning to work with the police, courts, the Department of Corrections, legislators, community organizations, and funders to build support for a demonstration project in North Lawndale that offers an alternative to incarceration for non-violent offenses.

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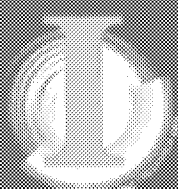
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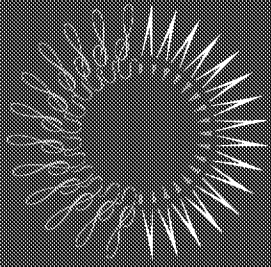
This report would not have been possible without the dedication and hard work of the core EESN staff, Walter and Pamela, and the commitment of three program consultants, Dennis Deer, Dwight Battles, and Dennis Delfosse.



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THE
PEW
CENTER ON THE STATES

One in 100:

Behind Bars in America 2008



The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life. We partner with a diverse range of donors, public and private organizations and concerned citizens who share our commitment to fact-based solutions and goal-driven investments to improve society.

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About this Report

The Pew Charitable Trusts applies the power of knowledge to solve today's most challenging problems. Pew's Center on the States identifies and advances effective policy approaches to critical issues facing states.

Launched in 2006 as an initiative of the Center, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

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For additional information on the Pew Center on the States and the Public Safety Performance Project, please visit www.pewcenteronthestates.org.

February 2008

Executive Summary

Three decades of growth in America's prison population has quietly nudged the nation across a sobering threshold: for the first time, more than one in every 100 adults is now confined in an American jail or prison. According to figures gathered and analyzed by the Pew Public Safety Performance Project, the number of people behind bars in the United States continued to climb in 2007, saddling cash-strapped states with soaring costs they can ill afford and failing to have a clear impact either on recidivism or overall crime.

For some groups, the incarceration numbers are especially startling. While one in 30 men between the ages of 20 and 34 is behind bars, for black males in that age group the figure is one in nine. Gender adds another dimension to the picture. Men still are roughly 10 times more likely to be in jail or prison, but the female population is burgeoning at a far brisker pace. For black women in their mid- to late-30s, the incarceration rate also has hit the 1-in-100 mark. Growing older, meanwhile, continues to have a dramatic chilling effect on criminal behavior. While one in every 53 people in their 20s is behind bars, the rate for those over 55 falls to one in 837.

While the national incarceration trend remains on the rise, some states report a flattening of growth, or even a decline, figures from January 1 of this year show. Texas' count dropped slightly over the previous year, but with California's massive system dipping by 4,068 inmates, Texas has become the nation's imprisonment leader. New York and Michigan, also among the country's biggest systems, reported declines as well.

There is reason to suspect those states may soon have lots of company. Prison costs are blowing holes in state budgets but barely making a dent in recidivism rates. At the same time, policy makers are becoming increasingly aware of research-backed strategies for community

corrections—better ways to identify which offenders need a prison cell and which can be safely handled in the community, new technologies to monitor their whereabouts and behavior, and more effective supervision and treatment programs to help them stay on the straight and narrow. Taken together, these trends are encouraging policy makers to diversify their states' array of criminal sanctions with options for low-risk offenders that save tax dollars but still hold offenders accountable for their actions.

Policy Choices Drive Growth

In exploring such alternatives, lawmakers are learning that current prison growth is not driven primarily by a parallel increase in crime, or a corresponding surge in the population at large. Rather, it flows principally from a wave of policy choices that are sending more lawbreakers to prison and, through popular "three-strikes" measures and other sentencing enhancements, keeping them there longer. Overlaying that picture in some states has been the habitual use of prison stays to punish

"There isn't a person in public office that's not sensitive to the accusation of being soft on crime. But you don't have to be soft on crime to be smart in dealing with criminals."

*OH Gov. Ted Strickland (D)
The Columbus Dispatch
January 26, 2008*

"There's a shift away from the mindset of lock them up and throw away the key. That cannot sustain itself."

*OH State Rep. John J. White
(R-Kettering)
Dayton Daily News
February 11, 2007*

are back in prison within three years, either for a new crime or for violating the terms of their release.¹

Few doubt the necessity of locking up violent criminals and those who repeatedly threaten community safety. And policy makers understandably are moved to act by especially heinous crimes or victims seeking justice in the name of a loved one.

Increasingly, however, states are discovering that casting such a wide net for prisoners creates a vexing fiscal burden—especially in lean times. Finding enough dollars to house, feed and provide a doctor's care to a low-risk inmate is a struggle besetting states from Arizona to Vermont. In the absence of tax hikes, lawmakers may find themselves forced to cut or limit other vital programs—from transportation to education and healthcare—to foot the incarceration tab.

That tab, meanwhile, is exploding, fueled in part by staff overtime expenses and a steep rise in inmate healthcare costs. In 1987, the states collectively spent \$10.6 billion of their general funds—their primary pool of discretionary tax dollars—on corrections. Last year, they spent more than \$44 billion, a 315 percent jump, data from the

those who break rules governing their probation or parole. In California, for example, such violators make up a large proportion of prison admissions, churning in and out of badly overloaded facilities. Nationally, more than half of released offenders

National Association of State Budget Officers show. Adjusted to 2007 dollars, the increase was 127 percent. Over the same period, adjusted spending on higher education rose just 21 percent.

Taking a Different Tack

Faced with the mushrooming bills, many states are confronting agonizing choices and weathering bitter divisions in their legislatures. But lawmakers are by no means powerless before the budget onslaught. Indeed, a rising number of states already are diversifying their menu of sanctions with new approaches that save money but still ensure that the public is protected and that offenders are held accountable. And some already are reaping encouraging results.

Kansas and Texas are well on their way. Facing daunting projections of prison population growth, they have embraced a strategy that blends incentives for reduced recidivism with greater use of community supervision for lower-risk offenders. In addition, the two states increasingly are imposing sanctions other than prison for parole and probation violators whose infractions are considered "technical," such as missing a counseling session. The new approach, born of bipartisan leadership, is allowing the two states to ensure they have enough prison beds for violent offenders while helping less dangerous lawbreakers become productive, taxpaying citizens.

No policy maker would choose this path if it meant sacrificing public safety. But gradually, some states are proving that deploying a broad range of sanctions can protect communities, punish lawbreakers and conserve tax dollars for other pressing public needs.

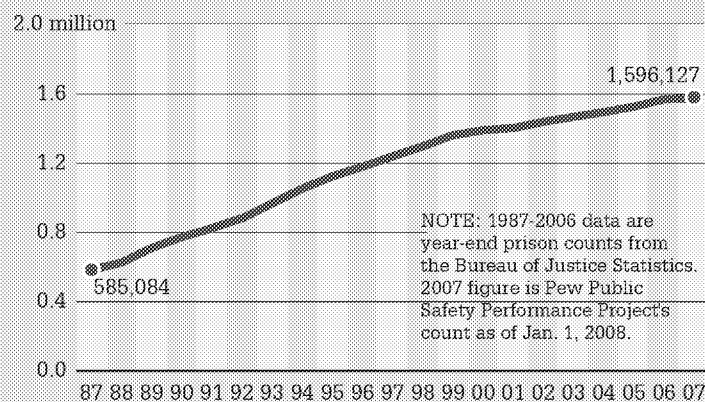
A Snapshot of Prison Growth

The United States incarcerates more people than any country in the world, including the far more populous nation of China. At the start of the new year, the American penal system held more than 2.3 million adults. China was second, with 1.5 million people behind bars, and Russia was a distant third with 890,000 inmates, according to the latest available figures. Beyond the sheer number of inmates, America also is the global leader in the rate at which it incarcerates its citizenry, outpacing nations like South Africa and Iran. In Germany, 93 people are in prison for every 100,000 adults and children. In the U.S, the rate is roughly eight times that, or 750 per 100,000.² (See Appendix A-7 for additional international analysis.)

To produce a fresh portrait of incarceration levels at the start of 2008, Pew conducted a survey of inmate counts from the states and the federal government. Our finding: the U.S. prison population rose by more than 25,000 inmates in 2007—a 1.6 percent rate of growth that brought the national prison census to 1,596,127. Although the 2007 expansion didn't match the 3.1 percent hike during 2006, the growth tracks projections³ and continues a pattern of steady expansion that has characterized the U.S. penal system for more than 30 years.

PRISON COUNT PUSHES UP

Between 1987 and 2007, the national prison population has nearly tripled.



SOURCES: Bureau of Justice Statistics; Pew Public Safety Performance Project

1 in 100 Adults Behind Bars

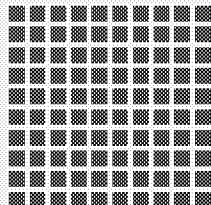
The consequences of that upward trend are many, but few can rival this: more than 1 in 100 adults is now locked up in America. With 1,596,127 in state or federal prison custody, and another 723,131 in local jails, the total adult inmate count at the beginning of 2008 stood at 2,319,258. With the number of adults just shy of 230 million, the actual incarceration rate is 1 in every 99.1 adults.

That statistic masks far higher incarceration rates by race, age and gender. A separate analysis of midyear 2006 data from the U.S. Department of Justice shows that for Hispanic and black men, for instance, imprisonment is a far more prevalent

WHO'S BEHIND BARS

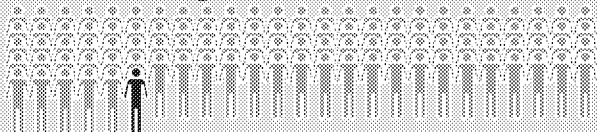
A sampling of incarceration rates by various demographics. Additional information available in Appendix A-6.

According to data analyzed for this report, as of Jan. 1, 2008 more than **1 in every 100 adults is behind bars.**

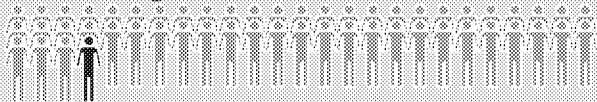

 For the most part, though, incarceration is heavily concentrated among men, racial and ethnic minorities, and 20- and 30-year olds. Among men the highest rate is with black males aged 20-34. Among women it's with black females aged 35-39.

MEN

White men ages 18 or older 1 in 106



All men ages 18 or older 1 in 54



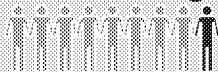
Hispanic men ages 18 or older 1 in 36



Black men ages 18 or older 1 in 15

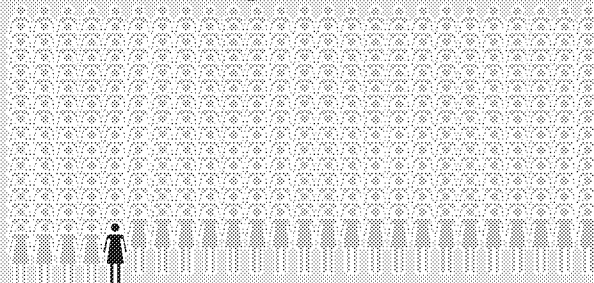


Black men ages 20-34 1 in 9

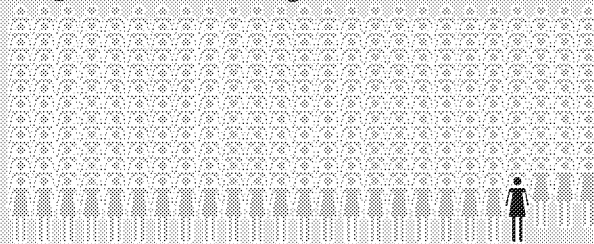


WOMEN

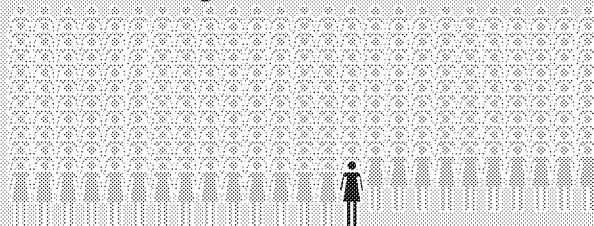
White women ages 35-39 1 in 355



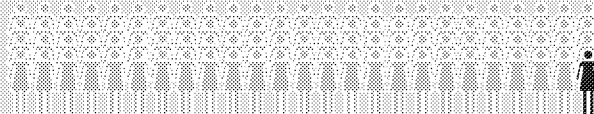
Hispanic women ages 35-39 1 in 297



All women ages 35-39 1 in 265



Black women ages 35-39 1 in 100



SOURCE: Analysis of "Prison and Jail Inmates at Midyear 2006," published June 2007 by the U.S. Department of Justice, Bureau of Justice Statistics. All demographic statistics, with exception of "1 in every 100 adults" are midyear 2006, not 2008 figures.

reality than it is for white men.⁴ The young, meanwhile, are disproportionately more likely to wind up in prison than their elders. While one in every 15 black males aged 18 or older is in prison or jail, for black men over 55, the rate is one in 115. (See Appendix A-6 for additional analysis of incarceration rates by race, sex and age.)

“I don't think we're getting the worst drug lords into the prisons. We're just getting the people who went out and got caught. It's the low-hanging fruit.”

*KY State Justice Secretary J. Michael Brown
 Testimony to KY Senate Judiciary Committee
 Lexington Herald-Leader
 January 24, 2008*

State Trends Vary Widely

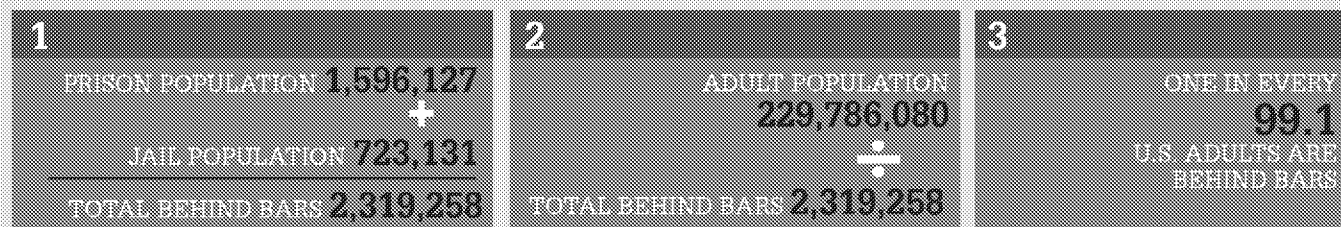
Look beneath the national incarceration numbers and you'll find the growth in 2007 transcended geographical boundaries. A majority of states in all four regions of the country finished the year with more prisoners than they housed at the start. The South led the way, with its population jumping from 623,563 to 641,024—a rise of 2.8 percent. Only three of the 16 states in the southern region reported a drop in inmates, while nine experienced growth exceeding 4 percent. In the West, meanwhile, Arizona outpaced all other states, and in the Northeast, New Hampshire's population grew the fastest. Among Midwestern states, Iowa was the growth leader, expanding its inmate count by 6.1 percent.

All told, 36 states reported higher numbers as 2008 dawned. Among the eight largest correctional agencies—those with more than 50,000 inmates—four grew (Ohio, Florida, Georgia and the Federal Bureau of Prisons) while four (New York, Michigan, Texas and California) saw their populations dip. Ten states, meanwhile, experienced an inmate population jump of 5 percent or greater, a list topped by Kentucky, with a surge of 12 percent.

Kentucky and Nevada are two states with relatively small correctional systems hit hard by growth. In Kentucky, an indeterminate sentencing structure means the parole board has broad powers to determine when a prisoner is suitable for release—and thus, to a large degree, how big the crowd behind bars will be. Guidelines require

DOING THE MATH

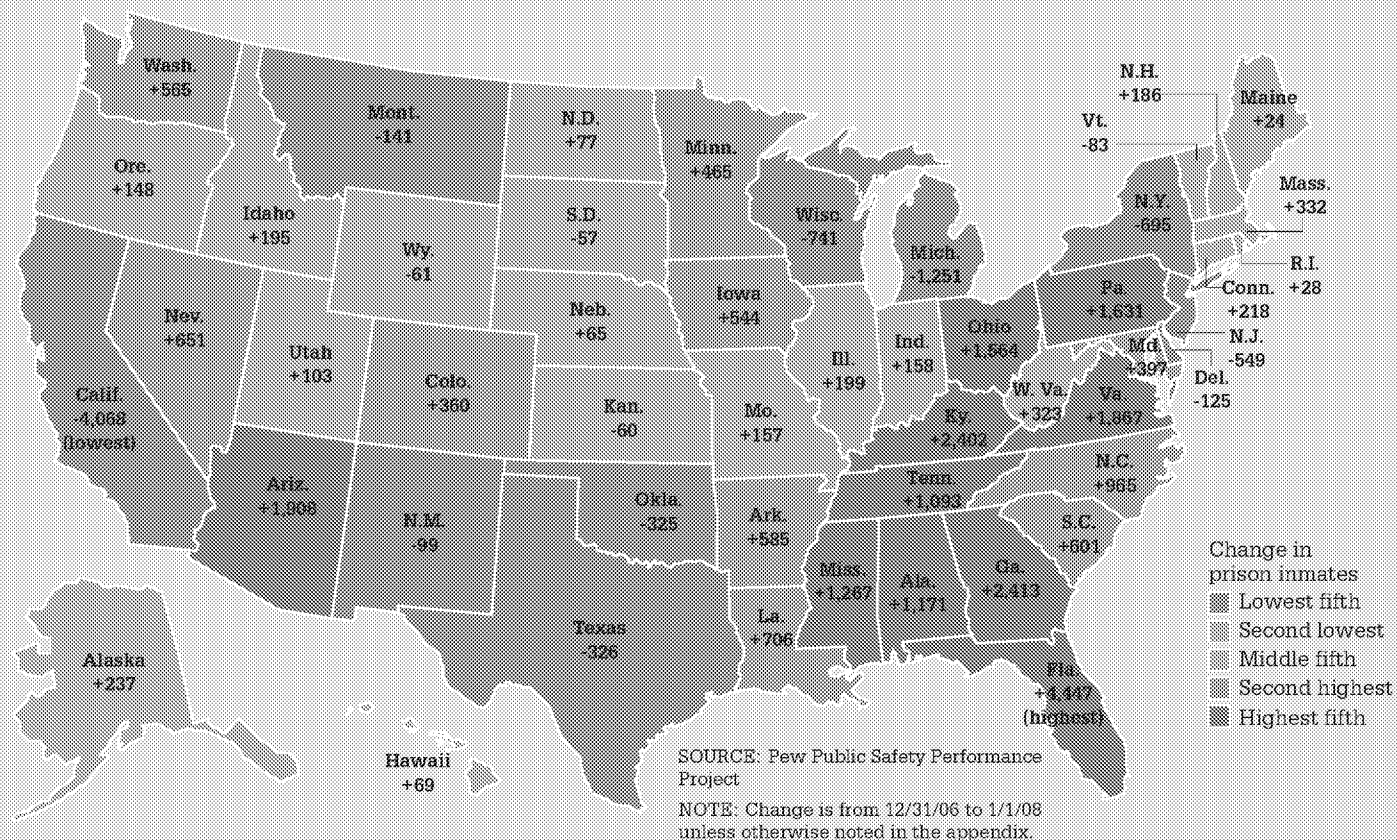
The calculation behind the **1 in 100 U.S. adults behind bars** statistic.



NOTE: See Methodology Notes for jail and adult population estimates.

WIDE VARIANCE IN PRISON GROWTH

State prisoner change, 2007, by quintile



inmates to serve a certain proportion of their sentence, but beyond that, board discretion comes into play in deciding whether to grant or deny parole. Over the past year, under new appointees to the board, the parole grant rate declined and the prison population increased as more inmates stayed locked up for a longer time. The result of this and other policies was a 12 percent jump in the incarcerated population in 2007. Absent a change of direction, projections show the inmate count will continue to rise to nearly 31,000—an increase of 40 percent—over the next decade.

Out West, Nevada at the start of the 2007 legislative session also faced a rapidly expanding prison population, fueled by an unexpected jump in prison admissions from the Las Vegas area. New

forecasts warned that without intervention by the state, the population would continue its steep ascent, climbing from 13,000 prisoners to more than 18,000 over the next 10 years. The fiscal consequences were alarming. Among other things, the growth forced prisoners from Washington and Wyoming who were housed in Nevada back to those states. That meant both lost revenue and new appropriations from the state general fund. At the beginning of 2008, Nevada's jails and prisons held 13,552 inmates, a 5 percent jump over the number incarcerated in the Silver State at the end of 2006.

Florida: A Case Study in Growth

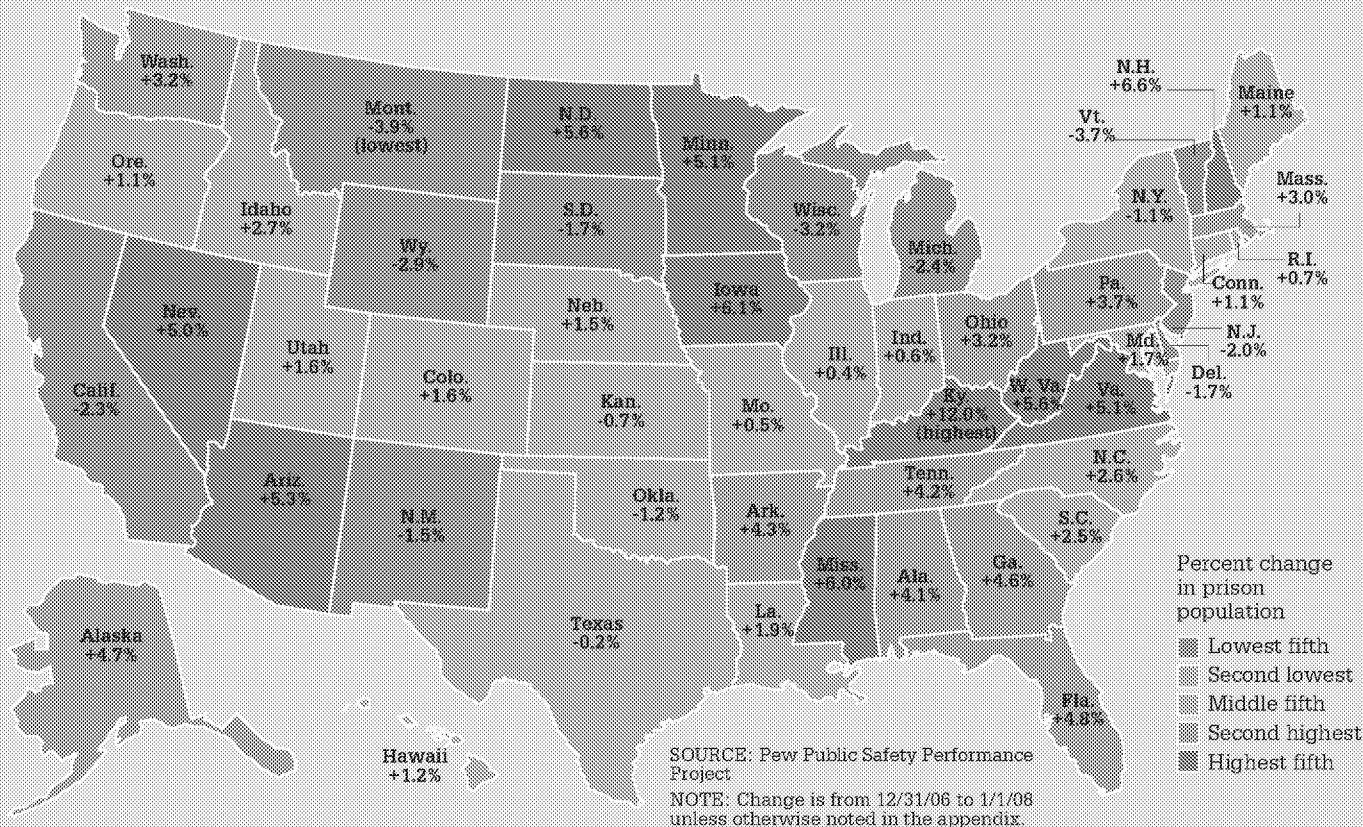
For policy makers keen on understanding the dynamics of prison growth, Florida serves as a compelling case. Between 1993 and 2007, the state's inmate population has increased from 53,000 to over 97,000. While crime and a growing resident population play a role, most of the growth, analysts agree, stemmed from a host of correctional policies and practices adopted by the state.

One of the first came in 1995, when the legislature abolished "good time" credits and discretionary

release by the parole board, and required that all prisoners—regardless of their crime, prior record, or risk to recidivate—serve 85 percent of their sentence. Next came a "zero tolerance" policy and other measures mandating that probation officers report every offender who violated any condition of supervision and increasing prison time for these "technical violations." As a result, the number of violators in Florida prisons has jumped by an estimated 12,000.⁵ Crime in Florida has dropped substantially during this period, but it has fallen as

HIGH GROWTH RATES SPREAD ACROSS NATION

Percent change in state prison populations, 2007, by quintile



much or more in some states that have not grown their prison systems, or even have shrunk them, such as New York.

Without a change of direction, Florida is expected to reach a peak of nearly 125,000 inmates by 2013. Based on that projection, the state will run out of prison capacity by early 2009 and will need to add another 16,500 beds to keep pace.⁶

The Costs – High and Climbing Fast

Prisons and jails are “24-7” operations. They require large, highly trained staffs. Their inhabitants are troubled, aging and generally sicker than people outside prison walls. Even absent continued growth, the cost of keeping the nation’s lock-ups running safely is staggering. Total state spending on corrections—including bonds and federal contributions—topped \$49 billion last year, up from \$12 billion in 1987. By 2011, continued prison growth is expected to cost states an additional \$25 billion.⁷

The primary catalyst behind the increase is obvious: prison growth means more bodies to feed, clothe, house and supervise. While figures vary widely by state, the average per prisoner operating cost was \$23,876 in 2005, the most recent year for which data were available. Rhode Island spent the most per inmate (\$44,860) while Louisiana had the lowest per inmate cost, \$13,009.⁸ While employee wages and benefits account for much of the variance among states, other factors—such as the inmate-to-staff ratio—play a role as well. Capital expenses, meanwhile, are difficult to estimate, but researchers cite \$65,000 per bed as the best approximation for a typical medium security facility.⁹

California: \$8.8 Billion and Growing

Remarkably, 13 states now devote more than \$1 billion a year in general funds to their corrections systems. The undisputed leader is California, where spending totaled \$8.8 billion last year. Even

when adjusted for inflation, that represents a 216 percent increase over the amount California spent on corrections 20 years earlier.

And last year, the governor signed a bill authorizing another \$7.9 billion in spending, through lease revenue bonds, for 53,000 more prison and jail beds.

Texas, with a slightly larger number of inmates, ranks a distant second in spending, investing roughly \$3.3 billion last year.

California vividly symbolizes the financial perils of the state prison business. On top of the perennial political tug-of-war, the state’s whopping corrections budget is shaped by a bevy of court settlements that make predicting and controlling spending tricky. Following successful lawsuits by prisoner plaintiffs, California now is subject to court oversight of inmate medical and dental care, mental health services, its juvenile offenders, and the treatment of disabled inmates. Even its parole revocation system is controlled by a legal settlement, and thereby subject to judicial orders that influence spending.

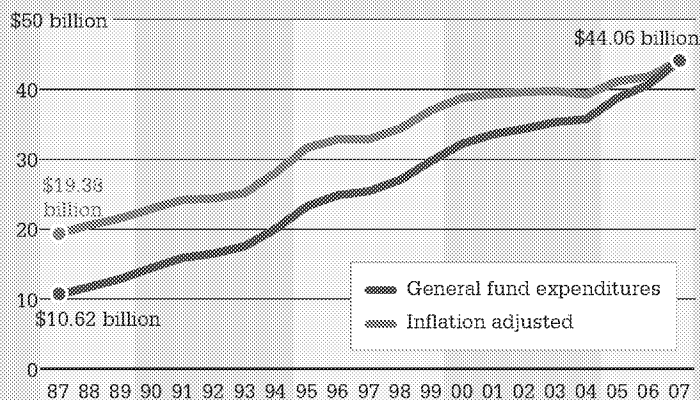
Healthcare costs have been affected more than any other category. In FY 2000-01, California spent \$676 million on such costs. By FY 2004-05, after the state settled a lawsuit alleging negligent and insufficient medical care, spending had soared to \$1.05 billion, an increase of 55 percent.¹⁰ And that was before a

“We are jammed up with this situation right now because we have fallen in love with one of the most undocumented beliefs: That somehow you get safer if you put more people in jail.”

*CA Senate President Pro Tem
Don Perata (D-East Bay)
Associated Press
December 8, 2007*

TWENTY YEARS OF RISING COSTS

Between fiscal years 1987 and 2007, total state general fund expenditures on corrections rose 315 percent.



SOURCE: National Association of State Budget Officers, "State Expenditure Report" series. Inflation adjusted figures are based on a reanalysis of data in this series.

NOTE: These figures represent state general funds. They do not include federal or local government corrections expenditures and typically do not include funding from other state sources.

judge appointed a federal receiver to run prison healthcare, a move that is driving such spending up even more dramatically. It now stands at \$2.1 billion annually, a 210 percent increase since 2000.

Health Care, Geriatrics Drive Costs

As California has learned, medical care is one of the principal cost drivers in corrections budgets today. From 1998 to 2001, healthcare spending in state prisons grew 10 percent annually, a 2004 report by the Council of State Governments found. At the time of the study, medical care costs totaled \$3.7 billion annually and accounted for about 10 percent of correctional spending.¹¹

Under the 1976 U.S. Supreme Court ruling *Estelle v. Gamble*, states are compelled to provide a constitutionally adequate level of medical care, or care that generally meets a "community standard."

Beyond that mandate, the rise in medical outlays largely stems from mushrooming costs associated with special needs populations, including HIV-positive prisoners and geriatric inmates.

Communicable diseases are a particular concern, spreading quickly in a crowded prison environment where risky behaviors such as tattooing and piercing, unprotected sex, fighting and intravenous drug use are not uncommon.¹² Hepatitis C, a blood-borne, life-threatening disease, is the biggest worry. The latest Hepatitis C treatments cost as much as \$30,000 per inmate annually. At one California prison, in Vacaville, the chief medical officer estimates that half of the 3,200 inmates have been infected with Hepatitis C.¹³ Other states put the in-prison prevalence at between 25 and 40 percent.¹⁴

Increasingly, the graying of the nation's prisons is causing costs to swell. While crime remains overwhelmingly a young man's game, between 1992 and 2001, the number of state and federal inmates aged 50 or older rose from 41,586 to 113,358, a staggering jump of 173 percent, a 2004 National Institute of Corrections report found.¹⁵ And older inmates are gradually making up a larger proportion of the overall count. In the federal prisons, for example, about one-quarter of the population was over 50 in 1989. By 2010, that proportion is forecast to grow to one-third. On the state level, Oklahoma recently found that 16 percent of newly admitted inmates were over 45 years old—more than double the rate in 1990.¹⁶

While aging decreases criminal activity, it brings a multitude of challenges in a prison setting. Because they are often preyed upon by younger, stronger inmates, older convicts may require special housing.¹⁷ Hearing and visual impairments, incontinence, dietary intolerance, depression and the early onset of

chronic diseases are other complicating management factors. As a result, the average cost associated with an older prisoner is \$70,000—two to three times that of a younger prisoner.¹⁸

The bottom line: Some crimes are so heinous they warrant a lifetime behind bars. But states are spending more and more on inmates who are less and less of a threat to public safety.

Staff Vacancies, Overtime Spike

Another key cost driver is compensation for the officers who patrol cellblocks.

In 2006, the most recent year for which data were available, there were approximately 4.25 million state government employees. About 11 percent of them—or one in nine—worked in corrections,¹⁹ but prisons are struggling mightily to keep a full complement of officers on staff. The result—the extensive use of overtime—is one of the biggest budget busters confronting states.

In Wisconsin, for instance, overtime rose 27 percent between 2005 and 2006, largely due to an unanticipated 1,200-inmate jump in the prison population.²⁰ California's overtime costs, meanwhile, exploded by 35 percent between 2005 and 2006, as the state struggled to keep its 33 prisons staffed despite nearly 4,000 vacancies. Overtime costs in California topped half a billion dollars in 2006, with 15 percent of the corrections workforce earning at least \$25,000 in overtime that year. Six employees even earned more than the \$212,179 annual salary set aside for Gov. Arnold Schwarzenegger.²¹

The economic picture is so dire in California, where a budget deficit of \$14.5 billion is predicted for the coming fiscal year, that the Republican governor has proposed releasing more than 22,100 inmates before their terms are up. Eligibility would be limited to nonviolent, non-serious offenders, and the plan excludes sex offenders and those convicted of 25 other specific crimes.

Governor Schwarzenegger says the state would save \$1.1 billion through his proposal, but so far it has received a cool reception from both parties in the legislature.

Restitution, Child Support, Tax Payments Lag

While overtime and healthcare costs show up vividly in budget documents, the nation's reliance on incarceration for many low-risk offenders inflicts economic hardship in many other, less obvious ways. If they have a job at all, prisoners are typically unable to earn more than a very low wage, making it unlikely they will pay much, if anything, in child support, victim restitution or taxes. National statistics on such impacts are scarce. But a few state-level reports document the difference incarceration can make.

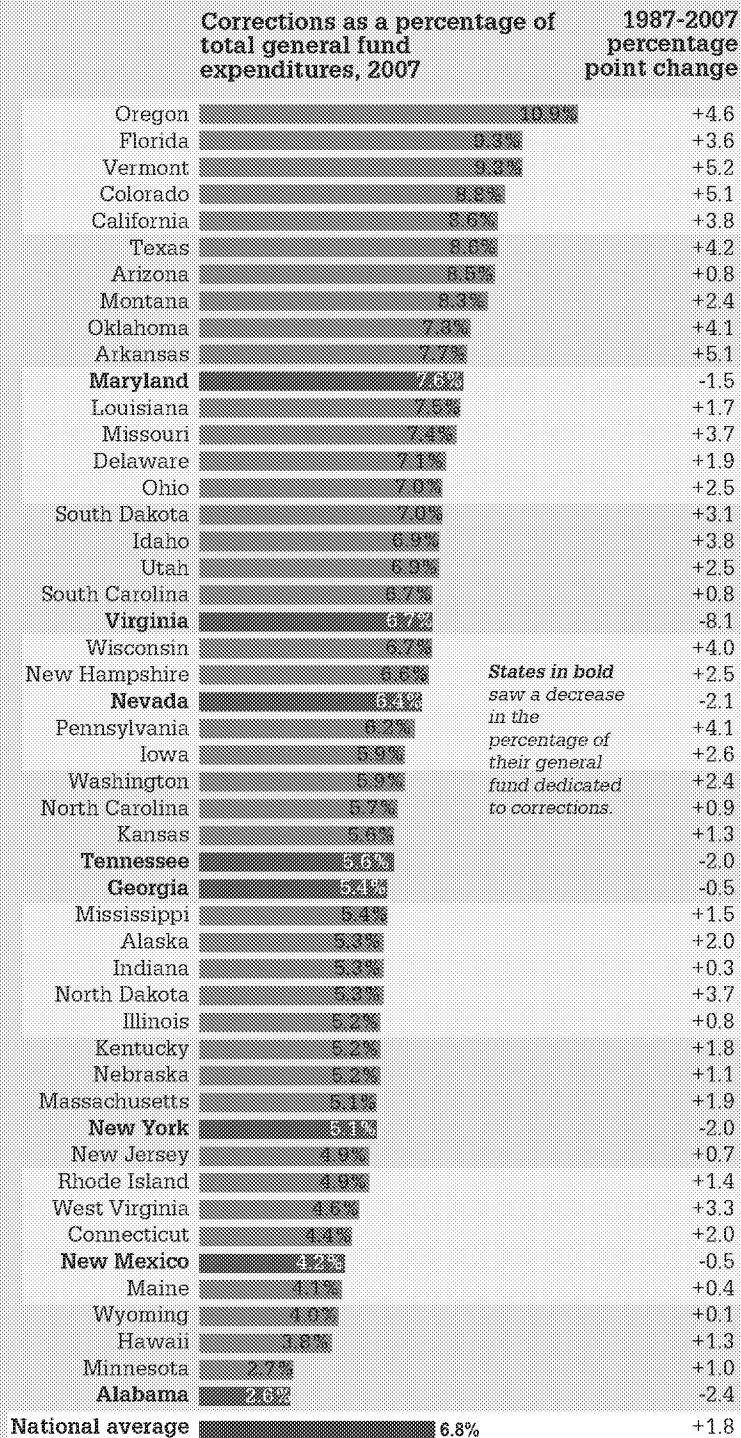
In a 2001 study, Massachusetts found that more than three-quarters of the state's prison population had paid none of its mandated child support in the previous 12 months. During the same timeframe, more than two-thirds of parolees with child

“Our policy and funding decisions need to be based on good data and the latest research. Unless we have that foundation, I'm not confident we're doing everything we can to fight crime effectively and to be efficient with taxpayer dollars.”

*AZ State Sen. John Huppenthal
(R-Phoenix)
Press release
February 6, 2007*

TAKING A BIGGER CUT

In fiscal year 2007, an estimated 1 in every 15 state general fund dollars was spent on corrections.



SOURCE: National Association of State Budget Officers, "State Expenditure Report" series; Percentage point increases are based on a reanalysis of data in this series.

NOTE: Michigan does not have a comparable figure because of the state's general fund definition. See Jurisdictional Notes.

support obligations managed to make at least partial payments. Overall, the average prisoner paid only \$206 over the previous year for child support obligations, while the average amount paid by parolees was \$1,538—more than seven times as much.²²

In Florida, meanwhile, statistics show that offenders under supervision in the community make substantial restitution payments to victims. In FY 2004-2005, one study showed, Florida probationers paid more than \$37.3 million in restitution under mandatory financial obligation agreements established at the onset of their supervision.²³

Crowding Out Other Priorities

Year by year, corrections budgets are consuming an ever larger chunk of state general funds, leaving less and less in the pot for other needs. Collectively, correctional agencies now consume 6.8 percent of state general funds, 2007 data show.²⁴ That means one in every 15 dollars in the states' main pool of discretionary money goes to corrections. Considering all types of funds, corrections had the second fastest rate of growth in FY 2006. With a 9.2 percent jump, it trailed transportation but outpaced increases in spending on education and Medicaid.²⁵

Some states spend an even larger proportion of their budgets on corrections. Oregon, for example, directed one in every 10 dollars to corrections, while Florida and Vermont spent one in 11. Minnesota and Alabama are at the other extreme, spending less than 3 percent of

their general fund dollars on corrections. Over the past 20 years, corrections spending took up a larger share of overall general fund expenditures in 42 states.

Some policy makers are questioning the wisdom of devoting an increasingly large slice of the budget pie to incarceration, especially when recidivism rates have remained discouragingly high. Are we getting our money's worth? Is our investment in this system returning sufficient dividends for victims, taxpayers and society at large?

On average, corrections is the fifth-largest state budget category, behind health, elementary and secondary education, higher education and transportation. But nearly all corrections dollars come from the states' own coffers; healthcare, by contrast, draws a majority of funding from the federal government, primarily through Medicaid. For some public officials, that distinction highlights the effect of corrections spending on other priorities.

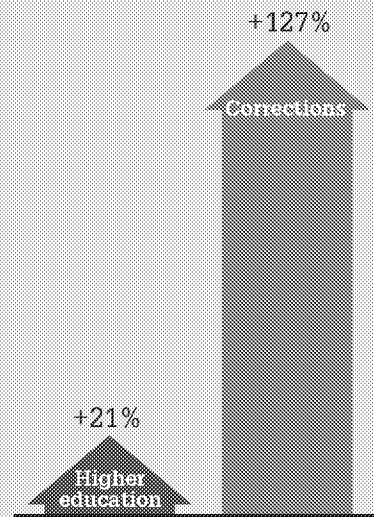
Pre-K, Higher Ed Funding Lags

Higher education is of particular concern. Higher education spending accounts for a roughly comparable portion of state expenditures as corrections, and other than tuition is paid for almost entirely out of state rather than federal funds. States don't necessarily make explicit choices between higher education and corrections funding, but they do have to balance their budgets. So, unlike the federal government, a dollar spent in one area is unavailable for another.

In 1987, states collectively spent \$33 billion of their general funds on higher education. By 2007, they were spending \$72.88 billion, an increase of 121

OF BOOKS AND BARS

Between 1987 and 2007, the amount states spent on **corrections** more than doubled while the increase in **higher education** spending has been moderate.



SOURCE: National Association of State Budget Officers. "State Expenditure Report" series; Inflation adjusted general fund figures are based on a reanalysis of data in this series.

percent. Adjusted to 2007 dollars, the increase was 21 percent. Over the same timeframe, inflation-adjusted corrections spending rose 127 percent, from \$10.6 billion (\$19.4 billion in 2007 dollars) to more than \$44 billion.

"If we don't change the course now, we will be building prisons forever and ever—prisons we can't afford."

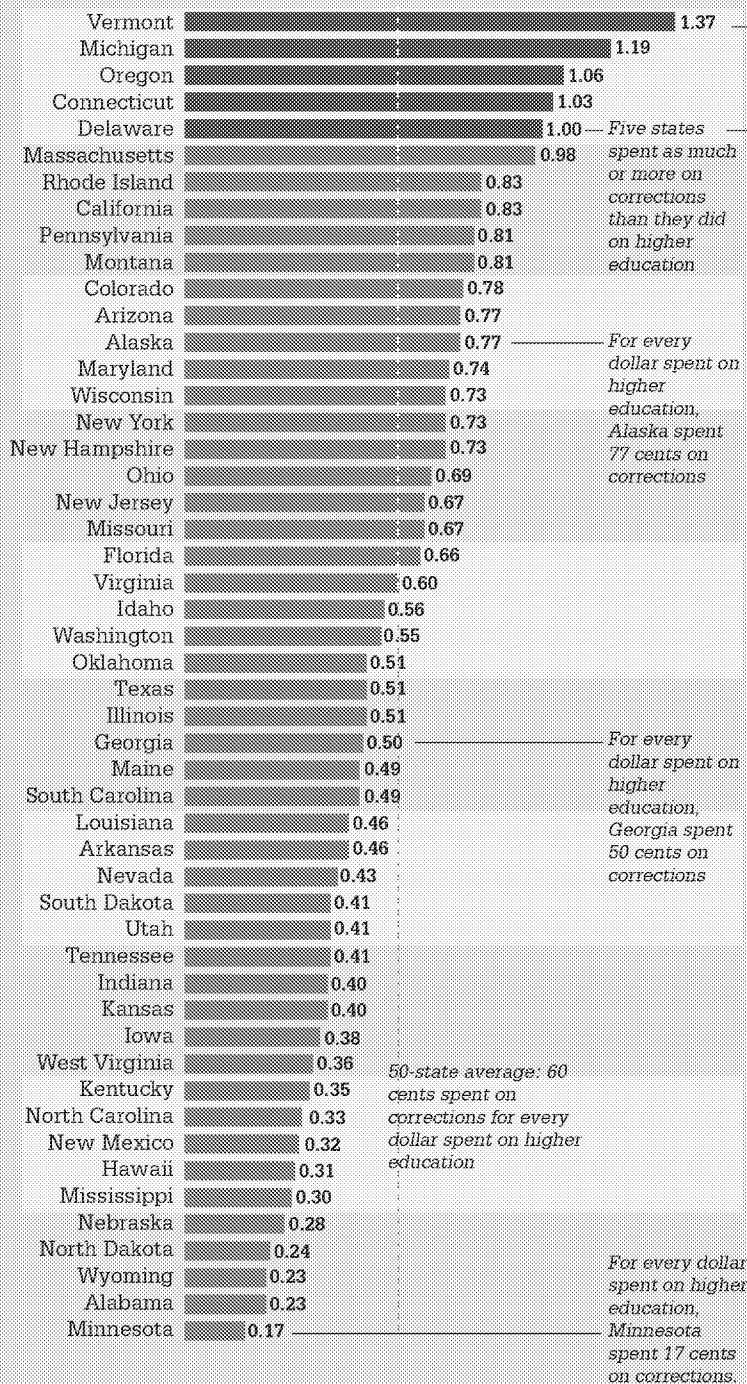
*TX State Senator John Whitmire
(D-Houston)
Chair, Senate Criminal Justice Committee
Austin-American Statesman
January 31, 2007*

Some regional differences were more dramatic. While inflation-adjusted prison spending rose 61 percent in the Northeast in the last 20 years, higher education spending went the other way, dropping by 5.5 percent. In the West, meanwhile, the number of dollars allocated to prisons skyrocketed by 205 percent. At the same time, higher education spending rose just 28 percent.

MAKING DECISIONS WHERE TO SPEND

While states don't necessarily choose between higher education and corrections, a dollar spent in one area is unavailable for another.

Ratio of corrections to higher education spending, 2007



SOURCE: Reanalysis of data presented in the National Association of State Budget Officers, "State Expenditure Report" series

Corrections spending also competes with the funding many states want to devote to early childhood education, one of the most proven crime prevention strategies. Research shows that attending a high-quality pre-kindergarten influences a child's success both in school and in life. One rigorous study that followed severely disadvantaged children into adulthood showed that participation in pre-kindergarten dramatically reduced participation in juvenile and adult crime, and increased high school graduation, employment and earnings, with a total benefit-cost ratio of 16 to 1.²⁶

Backed with such evidence of success, states have substantially increased support for high-quality, voluntary pre-kindergarten. New state pre-k funding exceeded \$525 million in FY 2008, an increase of more than 12 percent over FY07 expenditures, bringing total state investments in early education across the country to \$4.8 billion.²⁷

Increasingly, state policy makers are finding that a dollar spent for pre-k classes now can forestall many more dollars for prison beds down the road.

"It's not good public policy to take all of these taxpayer dollars at a very tough time, and invest it in the prison system when we ought to be investing it in the things that are going to transform the economy, like education and diversifying the economy."

*MI Gov. Jennifer Granholm (D)
Associated Press
December 12, 2007*

Controlling Crime and Costs

The politics of crime fighting have made most lawmakers understandably wary of advocating a diverse punishment strategy. There are politicians who have seen their careers torpedoed by opponents who used a lone vote, or even a comment, to create a dreaded “soft-on-crime” image at election time.

Still, in some states, policy makers on both sides of the aisle are finding a safe path through this minefield. In some cases, the soaring costs of imprisonment have hindered spending on other vital programs to a degree that many find unacceptable. At the same time, polls show a shift in public attitudes toward crime, which has dropped down the list of issues of most concern to voters.²⁸ Taken together, these factors—coupled with new strategies that can cut recidivism rates—are fueling a bipartisan appetite for new approaches.

Fortunately, public officials today enjoy a panoply of options as they consider how to rein in expansion of their prison population while maintaining public safety. Indeed, policy choices—more than crime rates, general population growth or other factors—are what determine the number of people behind bars. Policy makers largely control the levers that govern who goes in and when they get out. In short, they control their own fiscal destiny.

Some states already have broken away from old, prison-fits-all patterns to create more diverse correctional systems that are proving more cost-effective and at least as effective at preventing

offenders from returning to crime and drugs. These systems typically blend incarceration for high-risk and violent offenders with the increased use of other punishments for lawbreakers guilty of less serious crimes. Those at the vanguard include states with longstanding reputations for tough sentencing. Texas, with the second highest incarceration rate in the nation, is one of them.

A New Path in Texas

Between 1985 and 2005, the Texas prison population jumped 300 percent, forcing a vast expansion of prison capacity. After investing \$2.3 billion to add 108,000 beds, Texas didn’t get much of a breather. Within less than a decade, its prisons were teeming and experts forecast the arrival of another 14,000-17,000 inmates within five years.

In 2007, legislators from both parties decided it was time for a course change. Rather than spend \$523 million on more prison cells, they authorized a virtual makeover of the correctional system. Anchoring their approach was a dramatic expansion of drug treatment and diversion beds, many of them in secure facilities. Legislators also approved broad changes in parole practices and

“It’s far better for our society if we can get rid of the drug habit than if they just serve a short period of incarceration and go back to drugs after they come out.”

*TX State Rep. Jerry Madden
(R-Plano)
Chair, House
Corrections Committee*

expanded drug courts. In all, the reforms are expected to save Texas \$210 million over the next two years—plus an additional \$233 million if the recidivism rate drops and the state can avoid contingency plans to build three new prisons.²⁹

“It’s always been safer politically to build the next prison, rather than stop and see whether that’s really the smartest thing to do,” said state Sen.

“For continued funding, we have to achieve that goal statewide. The DOC has announced to us our funding will no longer be based solely on how many clients we have, but on our performance.”

*Ken Moore, Director,
Reno County (KS)
Community Corrections
The Hutchinson News
January 19, 2008*

John Whitmire of Houston, chairman of the senate’s criminal justice committee. “But we’re at a point where I don’t think we can afford to do that anymore.”

At the start of 2008, the future looked promising in the Lone Star state. For the next five years, new projections by the Legislative Budget Board show, the prison trend is a flat line.

“intermediate” sanctions for parolees and probationers who violate conditions of their release.

One common target for diversion is nonviolent offenders with drug addictions or mental illnesses. Since 2004, at least 13 states have adopted legislation creating or expanding community corrections options for nonviolent offenders, including drug courts that combine the “carrot” of substance abuse treatment with the “stick” of penalties for missing treatment or failing a drug test.³⁰

Another focus of diversion programs is those who have broken the rules of their release on probation or parole. In 2005, parole violators accounted for more than one-third of all prison admissions, the federal Bureau of Justice Statistics reports.³¹ Similarly, half the people in U.S. jails are there because they failed on probation in the community.

While some violators are reincarcerated for new crimes, a significant number wind up back in prison for so-called “technical” violations—transgressions such as a failed drug test or missed appointment with a supervisory agent. California locks up massive numbers of violators, scrambling to accommodate them in a sprawling, 171,444-inmate system so crowded that a three-judge panel may order a population reduction. A 2005 study showed that more than two-thirds of parolees in the Golden State were returned to prison within three years of release; of those, 39 percent were due to technical violations.³²

Viewing technical violators as a lesser threat to society than other offenders, states are increasingly opting to punish them with community-based

Managing Prison Admissions

As Texas has found, two principal variables govern the size of the crowd on a state’s prison yards—the number of admissions and the length of time an inmate remains behind bars. Even the smallest modifications can yield a marked slowdown—or acceleration—in population growth.

At the front end of the pipeline, states are reaping savings primarily through two maneuvers—the diversion of lower-risk offenders away from prison into less-costly settings and the use of a variety of

sanctions. These include a mix of day reporting centers, electronic monitoring systems, and community service. This strategy makes offenders pay for their missteps but keeps prison beds free for more violent and chronic lawbreakers. And, it makes it more likely the violators will be able to pay victim restitution, child support and taxes.

Kansas is among the states giving this approach an aggressive try. In 2006, Kansas faced bleak failure rates among offenders, with probation or parole revocations accounting for two-thirds of prison admissions, and nine out of 10 of those revocations resulting from technical violations. Meanwhile, the state was bracing for a 22 percent increase in its incarcerated population by 2016—and a bill of nearly \$500 million for new prison construction and operations.

To gain a sense of public attitudes about such significant new spending, legislators commissioned a survey, which revealed that most Kansans favored combining some construction with programs to help offenders on probation succeed and avoid reincarceration. At the recommendation of a bipartisan task force, the Kansas Legislature offered grants to community corrections agencies to cut revocations for those on parole and probation by 20 percent. Key elements of the strategy include tracking and monitoring revocations and creating guidelines to assist judges and officers in revocation decisions.³³

“By holding individuals who committed less serious crimes accountable for completing treatment and vocational programs, we will ensure we have space in our prisons to keep violent offenders behind bars,” said Gov. Kathleen Sebelius, a vocal supporter of her state’s direction.

Adjusting Length of Stay

The other key lever states can pull to tame prison growth is adjusting the length of time inmates remain behind bars. In some states with indeterminate sentencing, such as Texas, parole boards are taking pains to ensure their parole grant rates are meeting the minimum level mandated by law. Even a small tweak—such as the 5 percent increase in grants by the Texas Board of Pardons and Parole between 2006 and 2007—can have an appreciable thinning effect on the prison population.

More commonly, states are opting to use “earned time,” or credits that shorten an inmate’s term, to control the prison numbers. Typically, offenders are offered such credits if they complete rehabilitation or education programs, demonstrate good behavior or meet some other benchmark. In addition to freeing up cell space, this strategy aids wardens and correctional officers by giving inmates an incentive to behave, and helps cut reoffense rates by increasing participation in risk-reducing programs.

Nevada is among the states enjoying benefits from this approach. With projections for dramatic prison growth over the coming decade, Nevada at the start of 2007 faced a serious fiscal struggle that threatened spending on other key government services. With public safety paramount, policy makers decided to get creative. First, the legislature

“Community release programs that are conducted under strict guidelines and conditions enhance public safety because offenders who re-enter society under parole supervision are far less likely to re-offend than those who are released without the benefit of a supervised release.”

CT Gov. Jodi Rell (R)
Press release
January 27, 2008

CONTROLLING CRIME AND PRISON POPULATIONS: TWO LEVERS

States that want to protect public safety while slowing the growth of their prison populations can pull two basic policy levers: they can divert a greater number of low-risk offenders from prison; they can reduce the length of time that the lowest-risk offenders stay behind bars; and, of course, they can do some combination of the two.

Both options require strong community corrections programs to ensure that offenders in the community remain crime- and drug-free.

REDUCE PRISON ADMISSIONS	Front-End: Sentencing and Diversion	<p>Drug courts that break the cycle of crime and addiction with frequent drug tests, a continuum of treatment services and increasing penalties for violations.</p> <p>Targeted penalty changes that steer selected low-risk offenders to community corrections programs or modify mandatory minimums.</p> <p>Comprehensive sentencing guidelines that allow states to decide as a matter of policy which types of offenders should go to prison and which are appropriate for community corrections.</p>
	Back-End: Accountability for Parole and Probation Violations	<p>Intermediate sanctions such as day reporting centers for offenders who break the rules of their release, to ensure that each violation receives a swift, certain and proportionate response.</p> <p>Short-term residential facilities for persistent rule violators with substance abuse problems.</p> <p>Performance incentives that shorten terms of supervision for offenders who comply with their conditions and fulfill obligations such as victim restitution and child support.</p>
REDUCE LENGTH OF STAY	Release: Risk Reduction Before Reentry	<p>Risk reduction credits that allow slightly earlier release for inmates who complete treatment and education programs designed to reduce recidivism.</p> <p>Risk-based release instruments that use analysis of actual recidivism patterns to help releasing authorities decide who should remain behind bars and who is ready for release.</p> <p>Sufficient program availability in prisons and the community so release isn't delayed because inmates cannot complete requirements.</p>

NOTE: For a summary of recent and upcoming state activity on sentencing and corrections issues, see National Conference of State Legislatures, "State Sentencing and Corrections Legislation: 2007 Action, 2008 Outlook," January 2008. www.ncsl.org/programs/cj/pewpublicsafety.htm.

and executive branch agreed to expand earned time credits for prisoners, except sex offenders and those convicted of violent crimes. In passing AB 510, lawmakers increased the amount of good time an inmate could earn for good conduct and completion of education and treatment programs. To achieve an added population benefit, Nevada made the law retroactive to prisoners sentenced as long ago as 2000.

So far, the results in Nevada have fulfilled expectations, and, after the bump upward in 2007, the prison population has begun a moderate decline. A commission created to track impacts of the reforms has found no increases in key indicators such as crime, arrests or court filings.

A Final Word

As a nation, the United States has long anchored its punishment policy in bricks and mortar. The tangible feel of a jail or prison, with its surefire incapacitation of convicts, has been an unquestioned weapon of choice in our battle against crime. Recent studies show, however, that a continual increase in our reliance on incarceration will pay declining dividends in crime prevention. In short, experts say, expanding prisons will accomplish less and cost more than it has in the past.³⁴

Meanwhile, the breathtaking rise in correctional costs is triggering alarm in statehouses around the nation. By inevitably reducing the amount of tax dollars that are available for other vital needs, relentless prison growth is drawing closer scrutiny from lawmakers and the public. In some states, that scrutiny has evolved into action, producing encouraging results both for public safety and public spending. These states are finding that by broadening the mix of sanctions in their correctional tool box, they can save money and still make lawbreakers pay.

“Nebraska’s prison population is projected to grow in the coming years, and the concept we’ve embraced through community corrections is that there are better solutions to this challenge than to simply build another maximum-security prison.”

NE Gov. Dave Heineman (R)
Press release
February 12, 2007

The national inmate count marches onward and upward, almost exactly as it was projected to do last year. And with one in 100 adults looking out at this country from behind an expensive wall of bars, the potential of new approaches cannot be ignored.

Endnotes

- 1 Langan, Dr. Patrick A., and Dr. David J. Levin, *Recidivism of Prisoners Released in 1994*, U.S. Department of Justice, Bureau of Justice Statistics (Washington, D.C.: June 2002)
- 2 International incarceration rates from International Centre for Prison Studies at King's College, London, "World Prison Brief." www.kcl.ac.uk/depsta/rel/icps/worldbrief/world_brief.html
- 3 State projections were reported in *Public Safety, Public Spending: Forecasting America's Prison Population, 2007-2011*, Public Safety Performance Project, The Pew Charitable Trusts (Washington, D.C.: February 2007).
- 4 Sabol, Dr. William J., et al, *Prison and Jail Inmates at Midyear 2006*. U.S. Department of Justice, Bureau of Justice Statistics (Washington, D.C.: June 2007) All incarceration rates for subpopulations in this report are derived from this and other Bureau of Justice Statistics reports.
- 5 The number of offenders sentenced to prison for technical violations increased 7.1 percent in FY 2004-05, 4.3 percent in FY 2005-06, and 5.8 percent in FY 2006-07.
- 6 Workpapers of the Criminal Justice Estimating Conference, October 8, 2007. Tallahassee, FL: EDR.
- 7 *Public Safety, Public Spending*, p. ii. These cost estimates are cumulative, including operating and capital expenditures from 2007 to 2011.
- 8 *Public Safety, Public Spending*, p. 33.
- 9 *Public Safety, Public Spending*, p.22.
- 10 Office of California State Controller Steve Westly, *California Department of Corrections and Rehabilitation, Review Report: Healthcare Delivery System* (Sacramento, CA: August, 2006).
- 11 Council of State Governments, Trends Alert, Information for State Decision-Makers, *Corrections Health Care Costs*, by Chad Kinsella, January 2004.
- 12 *Ibid.*
- 13 Prison's Deadliest Inmate, Hepatitis C, Escaping: Public-health Workers Warn of Looming Epidemic of 'Silent Killer,' *Associated Press* (Vacaville, CA: March 14, 2007).
- 14 Fox, Rena K. et al, "Hepatitis C Virus Infection Among Prisoners in the California State Correctional System," *Clinical Infectious Diseases* (June 2005).
- 15 Anno, Jaye B., et al, *Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, U.S. Department of Justice, National Institute of Corrections, Criminal Justice Institute (Middleton, CT: February, 2004).
- 16 Turley, Jonathan, George Washington University Law School professor. Testimony before the House Judiciary Committee, Dec. 6, 2007.
- 17 *Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*
- 18 *Ibid.*
- 19 U.S. Census Bureau, State Government Employment and Payroll data: <http://www.census.gov/govs/www/apesst.html>. For more, see Appendix A-5.
- 20 Marley, Patrick, "Prison officers rack up overtime," *Milwaukee Journal Sentinel*, December 12, 2007.
- 21 Chorneau, Tom, "\$500 million in OT at state prisons," *San Francisco Chronicle*, July 15, 2007
- 22 Thoennes, Dr. Nancy, *Child Support Profile: Massachusetts Incarcerated and Paroled Parent*, Center for Policy Research, (Denver, CO: May 2002).
- 23 Florida Department of Corrections, *Restitution and Other Monetary Obligations Collected from Offenders Under Supervision in FY 2004-05*, available online at <http://www.dc.state.fl.us/oth/cmnyths.html>.
- 24 National Association of State Budget Officers, "State Expenditure Report FY 2006," December 2007. <http://www.nasbo.org/Publications/PDFs/fy2006er.pdf>
- 25 *Ibid.*
- 26 Schweinhart, L. J., Montie, J., Xiang, Z., Barnett, W. S., Belfield, C. R., & Nores, M. (2005). *Lifetime effects: The High/Scope Perry Preschool study through age 40*. (Monographs of the High/Scope Educational Research Foundation, 14). Ypsilanti, MI: High/Scope Press.
- 27 Prek Now, *Votes Count, Legislative Action on Prek Fiscal Year 2008* (Washington, D.C.: September 2007). www.preknow.org.
- 28 In the latest Gallup Poll, only 2 percent of Americans volunteered "crime" as the most important problem facing the country. In March 1977, by contrast, 15 percent of Americans polled by Gallup volunteered "crime" as the most important problem facing the country. Cited in Sam Roberts, "All Crime Is Local In '08 Politics," *The New York Times*, Sept. 16, 2007.
- 29 For more detail on Texas and the legislators who helped advance this legislation, see the following reports: Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas*, and Public Safety Performance Project, The Pew Charitable Trusts, *Changing Direction: A Bipartisan Team Paves a New Path for Sentencing and Corrections in Texas*.
- 30 Vera Institute of Justice, *Managing State Prison Growth: Key Trends in Sentencing Policy* (New York, January 2008).
- 31 *Prison and Jail Inmates at Midyear 2006*
- 32 *Ibid.*
- 33 For more detail on Kansas and a national discussion of the issues surrounding parole violators, see the following reports: Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas*, and Public Safety Performance Project, The Pew Charitable Trusts, *When Offenders Break the Rules: Smart Responses to Parole and Probation Violations*.
- 34 Vera Institute of Justice, *Reconsidering Incarceration: New Directions for Reducing Crime*, by Don Stemen (New York: January 2007).

Methodology Notes

This report estimates the number of prisoners housed in state and federal correctional facilities as of January 1, 2008. A separate estimate was made for the number of persons in local jail facilities on that date. In order to calculate the national incarceration rate, we also estimated the adult resident population.

The 2008 national incarceration rate in this report is not comparable to the rates published for prior years by the U.S. Department of Justice, Bureau of Justice Statistics (BJS), or to those issued last year by the Pew Public Safety Performance Project. The difference occurs because this report uses the adult resident population to calculate the incarceration rate for adults, while the BJS incarceration rates and the earlier Pew report are based on the total U.S. population, including those under age 18.

This Report	Bureau of Justice Statistics
Inmates/ Adult Population=	Inmates/ Total Population=
Adult Incarceration Rate	Incarceration Rate

State and Federal Prison Population Estimate

In making the state and federal prisoner population estimate, we took a two-pronged approach to obtain the count of inmates under the jurisdiction of each state's Department of Corrections (DOC) and the Federal Bureau of Prisons (FBOP) on January 1, 2008.

The first phase was a two-page survey which the Association of State Correctional Administrators (ASCA) sent to each DOC and the FBOP requesting its total jurisdictional count as well as certain subpopulations (e.g., pretrial, sentenced, males and females, etc.) comprising the total jurisdictional count. At the same time, the JFA Institute sought to obtain each department's total jurisdictional count through a combination of emails and phone calls to each DOC and searches of the DOC websites for inmate population statistics. The objective was to ensure that through two organizations and two methods we were able to secure the most accurate count for each state and the FBOP. We investigated and reconciled any differences in the total jurisdictional counts, often through follow-up emails or phone calls to the states.

For many DOCs, prisoners under their jurisdiction are housed not only in their own prison facilities, but also in facilities controlled by other agencies (i.e., local jails, other states' prisons, federal prisons, and private prisons). To avoid double-counting, we specified that the states' responses should include the inmates under a DOC's jurisdiction regardless of the inmates' locations, and exclude any inmates housed by a DOC who are not under that DOC's jurisdiction. As a hypothetical example, Mississippi would exclude inmates they are housing in their prisons for Texas while Texas would include its prisoners housed in Mississippi.

Unless otherwise noted, for the January 1, 2008 inmate population count, we utilized the total jurisdictional count that each state DOC provided

on the ASCA survey. For the 2006 inmate population count, we utilized the December 31, 2006 jurisdictional prisoner count from Table 1 of the Bureau of Justice Statistics' "Prisoners in 2006" report. Note that some states provided counts on dates other than January 1, 2008.

Many states provided their total jurisdictional counts before performing the data verification process they would normally undertake before publishing their official counts. As a result, the inmate figures in this report may differ from total jurisdictional counts subsequently published. We expect any such differences to be minor.

State-specific information about the source of the counts and any additional explanations appear in "Jurisdictional Notes" following this section.

The inmate count does not include a significant number of inmates held in facilities other than federal and state prisons and local jails. It excludes those in custody in territorial prisons, facilities administered by U.S. Immigration and Customs Enforcement, military facilities, jails in Indian country, and juvenile facilities. At yearend 2006, there were 126,230 inmates in custody in these facilities, three-quarters of them juveniles, according to the most recent count by the Justice Department. However, the count does include approximately 8,500 juveniles in jails or prisons.

Local Jail Population Estimate

This estimate takes into account people who are incarcerated in local (county and city) jails. Typically these inmates are being held pending trial or have been sentenced to less than a year.

Since there are more than 3,000 local jails in the United States, it was not feasible to conduct a complete national survey. Instead, we extrapolated from the most recent national trends as reported by BJS, which does conduct an annual survey using a sophisticated sampling methodology.

Table 1 shows the BJS jail population counts from its recent surveys. There has been considerable fluctuation in the rate of growth over the past six years. The average rate of growth has been 3.56 percent, but the growth rate slowed considerably in 2006.

To help inform our estimate, we surveyed some of the nation's largest jail systems during December 2007. Together these jails represent 12 percent of the nation's jail population. Here we see significant fluctuation, with an overall increase of only 1 percent since midyear 2004.

Since the BJS surveys represent the populations as of June 30, and given that jail populations have severe seasonal fluctuations, the December 2007 jail counts are not directly comparable to the June 30 BJS counts. Still, those counts offer some evidence that jail growth may indeed have slowed. So using the average rate of growth since 2000 may well over-estimate the actual jail population.

For these reasons we decided to use the 2006 growth rate of 2.47 percent. An estimate of the January 1, 2008 population must cover the 18-month period beginning with the last BJS report, from mid-year 2006. So we multiplied the 2.47 percent annual rate by a factor of 1.5 which produces an 18-month growth rate of 3.7 percent. This produced an estimated January 1, 2008 jail population of 794,417.

Table 1: Estimate of Local Jail Growth Rate

Year	Jail Population	% Change
2000	621,149	
2001	631,240	1.62%
2002	665,475	5.42%
2003	691,301	3.88%
2004	713,990	3.28%
2005	747,529	4.70%
2006	766,010	2.47%
Average Change 2000-2006		3.56%
Jan. 2008 estimate	794,417	2.47% (annual) 3.70% (18-month)

Sources: 2000-2006 from Bureau of Justice Statistics, "Prison and Jail Inmates at Mid-Year" series, 2000-2006; Jan. 2008 estimate from JFA Institute

Table 2: U.S. Adult Resident Population Calculation

Year	Population 18 Years and Over	% Change
2000	209,851,322	
2001	212,591,294	1.31%
2002	215,220,145	1.24%
2003	217,710,885	1.16%
2004	220,343,552	1.21%
2005	222,972,821	1.19%
2006	225,662,922	1.21%
Average Change 2000-2006		1.22%
Jan. 2008 estimate	229,786,080	1.22% (annual) 1.83% (18-month)

Source: U.S. Census Bureau, Annual Estimates of the Population by Selected Age Groups and Sex for the United States: April 1, 2000 to July 1, 2006; Jan. 2008 estimate from JFA Institute

For purposes of calculating the national adult incarceration rate, state prisoners being held in local jails were backed out of the jail figures to avoid double-counting. Our survey of the state prison population included identifying the number of these locally-held state inmates. Based on these figures, the unduplicated count of jail inmates on January 1, 2008 was estimated at 723,131.

January 1, 2008 Local Jail Estimate	794,417
State Inmates in Local Jails (2008)	-71,286
Unduplicated Local Jail Estimate	= 723,131

If the local jail population had grown by 21,397 fewer inmates than we estimate, the national adult incarceration rate would be exactly 1 in 100. That would result in an annual growth rate of 0.61% for the 18 months ending on January 1, 2008. In each year since 2000, the jail growth rate has been at least 2.5 times higher than that. If there was no growth in the jail population between mid-year 2006 and January 1, 2008, the national adult incarceration rate would be 1 in 100.3.

National Adult Population Estimate

There is not an official U.S. Census count of the nation's adult population (persons age 18 years and older) for January 1, 2008. The Census Bureau has issued a total national population estimate for July 1, 2007, but at press time it had not yet released estimates by age.

Such estimates are available from 2000 to 2006. To make our estimate of the January 1, 2008 adult population we applied the average annual change since 2000 to the most recent Census estimate. Specifically, we calculated the average annual

percentage change in the census estimates for the population 18 years and over from July 1, 2000 to July 1, 2006. To project forward 18 months from the most recent census estimate, we multiplied the average annual percentage change from 2000 to 2006 (1.22%) by 1.5 and applied that result to the census estimate for July 1, 2006 for the population 18 years and over (Table 2). This yields a January 1, 2008 adult population estimate of 229,786,080.

Calculation of National Incarceration Rate

The actual prisoner counts and estimates above yield the following overall computation of the nation's adult incarceration rate as of January 1, 2008.

State incarceration rates were not calculated for this report due to the lack of statewide jail population counts or a reliable method to estimate them.

Jail Population (estimate, unduplicated)	723,131
Prison Population (state/federal count)	+1,596,127
Total Inmate Population	2,319,258

Adult Population Estimate = 229,786,080
 Inmates/Adults = 1 in 99.1
(or 1,009 inmates per 100,000 adult residents)

Finally, inmate populations were not adjusted for illegal U.S. residents because such residents are not excluded from the census counts upon which our adult population estimate is based.

Cost Estimates

State corrections spending figures in this report are from the most recent data available from the National Association of State Budget Officers (NASBO). NASBO explains that its corrections spending totals include "the costs to build and operate prison systems and may include spending on juvenile justice programs and alternatives to incarceration such as probation and parole." There is no current national data source that tracks spending on prisons alone. Some states operate parole and probation systems in addition to prison systems, and these costs would be included in the figures. In many other states, probation or juvenile systems operate at the county level or within the judiciary, so these costs would not be included in the state totals. In addition, jails and other correctional programs operated by local jurisdictions are not included in the figures, which reflect spending by state governments.

Jurisdictional Notes

Unless noted below, for the January 1, 2008 inmate population count we used the total jurisdictional count that each state DOC provided on the survey conducted for the Public Safety Performance Project by the Association of State Correctional Administrators (ASCA). For the December 31, 2006 count we used the December 31, 2006 jurisdictional prisoner count from Table 1 of the Bureau of Justice Statistics' "Prisoners in 2006" report.

State	Notes
Alabama	Alabama's 2008 count is the total jurisdictional population on 12/31/2007 shown in the Alabama DOC's December 2007 Monthly Report and reported by phone to the JFA Institute.
Alaska	Alaska's 2008 count was reported by phone to the JFA Institute.
Arkansas	Arkansas' count excludes about 1,500 inmates under the jurisdiction of the Department of Community Correction.
California	California's 2008 count is from 12/31/2007.
District of Columbia	The District of Columbia is not included as a separate jurisdiction in this report. D.C. prisoners were transferred to federal custody in 2001.
Federal Bureau of Prisons	The BOP reported its total as 199,342, which included 189 juveniles and 164 long term boarders. These populations were not counted in this survey, resulting in a comparable total of 198,989.
Florida	Florida's 2008 count is from 12/31/07.
Georgia	Georgia's 2008 count represents the population in or awaiting DOC prison beds on 12/28/2007, and excludes offenders in or awaiting beds in residential probation facilities (5,287).
Illinois	Illinois' 2008 count is from 2/8/08.
Indiana	One component of Indiana's 2008 count (state inmates in local jails) is from 12/28/07; the remaining counts are from 1/1/08.
Iowa	Iowa's 2008 count includes inmates awaiting trial for civil commitment as sex offenders (9). It also includes detainees held for federal pretrial (about 116), a portion of whom are also serving Iowa prison sentences.
Michigan	Michigan's figure for corrections share of general fund spending is not comparable with other states. In 1994, Michigan separated its K-12 education system into a different fund. The resulting general fund was significantly smaller, and thus expenditures for corrections and all other state agencies account for a much greater portion of it. Calculations that would make Michigan's spending patterns comparable with other states were not available.
Minnesota	Minnesota submitted inmate population counts for July 1, 2007; more recent figures were not available.
Mississippi	Mississippi's 1/1/08 count includes offenders pending file review (111) and out on court order (272).
New Hampshire	New Hampshire's 2008 count includes inmates assigned to Administrative Home Confinement (electronic monitoring).
Oklahoma	Oklahoma's 2008 count is from 12/31/2007. Numbers include inmates sentenced in other states but located in either a state or contract facility under the Oklahoma DOC jurisdiction (about 69).
Rhode Island	Rhode Island's 2006 count is based on the total population count on 12/31/06 from Rhode Island Department of Corrections, not on the BJS 2006 count.
Texas	Texas' 2008 count shows the 12/31/07 total population count that is equivalent to the 2006 BJS count, as provided by the Legislative Budget Board to the Public Safety Performance Project. This count includes inmates that Texas does not consider in its counting definition as being part of its prison, state jail and treatment institutions. For example, BJS included in its December 2006 count over 13,000 inmates in county jails sentenced as felons or parole violators awaiting a hearing. TDCJ considers these inmates as being under the jurisdiction of local jail authorities.

Appendices

TABLE A-1 State, Regional and National Prison Counts

	Prison Population 12/31/06	Prison Population 1/1/08	# Change	% Change	
U.S. Total	1,570,644	1,596,127	25,483	1.6%	
Federal	193,046	198,989	5,943	3.1%	
State	1,377,598	1,397,138	19,540	1.4%	
<i>Northeast</i>	<i>177,600</i>	<i>178,692</i>	<i>1,092</i>	<i>0.6%</i>	
Connecticut	20,566	20,784	218	1.1%	
Maine	2,120	2,144	24	1.1%	
Massachusetts	11,032	11,364	332	3.0%	
New Hampshire	2,805	2,991	186	6.6%	
New Jersey	27,371	26,822	-549	-2.0%	
New York	63,315	62,620	-695	-1.1%	
Pennsylvania	44,397	46,028	1,631	3.7%	
Rhode Island	3,779	3,807	28	0.7%	
Vermont	2,215	2,132	-83	-3.7%	
<i>Midwest</i>	<i>261,466</i>	<i>262,586</i>	<i>1,120</i>	<i>0.4%</i>	
Illinois	45,106	45,305	199	0.4%	
Indiana	26,091	26,249	158	0.6%	Sources: 2006
Iowa	8,875	9,419	544	6.1%	figures - 12/31/06
Kansas	8,816	8,756	-60	-0.7%	Bureau of Justice
Michigan	51,577	50,326	-1,251	-2.4%	Statistics
Minnesota	9,108	9,573	465	5.1%	Jurisdictional
Missouri	30,167	30,324	157	0.5%	Count of Prisoners
Nebraska	4,407	4,472	65	1.5%	
North Dakota	1,363	1,440	77	5.6%	
Ohio	49,166	50,730	1,564	3.2%	2008 figures -
South Dakota	3,359	3,302	-57	-1.7%	1/1/2008 Public
Wisconsin	23,431	22,690	-741	-3.2%	Safety
<i>South</i>	<i>623,563</i>	<i>641,024</i>	<i>17,461</i>	<i>2.8%</i>	Performance
Alabama	28,241	29,412	1,171	4.1%	Project
Arkansas	13,729	14,314	585	4.3%	Jurisdictional
Delaware	7,206	7,081	-125	-1.7%	Count of Prisoners
Florida	92,969	97,416	4,447	4.8%	
Georgia	52,792	55,205	2,413	4.6%	
Kentucky	20,000	22,402	2,402	12.0%	Notes: Change is
Louisiana	37,012	37,718	706	1.9%	from 12/31/06 to
Maryland	22,945	23,342	397	1.7%	1/1/08 unless
Mississippi	21,068	22,335	1,267	6.0%	otherwise
North Carolina	37,460	38,425	965	2.6%	explained in
Oklahoma	26,243	25,918	-325	-1.2%	"Jurisdictional
South Carolina	23,616	24,217	601	2.5%	Notes"
Tennessee	25,745	26,838	1,093	4.2%	
Texas	172,116	171,790	-326	-0.2%	Many states have
Virginia	36,888	38,555	1,667	5.1%	not completed
West Virginia	5,733	6,056	323	5.6%	their data
<i>West</i>	<i>314,969</i>	<i>314,836</i>	<i>-133</i>	<i>0.0%</i>	verification
Alaska	5,069	5,306	237	4.7%	process. Final
Arizona	35,892	37,800	1,908	5.3%	published figures
California	175,512	171,444	-4,068	-2.3%	may differ slightly.
Colorado	22,481	22,541	60	1.6%	
Hawaii	5,967	6,036	69	1.2%	
Idaho	7,124	7,319	195	2.7%	
Montana	3,572	3,431	-141	-3.9%	The District of
Nevada	12,901	13,552	651	5.0%	Columbia is not
New Mexico	6,639	6,540	-99	-1.5%	included. D.C.
Oregon	13,707	13,855	148	1.1%	prisoners were
Utah	6,430	6,533	103	1.6%	transferred to
Washington	17,561	18,126	565	3.2%	federal custody in
Wyoming	2,114	2,053	-61	-2.9%	2001.

TABLE A-2 State Corrections Spending, FY 2007

	General Fund (in millions)	Percent of General Fund
State total	\$44,062	6.8%
<i>Northeast</i>	<i>\$8,010</i>	<i>5.2%</i>
Connecticut	\$661	4.4%
Maine	\$122	4.1%
Massachusetts	\$1,139	5.1%
New Hampshire	\$92	6.6%
New Jersey	\$1,468	4.9%
New York	\$2,622	5.1%
Pennsylvania	\$1,638	6.2%
Rhode Island	\$157	4.9%
Vermont	\$111	9.3%
<i>Midwest</i>	<i>\$8,443</i>	<i>6.9%</i>
Illinois	\$1,125	5.2%
Indiana	\$649	5.3%
Iowa	\$313	5.9%
Kansas	\$312	5.6%
Michigan*	\$2,063	22.6%
Minnesota	\$438	2.7%
Missouri	\$586	7.4%
Nebraska	\$172	5.2%
North Dakota	\$55	5.3%
Ohio	\$1,766	7.0%
South Dakota	\$74	7.0%
Wisconsin	\$890	6.7%
<i>South</i>	<i>\$14,182</i>	<i>6.8%</i>
Alabama	\$388	2.6%
Arkansas	\$314	7.7%
Delaware	\$240	7.1%
Florida	\$2,719	9.3%
Georgia	\$998	5.4%
Kentucky	\$454	5.2%
Louisiana	\$552	7.5%
Maryland	\$1,084	7.6%
Mississippi	\$227	5.4%
North Carolina	\$1,083	5.7%
Oklahoma	\$461	7.8%
South Carolina	\$444	6.7%
Tennessee	\$619	5.6%
Texas	\$3,292	8.6%
Virginia	\$1,136	6.7%
West Virginia	\$171	4.6%
<i>West</i>	<i>\$13,427</i>	<i>7.9%</i>
Alaska	\$227	5.3%
Arizona	\$895	8.5%
California	\$8,795	8.6%
Colorado	\$599	8.8%
Hawaii	\$205	3.8%
Idaho	\$179	6.9%
Montana	\$142	8.3%
Nevada	\$222	6.4%
New Mexico	\$241	4.2%
Oregon	\$684	10.9%
Utah	\$324	6.9%
Washington	\$832	5.9%
Wyoming	\$82	4.0%

Source: National Association of State Budget Officers, State Expenditure Report FY 2006, FY 2007 NASBO figures are estimates.

Notes: Michigan's percentage is not comparable with other states. See Jurisdiction Notes for additional detail about Michigan's figure.

The District of Columbia is not included. D.C. prisoners were transferred to federal custody in 2001.

TABLE A-3 State Spending on Corrections and Higher Education, FY 1987-2007

	State General Fund Higher Education Spending, FY 2007 (in millions)	Ratio of Corrections to Higher Education General Fund Spending, FY 2007	Ratio of Corrections to Higher Education General Fund Spending, FY 1987	Change in Ratio, FY 1987-2007
State total	\$72,888	0.60	0.32	0.28
<i>Northeast</i>	<i>\$10,253</i>	<i>0.76</i>	<i>0.46</i>	<i>0.32</i>
Connecticut	\$644	1.03	0.35	0.68
Maine	\$247	0.49	0.31	0.18
Massachusetts	\$1,160	0.98	0.30	0.68
New Hampshire	\$126	0.73	0.29	0.44
New Jersey	\$2,204	0.67	0.49	0.18
New York	\$3,587	0.73	0.61	0.12
Pennsylvania	\$2,015	0.81	0.20	0.61
Rhode Island	\$189	0.83	0.32	0.51
Vermont	\$81	1.37	0.37	1.00
<i>Midwest</i>	<i>\$15,377</i>	<i>0.55</i>	<i>0.25</i>	<i>0.30</i>
Illinois	\$2,209	0.51	0.30	0.21
Indiana	\$1,610	0.40	0.24	0.16
Iowa	\$827	0.38	0.16	0.22
Kansas	\$785	0.40	0.23	0.17
Michigan	\$1,728	1.19	0.38	0.81
Minnesota	\$2,556	0.17	0.09	0.08
Missouri	\$880	0.67	0.25	0.42
Nebraska	\$604	0.28	0.16	0.13
North Dakota	\$229	0.24	0.08	0.16
Ohio	\$2,551	0.69	0.28	0.41
South Dakota	\$182	0.41	0.16	0.25
Wisconsin	\$1,214	0.73	0.20	0.54
<i>South</i>	<i>\$28,874</i>	<i>0.49</i>	<i>0.32</i>	<i>0.17</i>
Alabama	\$1,712	0.23	0.25	-0.03
Arkansas	\$683	0.46	0.14	0.32
Delaware	\$239	1.00	0.45	0.56
Florida	\$4,110	0.66	0.34	0.32
Georgia	\$1,979	0.50	0.28	0.22
Kentucky	\$1,281	0.35	0.21	0.14
Louisiana	\$1,193	0.46	0.41	0.05
Maryland	\$1,456	0.74	0.71	0.03
Mississippi	\$760	0.30	0.20	0.10
North Carolina	\$3,310	0.33	0.19	0.14
Oklahoma	\$897	0.51	0.27	0.25
South Carolina	\$911	0.49	0.35	0.14
Tennessee	\$1,527	0.41	0.36	0.04
Texas	\$6,444	0.51	0.17	0.34
Virginia	\$1,903	0.60	0.79	-0.19
West Virginia	\$469	0.36	0.11	0.26
<i>West</i>	<i>\$18,623</i>	<i>0.72</i>	<i>0.30</i>	<i>0.42</i>
Alaska	\$296	0.77	0.48	0.29
Arizona	\$1,158	0.77	0.39	0.38
California	\$10,652	0.83	0.32	0.51
Colorado	\$764	0.78	0.18	0.60
Hawaii	\$666	0.31	0.23	0.08
Idaho	\$322	0.56	0.19	0.37
Montana	\$175	0.81	0.29	0.52
Nevada	\$513	0.43	0.44	0.00
New Mexico	\$762	0.32	0.29	0.03
Oregon	\$648	1.06	0.34	0.71
Utah	\$799	0.41	0.23	0.17
Washington	\$1,507	0.55	0.23	0.32
Wyoming	\$361	0.23	0.13	0.10

For every
dollar Ohio
spent on
higher
education,
it spent 69
cents on
corrections.

Source: Data and reanalysis of data from National Association of State Budget Officers, State Expenditure Reports, FY 2007. NASBO figures are estimates.

Notes: The District of Columbia is not included. D.C. prisoners were transferred to federal custody in 2001.

TABLE A-4 National Corrections and Higher Education Spending Trends, FY 1987-2007

		Corrections as Percent of All State General Fund Spending	State General Fund Corrections Spending (in millions)	State General Fund Higher Education Spending (in millions)	Ratio of Corrections to Higher Education General Fund Spending	National Prison Population
Sources: Spending data is from National Association of State Budget Officers, State Expenditure Reports or reanalysis thereof. FY 2007 NASBO figures are estimates. Note: 1987-2006 prison populations from Bureau of Justice Statistics 2007 prison population from this report (as of 1/1/08 for most states)	2007	6.8%	\$44,062	\$72,888	0.60	1,596,127
	2006	6.8%	\$40,661	\$67,792	0.60	1,570,861
	2005	7.2%	\$38,755	\$63,202	0.61	1,527,929
	2004	7.0%	\$35,744	\$59,819	0.60	1,496,629
	2003	7.2%	\$35,285	\$61,638	0.57	1,468,601
	2002	6.9%	\$34,364	\$61,784	0.56	1,440,144
	2001	6.9%	\$33,571	\$62,079	0.54	1,404,032
	2000	7.1%	\$32,195	\$58,119	0.55	1,391,261
	1999	7.1%	\$29,733	\$52,470	0.57	1,363,701
	1998	5.9%	\$27,021	\$51,461	0.53	1,299,096
	1997	6.8%	\$25,440	\$48,352	0.53	1,240,659
	1996	4.3%	\$24,847	\$46,279	0.54	1,181,919
	1995	4.4%	\$23,251	\$44,588	0.52	1,125,874
	1994	3.9%	\$20,062	\$41,812	0.48	1,054,702
	1993	3.5%	\$17,547	\$40,137	0.44	969,301
	1992	5.6%	\$16,504	\$39,567	0.42	882,500
	1991	5.7%	\$15,890	\$39,267	0.40	825,559
	1990	5.5%	\$14,453	\$38,729	0.37	773,919
	1989	5.3%	\$12,887	\$36,919	0.35	712,364
1988	6.9%	\$11,744	\$35,108	0.33	627,600	
1987	5.0%	\$10,619	\$33,026	0.32	585,084	

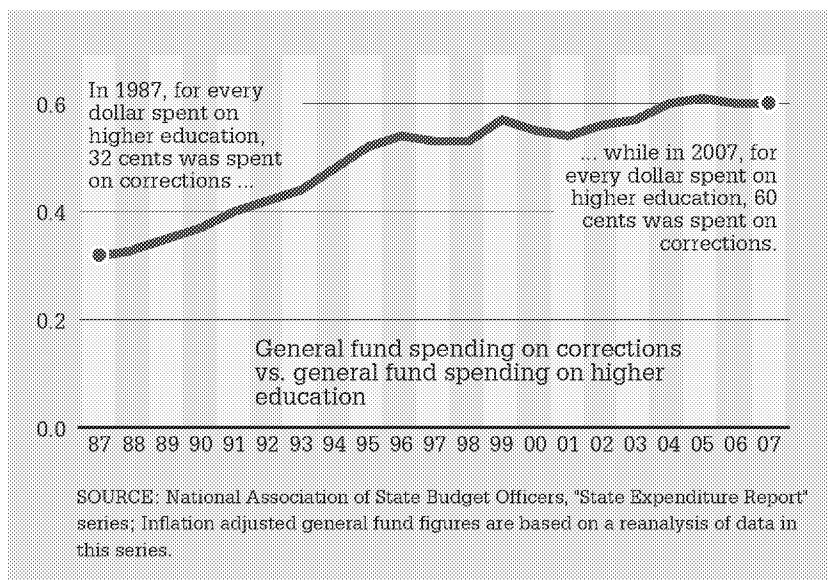


TABLE A-5 State Employees in Corrections Workforce, 2006

(by Region)

State total	11.0%
<i>Northeast</i>	10.2%
Connecticut	12.6%
Maine	6.1%
Massachusetts	7.1%
New Hampshire	7.1%
New Jersey	6.5%
New York	13.6%
Pennsylvania	10.9%
Rhode Island	8.2%
Vermont	8.3%
<i>Midwest</i>	10.3%
Illinois	10.3%
Indiana	8.3%
Iowa	6.0%
Kansas	8.5%
Michigan	12.8%
Minnesota	5.2%
Missouri	13.9%
Nebraska	8.6%
North Dakota	3.8%
Ohio	11.8%
South Dakota	6.3%
Wisconsin	14.0%
<i>South</i>	12.1%
Alabama	5.7%
Arkansas	8.5%
Delaware	11.0%
Florida	15.1%
Georgia	15.9%
Kentucky	5.2%
Louisiana	8.7%
Maryland	13.1%
Mississippi	6.4%
North Carolina	15.0%
Oklahoma	8.4%
South Carolina	9.9%
Tennessee	8.8%
Texas	16.9%
Virginia	11.7%
West Virginia	8.7%
<i>West</i>	10.3%
Alaska	6.9%
Arizona	14.5%
California	12.8%
Colorado	9.7%
Hawaii	4.2%
Idaho	8.4%
Montana	6.3%
Nevada	13.5%
New Mexico	7.8%
Oregon	8.8%
Utah	6.5%
Washington	7.7%
Wyoming	7.4%

(by Percent)

State total	11.0%
Texas	16.9%
Georgia	15.9%
Florida	15.1%
North Carolina	15.0%
Arizona	14.5%
Wisconsin	14.0%
Missouri	13.9%
New York	13.6%
Nevada	13.5%
Maryland	13.1%
California	12.8%
Michigan	12.8%
Connecticut	12.6%
Ohio	11.8%
Virginia	11.7%
Delaware	11.0%
Pennsylvania	10.9%
Illinois	10.3%
South Carolina	9.9%
Colorado	9.7%
Tennessee	8.8%
Oregon	8.8%
Louisiana	8.7%
West Virginia	8.7%
Nebraska	8.6%
Kansas	8.5%
Arkansas	8.5%
Idaho	8.4%
Oklahoma	8.4%
Vermont	8.3%
Indiana	8.3%
Rhode Island	8.2%
New Mexico	7.8%
Washington	7.7%
Wyoming	7.4%
Massachusetts	7.1%
New Hampshire	7.1%
Alaska	6.9%
New Jersey	6.5%
Utah	6.5%
Mississippi	6.4%
Montana	6.3%
South Dakota	6.3%
Maine	6.1%
Iowa	6.0%
Alabama	5.7%
Minnesota	5.2%
Kentucky	5.2%
Hawaii	4.2%
North Dakota	3.8%

Source: Reanalysis of U.S. Census Bureau, State Government Employment and Payroll data

TABLE A-6

1 in X: Incarceration Rates by Sex, Race/Ethnicity, Age & State

	All				Men				Women			
	All	White	Black	Hispanic	All	White	Black	Hispanic	All	White	Black	Hispanic
All ages	133	245	41	96	72	136	21	54	746	1064	279	658
18+	102	194	29	64	54	106	15	36	580	859	203	436
18-19	101	191	36	85	57	107	19	47	833	1235	382	571
20-24	53	103	17	41	30	60	9	24	345	453	157	289
25-29	53	104	17	43	30	59	9	26	333	443	140	328
30-34	54	92	17	47	30	53	9	27	270	343	108	300
35-39	63	104	19	55	36	61	10	32	265	355	100	297
40-44	76	124	24	66	43	71	13	38	352	500	125	358
45-54	153	266	45	101	83	148	23	55	893	1333	307	709
55+	837	1249	264	383	391	588	115	184	8333	11111	3571	3846

Source: All data are from BJS, "Prison and Jail Inmates at Midyear 2006," or reanalysis thereof.

For example, this cell indicates that 1 in every 115 black males 55 years or older was behind bars on June 30, 2006.

STATE INCARCERATION RATES, 2005, BY QUINTILE

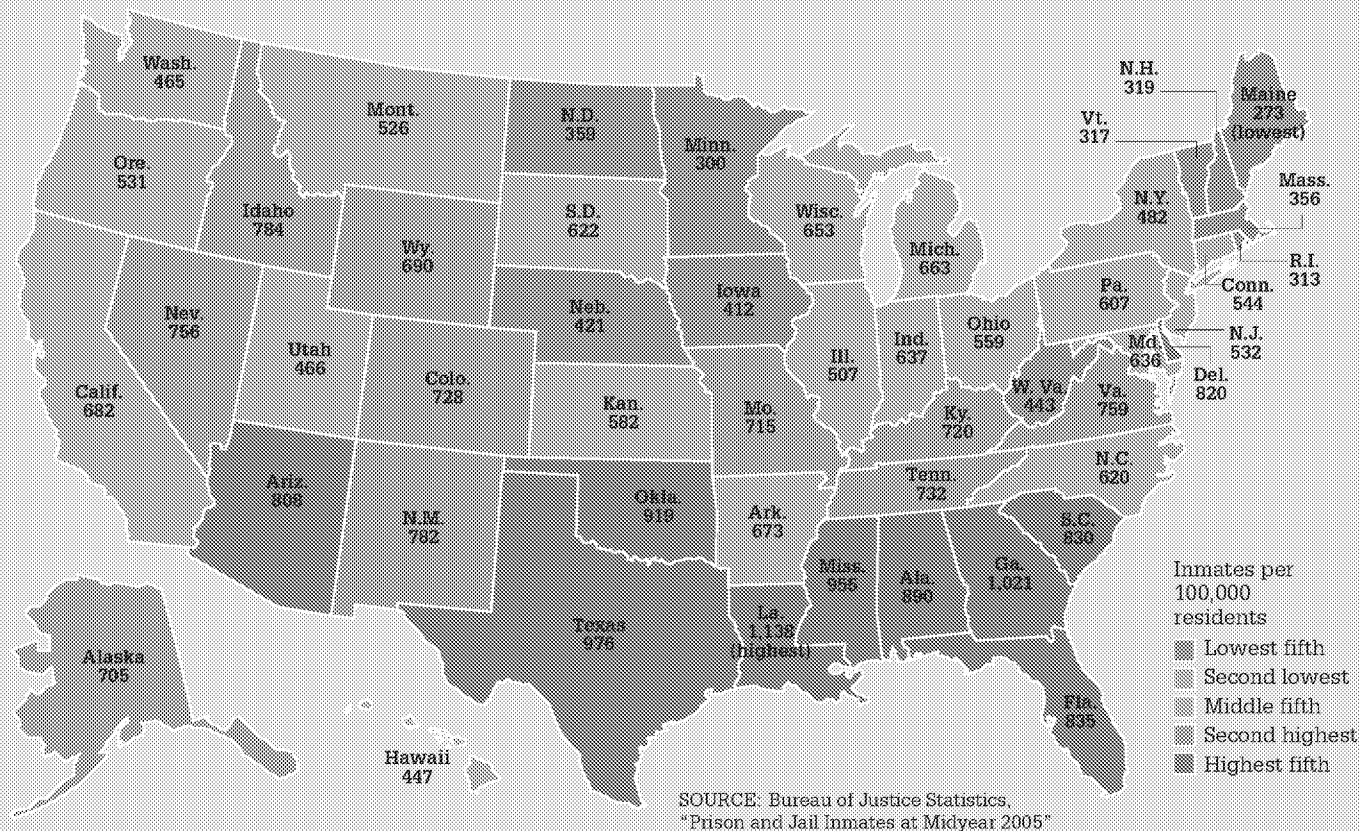
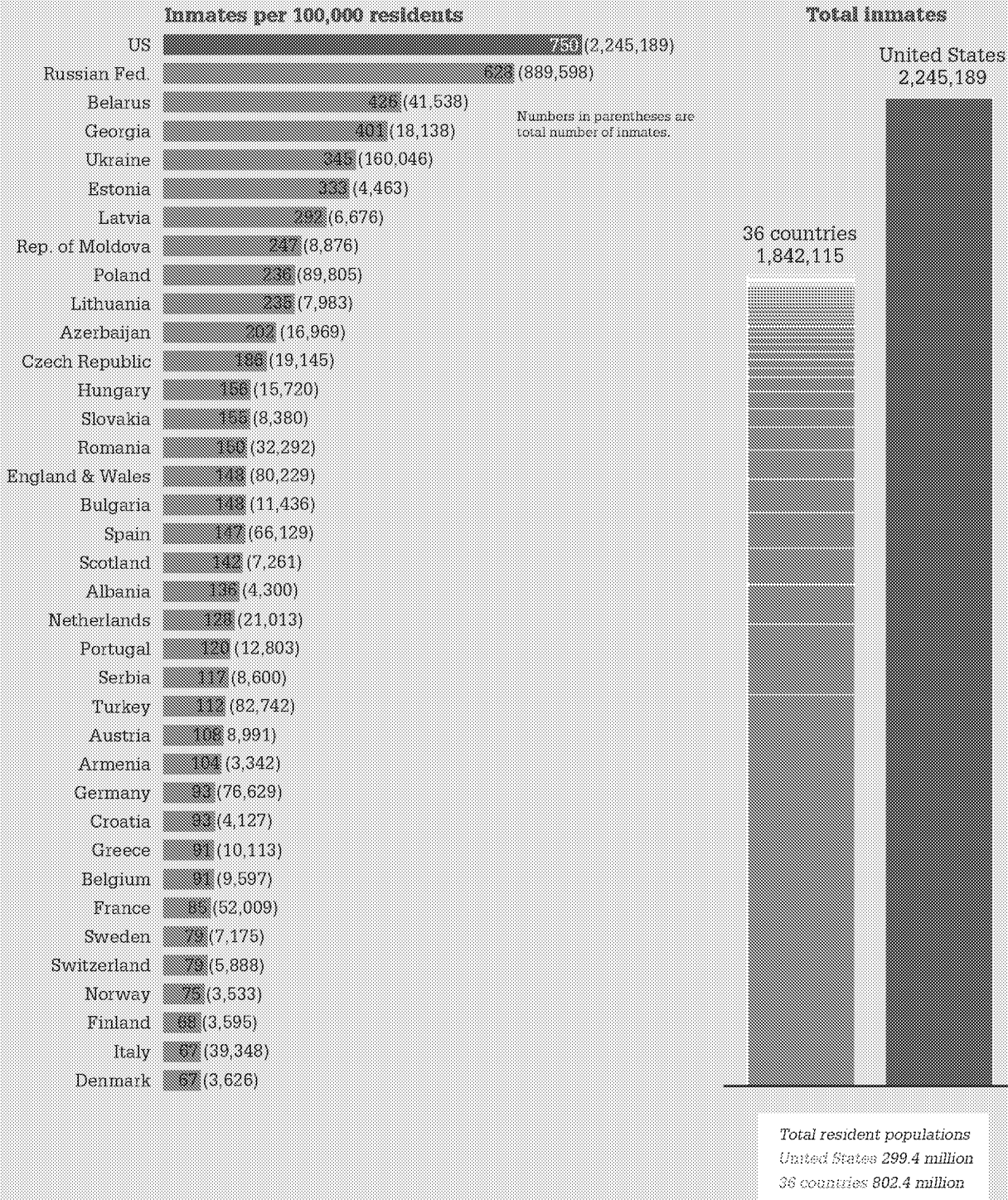


TABLE A-7

INTERNATIONAL COMPARISONS

The U.S. inmate population compared to the 36 largest European inmate populations (years vary).

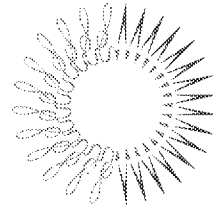


SOURCE: International Centre for Prison Studies at King's College, London. "World Prison Brief." Data downloaded January 2008.

NOTE: Rates are for total number of residents, not just adults. Figures in this chart may not align with others due to differences in counting methods.



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The Revolving Door of America's Prisons



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Launched in 2006, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

Executive Summary

The dramatic growth of America's prison population during the past three decades is by now a familiar story. In 2008, the Pew Center on the States reported that incarceration levels had risen to a point where one in 100 American adults was behind bars. A second Pew study the following year added another disturbing dimension to the picture, revealing that one in 31 adults in the United States was either incarcerated or on probation or parole.

The costs associated with this growth also have been well documented. Total state spending on corrections is now about \$52 billion, the bulk of which is spent on prisons. State spending on corrections quadrupled during the past two decades, making it the second fastest growing area of state budgets, trailing only Medicaid.

While America's imprisonment boom and its fiscal impacts have been widely debated, the public safety payoff from our expenditures on incarceration has undergone far less scrutiny. Now, however, as the nation's slumping economy continues to force states to do more with less, policy makers are asking tougher questions about corrections outcomes.

One key element of that analysis is measuring recidivism, or the rate at which offenders return to prison. Prisons, of course, are not solely responsible for recidivism results. Parole and probation agencies, along with social service providers and community organizations, play a critical role.

Although preventing offenders from committing more crimes once released is only one goal of the overall correctional system, it is a crucial one, both in terms of preventing future victimization and ensuring that taxpayer dollars are spent effectively. This report seeks to elevate the public discussion about recidivism, prompting policy makers and the public to dig more deeply into the factors that impact rates of return to prison, and into effective strategies for reducing them.

A Fresh Look at the Numbers

For years the most widely accepted sources of national recidivism statistics have been two studies produced by the U.S. Department of Justice's Bureau of Justice Statistics (BJS). The most recent of those reports, which tracked offenders released

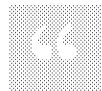
EXECUTIVE SUMMARY

from state prison in 1994, concluded that a little more than half of released offenders (51.8 percent) were back in prison within three years, either for committing a new crime or for violating rules of their supervision. Published in 2002, the BJS study followed a sample of offenders from 15 states, and did not provide any state-level recidivism data.

Recognizing the importance of recidivism to policy makers seeking better results from their correctional systems, Pew, in collaboration with the Association of State Correctional Administrators (ASCA), undertook a comprehensive survey aimed at producing the first state-by-state look at recidivism rates. The Pew/ASCA survey asked states to report three-year return-to-prison rates for all inmates released

from their prison systems in 1999 and 2004. This survey differs from the prior BJS study in many important ways, the most significant of which is that it includes recidivism data from more than twice as many states.

According to the survey results, 45.4 percent of people released from prison in 1999 and 43.3 percent of those sent home in 2004 were reincarcerated within three years, either for committing a new crime or for violating conditions governing their release. While differences in survey methods complicate direct comparisons of national recidivism rates over time, a comparison of the states included in both the Pew/ASCA and BJS studies reveals that recidivism rates have been largely stable. When excluding California, whose size skews the national picture, recidivism rates between 1994 and 2007 have consistently remained around 40 percent.



Without education, job skills, and other basic services, offenders are

likely to repeat the same steps that brought them to jail in the first place ...

This is a problem that needs to be addressed head-on. We cannot say we are doing everything we can to keep our communities and our families safe if we are not addressing the high rate at which offenders are becoming repeat criminals.”

Louisiana Gov. Bobby Jindal (R)
March 18, 2011

The new figures suggest that despite the massive increase in corrections spending, in many states there has been little improvement in the performance of corrections systems. If more than four out of 10 adult American offenders still return to prison within three years of their release, the system designed to deter them from continued criminal behavior clearly is falling short. That is an unhappy reality, not just for offenders, but for the safety of American communities.

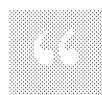
Variation among States

While Pew's new national numbers provide a useful and representative snapshot of recidivism, this report goes further, breaking out the figures state by state and showing change in reoffending trends over time. The result is a patchwork of recidivism rates that provokes myriad questions about the dramatic variations seen across the country.

For example, why do Wyoming and Oregon have the lowest overall recidivism rates for offenders released in 2004, and why do Minnesota and California have the highest? Why does North Carolina return relatively few ex-offenders to prison for technical violations of their parole, but reincarcerate a comparatively large proportion for new crimes? What drove the recidivism rate down by 22.1 percent in Kansas between 1999 and 2004, and what drove it up 34.9 percent in South Dakota during the same time period?

The causes of these variations are not always what they seem, and we explore some individual state stories, along with

some of the variables that influence recidivism patterns. We also examine policies and practices with demonstrated success in helping states reduce their recidivism rates. These strategies, anchored in research and proven over time, include the use of sophisticated risk assessments, meticulous reentry planning and post-release supervision carefully tailored to each offender's circumstances. By employing such measures and other evidence-based interventions, states can improve the odds that released offenders will not reappear at the prison gate. That outcome benefits everyone, saving public funds and keeping communities safe.



By reducing the rate of offenders who return to prison, we keep our communities safer, our families more intact, and we're able to begin reinvesting incarceration costs to other critical services."

Kentucky Gov. Steve Beshear (D)
January 4, 2011

Introduction

Since the early 1970s, prisons have been the weapon of choice in America's fight against crime. Between 1973 and 2009, the nation's prison population grew by 705 percent, resulting in more than one in 100 adults behind bars.¹ This growth came at substantial cost, with annual state and federal spending on corrections exploding by 305 percent during the past two decades, to about \$52 billion.² During that same period, corrections spending doubled as a share of state funding. It now accounts for one of every 14 general fund dollars,³ and one in every eight state employees works for a corrections agency.⁴

This high price would be more than defensible had it yielded proportionate improvements in public safety. In fact, the crime rate has been falling since the early 1990s, and is now at its lowest level since 1968.⁵ Prison expansion certainly contributed to this trend. The most sophisticated research gives prison growth credit for one-quarter to one-third of the crime drop during the 1990s.⁶ Other factors likely included advances in law enforcement practices, changes in drug markets and an aging American population, to name a few.

However, a deeper look at the data reveals a far more complicated picture with significant implications for public policy:

- During the past 10 years, all 19 states that cut their imprisonment rates also experienced a decline in their crime rates.⁷
- Florida and New York began the twenty-first century with nearly the same size prison population (about 70,000 inmates). During the ensuing decade, Florida added 30,000 inmates and now has more than 100,000 persons behind bars. Meanwhile, New York's prison population fell below 60,000. Yet the crime rate dropped in both states by about the same rate. In fact, New York's crime drop was slightly larger (29.2 percent) compared with Florida's (28.2 percent).
- Researchers calculate that we are past the point of diminishing returns, where each additional prison cell provides less and less public safety benefit. For example, in 1980, Washington State received more than \$9 in benefits for every dollar spent locking up drug offenders; now that

there are so many people behind bars, the state receives just 37 cents in benefits for each dollar spent.⁸

- Finally, if prisons helped cut crime by at most one-third, then other factors and efforts must account for the remaining two-thirds of the reduction. And because prisons are the most expensive option available, there are more cost-effective policies and programs. For example, it costs an average of \$78.95 per day to keep an inmate locked up, more than 20 times the cost of a day on probation.⁹

Figures like these, along with massive state budget shortfalls, have helped contribute

to a growing national movement that puts prison spending under greater scrutiny than ever before. For most of the past 40 years, the most common question policy makers asked about the budgets of state departments of corrections was simply “How many more prisons do we need?” Today state and national leaders from both parties are asking a much tougher question: “How do we get taxpayers a better public safety return on their corrections dollars?”

Recidivism as a Performance Measure

In their efforts to answer that question, many states are taking a hard look at their recidivism rate as a key indicator of the return they receive from their correctional investments. Prisons serve multiple purposes, including exacting retribution for breaking the law, separating offenders from society so they cannot commit more crimes, deterring the general population from committing crimes and discouraging incarcerated offenders from committing new crimes once they are released. The last goal—avoiding future criminal conduct through deterrence and rehabilitation—is measured by the recidivism rate and has long been considered the leading statistical indicator of return on correctional investment.

To be sure, the performance of corrections agencies should be judged by whether the recidivism rate is

“To increase public safety in this austere budget environment, we must support cost-effective efforts by states that are grounded in the ‘best practices’ and draw on the latest innovations from public corrections and the faith-based community ... For many years, reducing recidivism seemed nearly impossible. Now, many states are starting to turn a corner through commonsense and cost-effective reforms.”

U.S. Rep. Frank Wolf (R-VA, chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations)
January 8, 2011

rising or falling over time. All other things being equal, a state where corrections agencies are strategically improving their release preparation and supervision strategies will see its recidivism rate drop.

Policy makers should exercise caution, however, before merely accepting low or high recidivism numbers as evidence of successful or failing correctional programs. A low recidivism rate does not always reflect the use of sound release preparation and supervision strategies. By contrast, they also may be the by-product of a wide range of other factors, such as policies that send low-risk offenders to prison instead of granting probation, which is likely to result in a low rate of reoffending but at a higher cost. Moreover, beyond the justice system, recidivism rates can be influenced by larger social and economic forces. Therefore, any evaluation of recidivism data must include an understanding of this broader context and the larger policies and practices that drive the numbers.

For this reason, states in this report are presented in alphabetical order, rather than ranked by recidivism rate. Readers are advised to focus on differences within states over time, and to probe for reasons why one state's recidivism rate might be higher than its neighbor's rather than to make judgments about the performance of its corrections agencies based on this single indicator.

Overview of the Study

At a time when states are mired in fiscal crises and struggling with painful budget choices, policy makers need updated information about the public safety return on corrections spending in their states. Specifically, they need knowledge about what is working—and what is not—to slow down the revolving door of prisons.

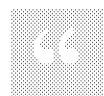
To help them along that path, Pew undertook a first-of-its-kind project—a survey of every state's department of

WHAT IS THE RECIDIVISM RATE?

Recidivism is the act of reengaging in criminal offending despite having been punished. The prison recidivism rate—the subject of this report—is the proportion of persons released from prison who are rearrested, reconvicted or returned to custody within a specific time period. Typically, recidivism studies follow released offenders for three years following their release from prison or placement on probation. Offenders are returned to prison for one of two reasons:

1. For committing a new crime that results in a new conviction
or
2. For a technical violation of supervision, such as not reporting to their parole or probation officer or failing a drug test

INTRODUCTION



Prisons are often the forgotten element of the criminal justice system until things go badly. Catching the guy and prosecuting him is really important work, but if we don't do anything with that individual after we've got him, then shame on us. If all that effort goes to waste and we just open the doors five years later, and it's the same guy walking out the door and the same criminal thinking, we've failed in our mission."

Minnesota Commissioner of Corrections Tom Roy
April 7, 2011

corrections—with the aim of creating a single source of state-level recidivism data.¹⁰ The survey, conducted with assistance from the Association of State Correctional Administrators (ASCA), asked states to provide recidivism rates for the 36 months following an offender's release from prison.¹¹ States also were asked to

specify whether an individual was returned to prison for a new criminal conviction or for a technical violation of the terms of his or her supervision. The survey sought estimates of recidivism for two cohorts of prisoners, those released in 1999 and for a second group released in 2004.

Thirty-three states responded with data for the 1999 release cohort, and 41 states provided data for offenders released in 2004, allowing for an analysis of recidivism trends in almost three dozen states that represent 87 and 91 percent of all releases from state prison, respectively.¹² This report provides the first opportunity to examine intrastate rates over time. These data provide crucial insight to policy makers as they assess the performance of their state's correctional system. Those states that did not participate either were unable to respond to our survey because they had not collected data on recidivism for the requested period(s) or they did not respond to numerous efforts to contact state officials. The Appendix contains more information on the research methodology.

A Closer Look at Recidivism Rates

New Figures Show Steady National Recidivism Rate

The Pew/ASCA survey found the three-year return-to-prison rate for inmates released in 1999 to be 45.4 percent, and 43.3 percent for those released in 2004. Recidivism rates changed little between the 1999 and 2004 release cohorts, despite more than 63,000 more people being discharged from prison in 2004. The total number of releases from prison increased by 13.5 percent in the 33 states that reported data for both 1999 and 2004

66

I believe in, and we have, tough statutes and sentences for those who break our laws and endanger our citizens and communities. As a result, our crime rates are down. However, our recidivism rate is still too high. Reduction in recidivism means fewer victims, and less prison costs.”

Virginia Gov. Bob McDonnell (R)
January 12, 2011

(see Exhibit 1 for state-by-state data). The number of prisoners released increased in 29 states but decreased in four. Across the 33 states that reported for both periods, the recidivism rate declined slightly, dropping 4.8 percent between the cohorts.

Despite a nearly two-decade decline in national crime rates, the rate of reincarceration for a new crime among those persons released from prison increased by 11.9 percent between the two cohorts in this study. However, this increase was offset by a 17.7 percent drop in the rate of offenders returned for a technical violation. These numbers suggest that states are improving their responses to community supervision violations, thereby reserving prison space for ex-offenders who have committed new crimes. Nevertheless, the increase in the rate of returns for new crimes underscores the need for states to identify and implement evidence-based strategies that protect public safety and hold offenders accountable.

Prior to this research, the most recent studies of national recidivism rates by BJS found that the rate of released

A CLOSER LOOK AT RECIDIVISM RATES

Exhibit 1

State Prison Releases and Recidivism Rates

	Releases	1999–2002 Recidivism	Releases	2004–2007 Recidivism
Alabama	8,771	36.0%	10,880	35.1%
Alaska*	N/A	N/A	11,619	50.4%
Arizona	13,091	39.6%	15,795	39.1%
Arkansas*	5,663	49.0%	6,244	44.4%
California	126,456	61.1%	118,189	57.8%
Colorado	N/A	N/A	N/A	N/A
Connecticut*	13,950	45.8%	16,100	43.7%
Delaware	N/A	N/A	N/A	N/A
Florida	N/A	N/A	N/A	N/A
Georgia*	16,951	38.0%	18,972	34.8%
Hawaii	N/A	N/A	N/A	N/A
Idaho	1,071	33.0%	1,574	33.6%
Illinois	25,025	51.8%	35,606	51.7%
Indiana	N/A	N/A	13,651	37.8%
Iowa*	2,953	32.4%	3,533	33.9%
Kansas*	5,088	55.1%	5,178	42.9%
Kentucky	7,622	38.8%	10,743	41.0%
Louisiana	12,787	43.9%	13,391	39.3%
Maine	N/A	N/A	N/A	N/A
Maryland	N/A	N/A	N/A	N/A
Massachusetts*	2,860	38.1%	2,299	42.2%
Michigan	10,985	38.0%	14,217	31.0%
Minnesota	3,940	55.1%	5,189	61.2%
Mississippi	5,742	26.6%	8,428	33.3%
Missouri	12,974	48.7%	18,637	54.4%
Montana	906	41.8%	1,253	42.1%
Nebraska	1,612	28.8%	1,846	32.3%
Nevada	N/A	N/A	N/A	N/A

(continued)

A CLOSER LOOK AT RECIDIVISM RATES

Exhibit 1

State Prison Releases and Recidivism Rates *(continued)*

	1999–2002		2004–2007	
	Releases	Recidivism	Releases	Recidivism
New Hampshire*	N/A	N/A	1,082	44.2%
New Jersey	14,034	48.2%	14,039	42.7%
New Mexico	N/A	N/A	3,615	43.8%
New York	25,592	39.9%	24,921	39.9%
North Carolina	23,445	43.8%	22,406	41.1%
North Dakota	N/A	N/A	845	39.6%
Ohio	22,128	39.0%	26,695	39.6%
Oklahoma	7,802	24.1%	8,159	26.4%
Oregon	2,769	33.4%	4,202	22.8%
Pennsylvania	6,844	36.6%	8,750	39.6%
Rhode Island	N/A	N/A	770	30.8%
South Carolina	9,299	26.8%	11,211	31.8%
South Dakota	1,231	33.7%	2,034	45.5%
Tennessee	N/A	N/A	N/A	N/A
Texas*	56,571	32.1%	72,130	31.9%
Utah	2,563	65.8%	3,056	53.7%
Vermont	N/A	N/A	N/A	N/A
Virginia	8,997	29.0%	11,999	28.3%
Washington	5,738	32.8%	8,093	42.9%
West Virginia	N/A	N/A	1,346	26.8%
Wisconsin*	5,206	46.1%	8,501	46.0%
Wyoming	N/A	N/A	705	24.8%
Total	470,666	45.4%	567,903	43.3%

NOTES: The national total for 1999–2002 is not directly comparable to the national total for 2004–2007 because eight states did not report data for the 1999–2002 cohort. The 2004–2007 recidivism rate for the 33 states that reported data in both years is 43.3 percent, but the total releases are 534,270. Data are missing for nine states (Colorado, Delaware, Florida, Hawaii, Maryland, Maine, Nevada, Tennessee and Vermont). Eight additional states provided data for 2004–2007 only (Alaska, Indiana, North Dakota, New Hampshire, New Mexico, Rhode Island, West Virginia and Wyoming).

*See the jurisdictional notes in the Appendix for information about this state.

SOURCE: Pew/ASCA Recidivism Survey.

A CLOSER LOOK AT RECIDIVISM RATES

prisoners who were reincarcerated within three years of release had increased sharply.¹³ For inmates released in 1983, the estimated national recidivism rate was 41.4 percent; for prisoners released in 1994, it had jumped to 51.8 percent. The Pew/ASCA survey differs from the prior BJS studies in many important ways. See the Appendix for a discussion of the differences between the studies.

While differences in survey methods complicated direct comparisons of national recidivism rates over time, a comparison of the states included in both the Pew/ASCA and BJS studies reveals that recidivism rates have been largely stable since the mid-1990s. The high number of releases and rate of return for offenders from California has a significant impact on the national recidivism rates. When California is excluded from the national figures, the recidivism rate for the remaining states declines to 39.7 percent and 38.5 percent for the 1999 and 2004 release cohorts, respectively. These rates are similar to the 40.1 percent rate that BJS produced for its 1994 release cohort when excluding California. This suggests that the overall national recidivism rate has been largely stable, with roughly four in 10 prisoners returning to prison within three years of release.

State Rates Vary Widely

The national recidivism rates provide an important barometer of return on

correctional investment, but they obscure key differences among the states. The correctional landscape varies dramatically in scale, policy and practice from state to state, rendering national estimates helpful for understanding broad trends and developments, but ill suited for identifying state progress and promising areas for improvement. State-level analyses uncovered interesting findings related to prisoner releases and rates of recidivism in the past decade.

Recidivism among 1999 Releases

In the 33 states that reported data for the 1999 release cohort, 45.4 percent of inmates released from prison were reincarcerated within three years. Utah

COMPARING STATE RATES: A NOTE OF CAUTION

Readers are advised to use caution when comparing recidivism rates across states. A state's recidivism rate is the product of numerous variables, and valid interstate assessments are possible only with careful study and analysis of the wide range of unique conditions affecting corrections agencies in each state.

See the Appendix for a discussion of interstate differences in the measurement and reporting of recidivism rates.

A CLOSER LOOK AT RECIDIVISM RATES

had the highest rate of recidivism, with 65.8 percent of those released from prison sent back within three years. In five states, more than half of released prisoners were returned to prison during the follow-up period.

Oklahoma had the lowest rate of recidivism, with 24.1 percent of released prisoners returned to custody. Four other states (Mississippi, Nebraska, South Carolina and Virginia) reported three-year recidivism rates of less than 30 percent.

Breaking the numbers down further, 19.9 percent of all released offenders were reincarcerated for a new crime and 25.5 percent were returned for a technical violation of supervision (Exhibit 2). States' rates of recidivism for a new crime ranged from a high of 41.9 percent in North Carolina to a low of 8 percent in Georgia. Recidivism for technical violations was equally varied, topping out at 51.2 percent in Utah and dipping as low as 1.9 percent in North Carolina.

Recidivism among 2004 Releases

Findings for the 2004 release cohort largely mirrored those for the 1999 group, with some interesting state variations. Figures from the 41 participating states showed that 43.3 percent of people released from prison in 2004 were returned within three years. Minnesota reported the highest recidivism rate, with 61.2 percent of released prisoners

returning to custody within three years. Six states had recidivism rates that were above 50 percent.

Oregon had the lowest rate of recidivism in the country for prisoners released in 2004—22.8 percent. Nationally five states reported recidivism rates under 30 percent for their 2004 releases.

Among this group of released offenders, 22.3 percent were returned to prison for a new crime and 21 percent were returned for a technical violation of supervision. Alaska reported the highest rate of recidivism for a new crime (44.7 percent), while Montana reported the lowest rate (4.7 percent). A look at technical violations leading to reincarceration showed rates as high as 40.3 percent in Missouri and as low as zero in Arkansas. The reason for Arkansas's results: the Department of Community Corrections operates two distinct programs as alternatives to traditional incarceration for adult offenders who fail to comply with the terms of parole supervision.

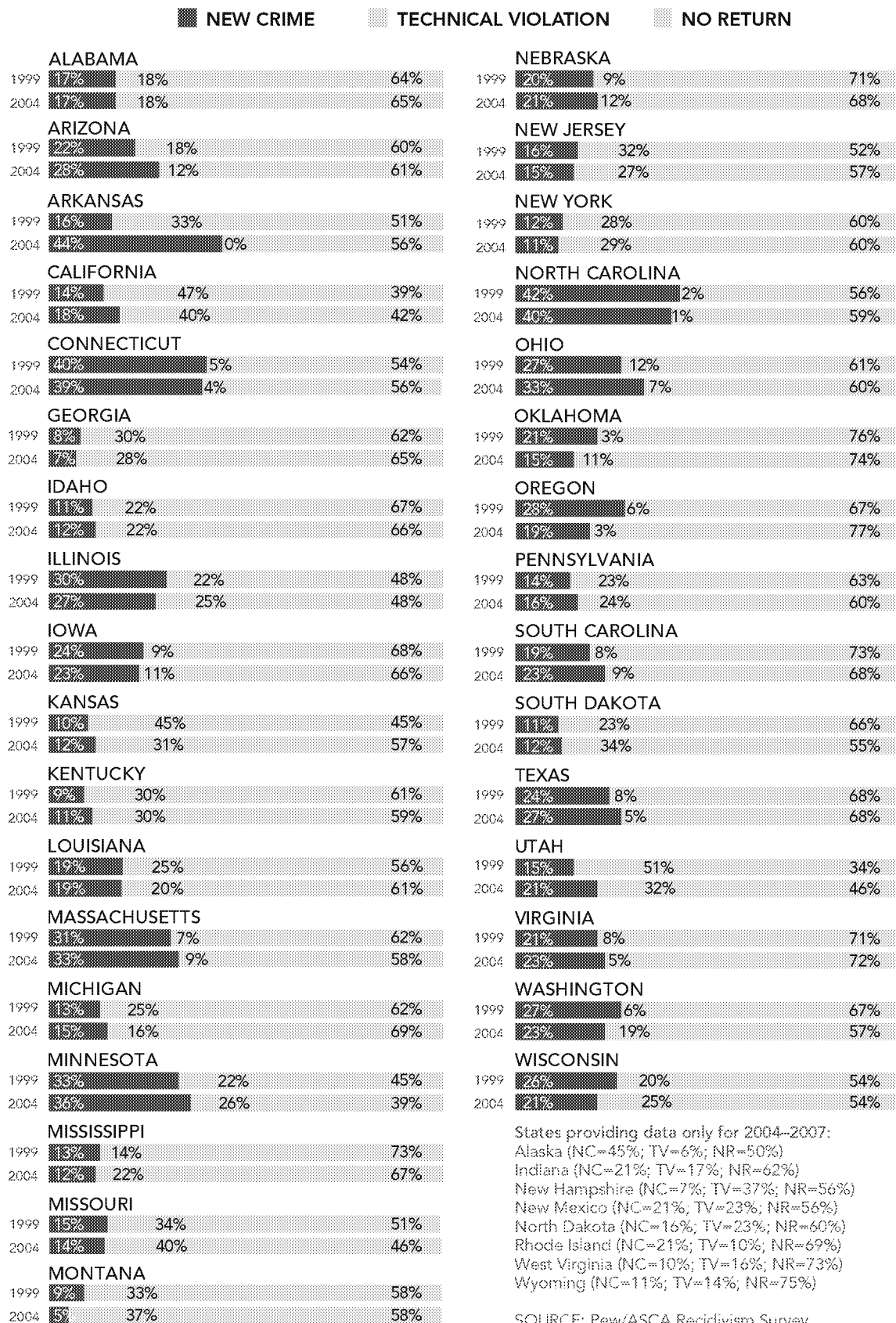
How Have Recidivism Rates Changed?

The Pew/ASCA study shows a nearly even split between states that had increasing and decreasing rates of recidivism between the 1999 and 2004 releases (Exhibit 3). Oregon, Kansas and Utah led the country in declining returns to prison during the

Exhibit 2

The Cycle of Prison Release

This graph shows the proportion of released offenders who returned to prison for either committing a new crime or a technical violation as well as those who did not return within three years.



A CLOSER LOOK AT RECIDIVISM RATES

study period, with Oregon reporting the steepest drop of 31.9 percent. Louisiana, Michigan and New Jersey also reported decreases of at least 10 percent.

increases of greater than 10 percent in their recidivism rates between the 1999 and 2004 cohorts.

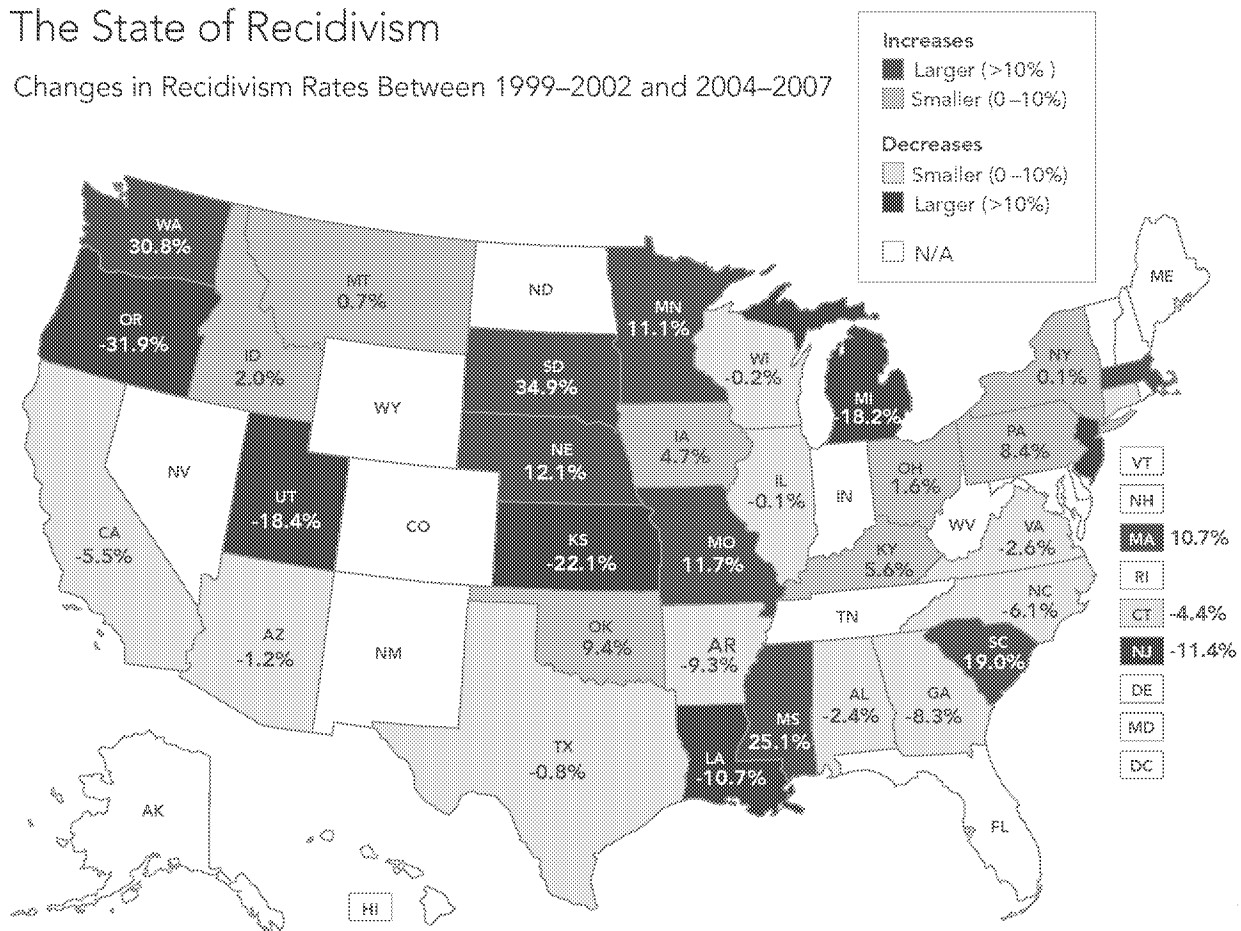
Meanwhile, South Dakota and Washington State reported increases of greater than 30 percent. Six other states (Massachusetts, Minnesota, Mississippi, Missouri, Nebraska and South Carolina) reported

Focusing the lens more tightly, Montana and Oregon documented the largest declines in new crime returns while North Carolina, Ohio and Oregon reported the largest decreases in returns for technical violations of supervision.

Exhibit 3

The State of Recidivism

Changes in Recidivism Rates Between 1999–2002 and 2004–2007



SOURCE: Pew/ASCA Recidivism Survey.

Unpacking the Numbers

Recidivism rates vary widely among the states, and there are a number of potential explanations for the differences. Many deliberate policy decisions, such as the types of offenders sentenced to prison, how inmates are selected for release, the length of stay under supervision, and decisions about how to respond to violations of supervision, can have a large impact on recidivism rates. States differ markedly with regard to these practices, which influence recidivism rates to a strikingly high degree. In other words, the numbers are only one piece of the puzzle. In order to understand the significance of a state's recidivism rate, one must examine the underlying policies and practices that impact the number.

How Does Sentencing Policy Impact Recidivism Rates?

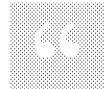
States that send comparatively low-risk offenders to prison are likely to see lower rearrest and violation rates compared with states that concentrate prison space on more dangerous offenders. If, for example, a state incarcerates a large proportion of lower-risk offenders, then its recidivism rate might be comparatively low, because such offenders would be, by definition, less of a

risk to return to prison. A state with a larger percentage of serious offenders behind bars, on the other hand, might experience higher rates of reincarceration when those offenders return to the community.

Oklahoma exemplifies the former example: "A lot of people who might be put on probation or diverted into an alternative program in another state wind up going to prison in Oklahoma," notes Michael Connelly, administrator of evaluation and analysis in the Oklahoma Department of Corrections. "These lower level folks aren't as likely to recidivate, so it benefits our overall numbers and makes us look like we're doing an even better job than we're doing." Oklahoma's overall recidivism rate for offenders released in 2004 was 26.4 percent, the third lowest in the country, the Pew/ASCA survey found.

How Does Community Corrections Policy Impact Recidivism Rates?

Few practices can influence a state's recidivism rate more dramatically than its handling of technical violations of conditions of supervision. As a result,



“It is easy to see that we are at a critical turning point in criminal justice policies—one that will hopefully result in smart and tough policies to protect the public.”

Texas State Rep. Jerry Madden (R)
May 11, 2010

taking a close look at a state’s management of such violations is key to understanding what its recidivism rate really means.

First, states that have shorter periods of post-prison supervision may have lower rates of revocation to prison, because their offenders must comply with supervision rules for shorter periods. North Carolina is a good example of this policy. Parole supervision in North Carolina lasts between six and nine months, an unusually short period. Not surprisingly, the state had the second lowest rate of technical violators returned to prison among offenders released in 2004—less than 1 percent. If you are not on parole, you are not going to be reincarcerated on a technical violation. By contrast, North Carolina has a relatively high rate of return for new crimes—40.4 percent for offenders released in 2004—placing it in the top third among states by that measure.

Second, the ability of supervision agencies to detect violations and how they respond

to such violations have a substantial impact on recidivism rates. Detection can depend on caseload sizes; the number and complexity of the rules and programs with which offenders must comply; the availability of drug testing and GPS and other monitoring systems; and the strength of the relationships that officers have with offenders’ families and communities. Responses to violations are guided by supervision philosophy, and the laws and policies that specify what officers are supposed to do when various violations are discovered.¹⁴ The examples below illustrate a few ways in which management of technical violations can influence the recidivism rate.

In some states, released offenders who break the rules of their supervision are routinely punished with a short prison stay. California, for example, has for years taken this route, an approach that has helped to keep its prison population the highest in the nation. In other states, such as Oregon, the practice is to use prison only as a last resort, and technical violations are instead met with a range of sanctions in the community, sometimes including time in jail. The state that uses prison as a response would have a higher recidivism rate, because a violator’s return to prison is counted in the calculation. But that higher rate would not necessarily mean that state is doing a worse job preparing offenders to succeed in the community. Rather, it is merely a reflection of how transgressions are handled.

Another variable in the mix is a state's fundamental parole policy. In some "truth in sentencing" states, where offenders serve 85 percent or more of their prison terms, there are proportionally fewer people on parole, because inmates will have at most 15 percent of their sentence left after release. Fewer parolees translate into fewer violations, and therefore a lower recidivism rate. Arizona, which applies a strict truth in sentencing standard to nonviolent as well as violent offenders, may be a case in point. The Pew/ASCA survey data show that only 11.5 percent of Arizona offenders released in 2004 returned to prison on a technical violation, ranking it in the lower third among states participating in the survey.

California is just the opposite. There, almost everyone released from prison goes on mandatory parole, typically for three years. That is a long time to abide by the often strict conditions imposed on parolees. This partly explains why California ranked second among states in the proportion of released offenders from 2004 who were returned to prison for technical violations within three years, with a rate of 40 percent. The proportion of released California offenders reimprisoned for new crimes, meanwhile, was just 17.7 percent, ranking it in the bottom half of states.

These kinds of differences substantially complicate interstate comparisons, and, much in the same way the Federal

Bureau of Investigation cautions against comparing state crime rates, great care should be used in comparing state recidivism rates. Differences among states certainly should prompt many questions, such as "Why is the rate in my state so much higher than our neighbor's?" But looking at the change within a state over time is more likely to yield a valid sense of the performance of any state's corrections system.

Attacking Recidivism: Examples from Three States

Assessing a state's correctional performance requires linking recidivism rates with the specific policies and practices that impact the frequency with which persons reoffend. Oregon, Michigan and Missouri are three states that took thoughtful and concerted steps to put research into practice. While none of the three would argue it has the perfect system, their stories help illuminate strategies that can help cut reoffending and corrections costs.

“We were frustrated with the revolving door of people moving in and out of the system ... The question was, are we doing the best we can do with the resources we've got?”

North Little Rock (AR) Police Chief Danny Bradley
March 7, 2011



LEADING THE WAY IN OREGON

One state considered a national standout in reducing recidivism is Oregon. For offenders released in 2004, Oregon recorded the lowest overall recidivism rate among the 41 reporting states, a rate of 22.8 percent. Oregon also experienced the biggest decline in recidivism from 1999 to 2004, a drop of almost 32 percent. Oregon officials attribute their success to a comprehensive approach to reform and a commitment to change that reaches across all levels of government—from the supervision officer in the field, to the judiciary, through the state corrections department and up the ranks of legislative leadership.

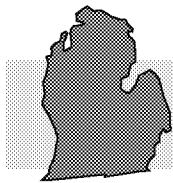
In prison, Oregon inmates receive risk and needs assessments at intake, and targeted case management during incarceration, along with detailed transition planning that begins six months before release. In the community, probation officers use a sanctioning grid to impose swift, certain consequences for violations, creating consistency across offenders and from county to county. In both settings, offender programs are anchored in research and continually monitored and updated to optimize their effectiveness.

The change in the handling of offenders who violate terms of their supervision was striking. In the past, parole and probation violators filled more than a quarter of Oregon's prison beds. Today violators are rarely reincarcerated. Instead, they face an array of graduated sanctions in the community, including a short jail stay as needed to hold violators accountable. Results of the Pew/ASCA survey confirmed this—only 5.9 percent of offenders released in 1999 and 3.3 percent of the 2004 cohort were returned to prison on technical violations.

“It’s pretty rare in Oregon for someone to be violated all the way back to prison,” said Oregon Director of Corrections Max Williams, “so we don’t have that revolving door that puts so much pressure on the prison population in other states.”

A key piece of legislation, passed with bipartisan support in 2003, helped fuel Oregon's efforts. The bill, SB 267, required that any correctional program receiving state money be evidence-based in its design and delivery.¹⁵

“I think the bill pushed Oregon forward at a faster pace, and forced us to make sure our programs were truly translating the best available research into practice in the field,” Williams said.



TURNING THE TIDE IN MICHIGAN

At the start of the millennium, Michigan did not look like a state on the cusp of inspiring correctional reform. Its myriad problems included high crime rates, a sharply rising inmate population, disappointing recidivism numbers and an economy deeply wounded by the ailing auto industry. By 2002, the state was sinking \$1.6 billion a year into corrections, almost one-fifth of its general fund.

Less than a decade later, Michigan is riding a wave of policy changes that have allowed it to shrink its inmate population by 12 percent, close more than 20 correctional facilities and keep a growing number of parolees from returning to custody.

The cornerstone of the effort is the Michigan Prisoner Reentry Initiative (MPRI). Launched in 2003 and expanded statewide in 2008, the initiative's mission is to equip every released offender with tools to succeed in the community. MPRI begins at intake, when a prisoner's risk, needs and strengths are measured to develop individualized programming. Prior to parole, offenders are transferred to a reentry facility, and a transition plan, which addresses employment, housing, transportation, mentoring, counseling and any necessary treatment for mental illness or addictions, is finalized in close collaboration with community service

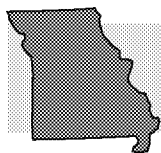
providers. After release, officers use firm but flexible graduated sanctions—including short stays in a reentry center if needed—to manage rule breaking before it escalates to more serious transgressions.

The Pew/ASCA recidivism survey found a mixed picture in Michigan. Recidivism declined by 18 percent between 1999 and 2004 because of a dramatic drop in the reincarceration of technical violators, but returns to prison for new crimes jumped by almost 21 percent during the period. Those numbers, however, do not capture progress that has occurred under MPRI since Pew's observation period ended in 2007.

Overall, post-2007 preliminary figures from the Michigan Department of Corrections show that parolees released through the MPRI are returning to prison 33 percent less frequently than similar offenders who do not participate in the program. A closer look at all offenders released from Michigan prisons reveals that parole revocations for both new crimes and technical violations are at their lowest level since record keeping began 23 years ago. In 2009, there were 195 revocations for every 1,000 parolees—101 were for technical violations and 94 were for new crimes. A decade earlier, that figure was 344 revocations per 1,000 parolees—246 for technical violations and 98 for new criminal convictions.

The trend is particularly significant because Michigan's parole population has grown dramatically in recent years. As MPRI has produced positive results, members of the state's Parole & Commutation Board have become increasingly confident about parolee success, leading to higher parole approval rates. As a result, the state paroled roughly 3,000 more prisoners in 2009 than it did in 2006.

"Although the roots of MPRI were clearly in a budget crisis, it was never only about saving money—it was a belief that doing corrections 'right' would result in a smaller prison system and large savings," recalled former Michigan Director of Corrections Patricia L. Caruso. "We had to change our entire culture to focus on success. It was challenging, but fortunately, it worked."



TACKLING TECHNICAL VIOLATIONS IN MISSOURI

“ I want to be absolutely clear. I am not advocating that we reduce prison populations just to save money. Nonviolent offenders are still law breakers, and they will break laws until they learn their lesson. What I am saying is that we need to do a better job teaching nonviolent offenders the right lessons. That takes more than prison; it takes more than slap-on-the-wrist-probation. Drug and alcohol addiction must be broken; discipline and job skills must be learned. When that can be done better, outside of expensive prison walls, that is what we should do. Results matter, public safety matters, taxpayer dollars matter, saving lives and restoring families matter.”

Chief Justice William Ray Price Jr.,
Supreme Court of Missouri
February 9, 2011

In early 2002, Missouri faced a dilemma familiar to many states: A jump in the prison population had stretched capacity to the limit, yet budget woes and other funding priorities meant there were no dollars to increase prison capacity. The message from the governor's office and General Assembly was clear—no more prisons. Find another way to cope.

In response, Missouri policy makers took a hard look at what was driving their inmate population upward. Longer terms brought on by mandatory minimum sentencing were partly responsible. But the primary contributor was a steep rise in the number of parole and probation violators behind bars. The Pew/ASCA data confirm the diagnosis. In 2004, the state recorded an overall recidivism rate of 54.4 percent—the third highest among the states. Missouri also ranked

UNPACKING THE NUMBERS

highest in the proportion of released offenders imprisoned for a technical violation (40.3 percent). That factor contributed to an overall increase in recidivism in Missouri of 12 percent between 1999 and 2004.

Over the next four years, Missouri mapped out a meticulous plan for managing all but the most serious violators in the community. It began with a work group that analyzed revocations, evolved into an inter-agency team that drafted a vision and set goals, continued through a pilot project and ultimately took flight through new policies and procedures, coupled with extensive parole and probation staff training, in 2006.

Today released offenders in Missouri are subject to “e-driven supervision” (the “e” is for evidence), which uses a new risk assessment tool to categorize parolees and help set supervision levels. When violations occur, officers have a range

of sanctions they may impose, from a verbal reprimand or modification of conditions, to electronic monitoring, residential drug treatment or “shock time” in jail.

“Every possible avenue is tried for that individual before we resort to sending him back to prison,” Missouri Director of Corrections George Lombardi said. “That approach is just part of our culture now.”

The payoff has been dramatic: 46 percent of offenders released in fiscal year 2004, for example, were returned to prison within two years, either for a new crime or technical violation. Since then, that rate has dropped steadily, and reached a low of 36.4 percent for offenders released in fiscal year 2009.

Missouri’s prison population, meanwhile, has held steady at about 30,500 inmates since 2005.

Improving Public Safety and Cutting Correctional Costs

With state revenues down and lawmakers forced to make cuts to vital public programs, corrections spending is under scrutiny like never before. Leaders from across the political spectrum are demanding a more effective correctional system that reduces recidivism and delivers taxpayers a higher public safety return on their investment.

States have been seeking better results in four main areas:

Staff and program cuts: The vast majority of states recently made or plan to make cuts to personnel and programs to save money. A recent survey of state corrections departments by the Vera Institute of Justice showed that least 32 states have implemented staff reductions or hiring freezes, and 22 states have eliminated programs or instituted cut-backs.¹⁶

Operating efficiencies: To save additional dollars, a number of states are finding ways to operate more efficiently by reducing the number of prison beds and closing facilities, reining in food service costs, investing in technology to streamline and improve institutional surveillance,

cutting back on inmate transportation costs and improving energy efficiency in facilities.¹⁷

Sentencing and release policies: Several states are reexamining their statutes that help determine who goes to prison and how long they stay. Many states are updating the dollar thresholds for various property crimes, realizing they have not been adjusted since the 1960s, while others are modifying penalties for drug crimes, including making more offenders eligible for prison alternatives.¹⁸ Other states are instituting or changing earned-time credit incentives for inmates.

Recidivism reduction strategies: Finally, almost all states have under way a variety of efforts to break the cycle of recidivism. In addition to improving correctional policy and practice, many of these initiatives involve coordination of offender services with other government agencies, such as health and housing, and community- and faith-based organizations.¹⁹

Policies targeted at reducing recidivism offer perhaps the ripest opportunities for achieving the twin goals of less

crime and lower costs. Research indicates that strong implementation of evidence-based practices (EBP) and programs can reduce recidivism rates by 50 percent.²⁰ Such powerful results were seen recently in Arizona, where a combination of new legislation and persistent efforts by the courts and probation officials to adopt EBP resulted in a 31 percent drop in new felony convictions of probationers during the past two years.²¹

That kind of change is unlikely nationwide over a short period, but Pew calculates that if the 41 states that responded to our survey with 2004 data could reduce their recidivism rates by just 10 percent, they could save more than \$635 million in averted prison costs in one year alone (see Exhibit 4 for an analysis of 10 states). More importantly, the drop in recidivism would mean fewer victims of crime.

Reducing Recidivism: Strategies for Success

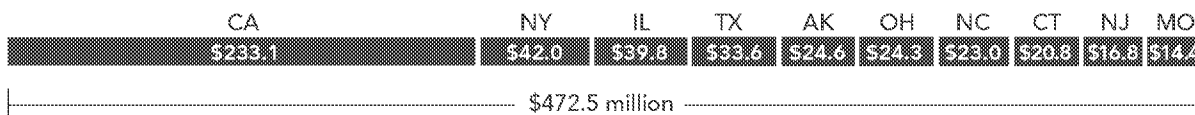
Many states already are employing a mix of strategies proven to break the cycle of recidivism. Research shows that the largest reductions in recidivism are realized when evidence-based programs and practices are implemented in prisons and govern the supervision of probationers and parolees in the community post-release. While outlining a comprehensive reentry strategy is beyond the scope of this study, leaders in the field have published helpful resources that are available to policy makers and practitioners (see sidebar). For purposes of this report, we highlight a condensed array of approaches that states have used to reduce recidivism, hold offenders accountable and control corrections costs.

Exhibit 4

Protecting Public Safety and Cutting Costs

If just the 10 states with the greatest potential cost savings reduced their recidivism rates by 10 percent, they could save more than \$470 million in a single year.

(Potential Annual Cost Savings in Millions)



NOTE: Potential cost savings were calculated by multiplying each state's annual operating cost per inmate in 2005 by one-tenth of the number of offenders who returned to prison in 2004-2007. Annual operating costs per inmate in 2005 are from Pew Center on the States, *Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011* (Washington, DC: The Pew Charitable Trusts, June 2007). To achieve the full estimated savings, states would have to close correctional facilities.

SOURCE: Pew/ASCA Recidivism Survey.

RESOURCES FOR DEVELOPING EFFECTIVE REENTRY AND SUPERVISION STRATEGIES

During the past decade, a number of leading criminal justice organizations, stakeholders and community leaders have developed comprehensive reentry and supervision strategies. There are a number of resources in the field aimed at helping policy makers and practitioners implement effective, evidence-based correctional policies and programs, including:

- Council of State Governments: *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* and the many materials from the CSG Justice Center's National Reentry Resource Center.²²
- Urban Institute: *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*²³
- National Governors Association Center for Best Practices: *Improving Prisoner Reentry through Strategic Policy Innovations*²⁴
- U.S. Department of Justice National Institute of Corrections and Crime & Justice Institute: *Implementing Evidence-Based Policy and Practice in Community Corrections*²⁵
- Pew Center on the States, Public Safety Performance Project: *Policy Framework to Strengthen Community Corrections*²⁶

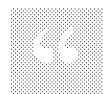
1. Define Success as Recidivism Reduction and Measure and Reward Progress

Although America's first prisons were aimed at rehabilitation, in the twentieth century the mission became command and control. Keep the inmates inside the walls, prevent riots, meet constitutionally minimal standards of confinement and make sure staff is safe. Those were, and today remain, the chief marching orders for most wardens. Setting up inmates for success when they leave has not been part of the job description.

Successful efforts to improve public safety and control corrections costs should start with defining, measuring, tracking and rewarding correctional agencies' performance in terms of recidivism reduction. It is worrisome that not all 50 states were able or willing to provide data on key public safety outcomes such as the rate of reincarceration of released offenders. States cannot determine whether their correctional interventions are effective if they lack the basic data necessary to evaluate outcomes. Focusing on desired results such as decreasing

recidivism, reducing substance abuse, increasing employment and paying victim restitution encourages correctional agencies to set goals for these important outcomes, to track their performance and to use that information to manage and improve practice. Further, by offering incentives to agencies that reach defined targets, states can promote changes in practices—and agency culture—that lead to positive results for ex-offenders and improve public safety.

A number of states have adopted reforms to directly reduce recidivism, measure progress and reward success. In Kansas, for example, the legislature created the Kansas Sentencing Commission with the explicit responsibility of measuring and monitoring the state's progress in



As a former prosecutor, I believe strongly in securing tough and appropriate prison sentences for people who break our laws. But it is also important that we do everything we can to ensure that when these people get out of prison, they enter our communities as productive members of society, so we can start to reverse the dangerous cycles of recidivism and violence.”

U.S. Sen. Patrick Leahy
(D-VT, chair, Judiciary Committee)
July 21, 2010

reducing recidivism.²⁷ More recently, the Kansas legislature implemented incentive funding for diverting technical violators away from the expensive option of reincarceration. Legislation passed in 2007 provided \$4 million annually in state grants to county community corrections programs that submit plans to reduce revocations to prison by 20 percent.²⁸ Similarly, in the past three years, Arizona, California, Illinois and South Carolina each have passed legislation that sets up “performance incentive funding” programs for probation departments to reduce recidivism and technical violation rates.²⁹ The Arizona program provides refunds—equal to up to 40 percent of the resultant cost savings—to counties that cut revocations to prison.³⁰

The federal government, which provides hundreds of millions in aid annually to state and local justice systems, could help accelerate the trend toward results-based corrections. Similar to efforts that reward success in education and other fields, appropriate justice awards could be linked to progress on reducing recidivism and other key objectives.

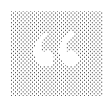
2. Begin Preparation for Release at Time of Prison Admission

Prior to the past decade, little was done to smooth an offender's transition from prison back to the community. In most states, offenders typically were set free with a few dollars and the phone number of the local parole office. While the impulse to

do the bare minimum may have reflected public sentiment, it did little to enhance public safety.

Over time, research has revealed a series of critical steps that can put offenders on a path to success. A large and growing body of evidence shows that the first such step is careful planning for release. Beginning at the time of prison admission, such pre-release preparation can yield positive results in the crucial first months after an offender returns to the community when he or she is at greatest risk of returning to prison.³¹

The process should begin with a thorough screening and assessment at intake to identify potentially urgent needs, such as substance abuse treatment and mental health services. The assessment should guide a case management plan during incarceration that uses evidence-based programming tailored to each offender's criminal risk factors. While in prison, offenders should develop relationships with parole officers and others who will be integral to their lives after release. Ensuring that conditions of supervision at home are clearly communicated and tailored to each individual's risk factors for reoffending is equally critical, and should be conveyed prior to an offender's release. In Oregon and Michigan, for example, field staff connect with inmates to help explore housing options, identify the need for mental health or other community services, and clearly communicate expectations and the rules of supervision.³²



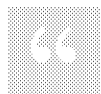
It's time to end business as usual in our prison system and for legislators to think and act with courage and creativity. We can make sensible and proven reforms to our criminal justice system that will cut prison costs while keeping the public safe."

Former House Speaker Newt Gingrich (R)
January 8, 2011

3. Optimize Use of Supervision Resources

Decades of research have produced ample evidence and professional consensus about which case management strategies most effectively reduce recidivism and improve public safety. Effective community supervision begins with validated risk and needs assessments, the accurate categorization of offenders by their risk of reoffending and the development and implementation of case plans based on an individual's needs and risk of reoffending.

The identification of risk and needs is a critical step, because supervision and programs are most effective at reducing future crime when they are specific to an offender's individual profile.³³ Failing to match treatment with an offender's risk level can, in fact, have serious consequences. Research shows, for example, that putting lower-risk



“If you just throw everyone in jail, it’s terribly expensive and they get out and they are in the same boat.”

Kentucky State Sen. Tom Jensen (R)
March 5, 2011

offenders in intensive programming actually increases their recidivism rates.³⁴ Evidence-based interventions targeting offenders with a moderate to high risk of committing new crimes produce better outcomes for both the offenders and the community.³⁵

Programming also is key, as research demonstrates that a combination of surveillance and treatment is more effective at reducing recidivism than reliance on monitoring and control alone.³⁶ Supervision can improve public safety and individual outcomes while maximizing the use of scarce correctional dollars by focusing on high-risk offenders and incorporating critical community-based mental health and substance abuse services, education and employment assistance.

Some states have codified the use of risk and needs assessments and individualized treatment plans and directed resources toward higher risk offenders. For example, in 2010 New Hampshire passed a bill mandating the administration of risk and

needs assessments to all offenders on probation and parole to inform decisions about the length of active supervision terms.³⁷ Illinois passed a similar law in 2009, creating a task force to deploy a tool to evaluate offenders’ risks, needs and resources necessary to improve outcomes. The state mandated use of this tool with at least 75 percent of the incarcerated and parole populations within five years.³⁸ Washington’s Offender Accountability Act, passed in 1999, required that felony offenders be classified according to their risk of reoffending, and that those at higher risk receive proportionally more staff attention and rehabilitation resources.³⁹

4. Impose Swift and Certain Sanctions

Some technical violators should undoubtedly be returned to prison, particularly those who violate conditions such as “stay away” orders that have a direct link to victim safety. But progressive sanctions that hold the offender accountable and keep him or her in the community—and therefore connected to family and employment—can be just as effective, if not more effective, than a costly revocation.⁴⁰

When using alternative sanctions, agencies should ensure their officers respond to violations swiftly with consequences that are proportional to the seriousness of the wrongdoing. One model of this approach is delivering remarkable results in Honolulu, Hawaii,

where the penalty for rule-breakers is a swift and certain few days in jail. Aided by collaboration among prosecutors and defense counsel, police, probation officers and treatment providers, Hawaii's Opportunity Probation with Enforcement (HOPE) program has proven in a randomized controlled trial to cut both revocations and new arrests by more than 50 percent.⁴¹

5. Create Incentives for Offenders to Succeed

Criminal justice professionals and academics have long debated whether parole and probation agencies should tilt more toward law enforcement or social work. The result is a system that tries to do a little of both, and ends up being mainly reactive, waiting for offenders to break the rules and then figuring out how to punish them.

More recently, the field has begun to benefit from research that shows offenders, just like everyone else, respond better to the prospect of rewards than to the fear of punishment. Behavioral incentives, such as offering ex-offenders the opportunity to reduce the length of their supervision terms, can be a powerful carrot, motivating them to obtain and hold a job, stay sober and in treatment, abide by other conditions of release and avoid new crimes.⁴² In addition to promoting positive behavior by offenders, earned-time credits help clear low-risk offenders from caseloads so supervision

agencies can focus on higher-risk parolees and on the critical period immediately following release.

A growing number of states are embracing earned-time credits as part of their correctional approach. In the past three years, Arizona and South Carolina passed laws authorizing their courts to reduce the term of an offender's probation by up to 20 days per month for every month the offender meets certain measures of compliance.⁴³

Nevada passed a similar law granting earned-time credit to offenders who meet specified education and treatment conditions. Recent legislation in New Hampshire directed the commissioner of corrections to issue a rule establishing standards for offenders to receive credit for participation in recidivism reduction programs.⁴⁴

A Promising Start

The nation's persistent fiscal crisis has made corrections a prime focus for policy makers. Even if states could afford to keep building and operating more prisons, recent research and the experience of several states now make it clear that there are strategies for controlling low-risk offenders and those who break the rules of their supervision that cost less and are more effective. Increasingly, lawmakers around the country are recognizing that aggressive recidivism reduction is a smarter

approach to curbing corrections costs and protecting public safety.

At least 95 percent of inmates in America ultimately will be released and returned to the community.⁴³ Keeping them crime- and drug-free is no easy assignment. Many offenders lacked education, work experience, family support and a stable living situation before they were incarcerated, and many suffer from mental illness or a history of addiction. Once released, ex-offenders have the added stigma of a prison record, a considerable

barrier to employment. Moreover, the parole and probation agencies charged with supervising them often are burdened with high caseloads and outdated technologies.

Despite the obstacles, states such as Oregon, Michigan and Missouri are demonstrating success in reducing victimization and closing the revolving door that for so long has funneled a stream of repeat offenders back into prison. Their work and promising initiatives under way in many other states deserve attention now more than ever.

Appendix: Methodology

The Public Safety Performance Project of the Pew Center on the States, in conjunction with the Association of State Correctional Administrators (ASCA), conducted a 50-state survey of state departments of correction during 2009. Pew and ASCA collected data for two cohorts released in calendar years 1999 and 2004. The questionnaire was designed to collect recidivism data for sentenced prisoners released from state correctional facilities who returned to custody for either a new criminal conviction or a technical violation of the terms of their supervision within 36 months of their release. The survey asked states to report an individual returned both for a new conviction and a technical violation as a new conviction.

Upon receipt of the surveys, Pew followed up with the states to verify the responses and solicit clarifications for any outstanding questions. We received responses from 33 states with data for the 1999 release cohort and 41 states with data for the 2004 cohort. Despite our best efforts to collect uniform and comparable data across states, the diversity of state practices in data definitions makes

assembling purely analogous data difficult. Specific areas of inconsistency include:

Period of Observation: The survey asked states to report recidivism data for cohorts released in calendar years 1999 and 2004. Three states (Iowa, New Hampshire and Texas) reported data from fiscal years 1999 and 2004.

First Releases versus All Releases: States varied concerning whether they reported only an inmate's first release for a particular offense during the calendar year, or all releases. In the Pew/ASCA survey, 13 states provided data only on first releases from prison (Exhibit A1).

Return for New Conviction versus Technical Violation: The survey asked states to classify any individual who was returned to custody for both a technical violation of the terms of his or her supervision and for a conviction of a new crime as having returned for a new crime. However, due to limitations in data collection and database management, some states were unable to report in the requested manner. Exhibit A2 shows how states reported offenders who were

returned to prison within three years of release for technical violations and then, while incarcerated, were later convicted of a new crime that occurred prior to the return to prison.

Differences Between the Pew/ASCA Survey and BJS Research

The Pew/ASCA survey and the earlier BJS research differ in important ways. First, the studies used distinct methods of collecting recidivism data. The Pew/ASCA survey asked all states to self-report data on releases from and returns to prison. For its research, BJS collected data for all prison releases from 11 states in 1983 and 15 states in 1994 and drew a sample from each of those states based on offense category. Researchers then constructed samples to match with offender “rap sheet” data to create rates of rearrest, reconviction and return to prison. BJS analyzed these release cohorts for three years following release.

A second key difference between the studies is that the Pew/ASCA survey included more than twice as many states as the BJS studies. The Pew/ASCA survey includes either 18 or 26 more states than the BJS 1994 recidivism study, depending on which cohort is used as a point of comparison. The 12 states that were included in both the Pew/ASCA 1999 survey and the BJS 1994 study had an average recidivism rate of 47.9 percent

Exhibit A1

States Providing Data on First Releases versus Data for All Releases

DATA FOR FIRST RELEASES ONLY	DATA FOR ALL RELEASES
Alaska	Alabama
California	Arizona
Indiana	Arkansas
Massachusetts	California
Mississippi	Connecticut*
Montana	Georgia
Nebraska	Illinois
New Jersey	Indiana*
North Carolina	Iowa
Oregon	Kansas
Pennsylvania	Kentucky
Rhode Island	Louisiana
South Dakota	Michigan
	Minnesota
	Missouri
	New Hampshire
	New Mexico
	New York
	Ohio*
	Oklahoma
	South Carolina*
	Texas
	Utah
	Virginia
	Washington
	West Virginia
	Wisconsin
	Wyoming

NOTES: Connecticut and South Carolina report only most recent release. Indiana reports an offender's first release in a calendar year, but that may not necessarily be their first release for their current offense. Ohio does not count more than one release in the same calendar year. Idaho and North Dakota did not verify release type.

for the 1999 cohort—a figure closer to the 51.8 percent reported by BJS for 1994. When California is excluded from the national figures, the recidivism rates for the remaining states decline to 39.7 percent and 38.5 percent for the 1999 and 2004 release cohorts, respectively. These rates are similar to the 40.1 percent rate that BJS produced for its 1994 release cohort when excluding California. The inclusion of additional states contributes to a more representative national recidivism rate.

A third difference is that the Pew/ASCA survey did not include individuals who were released from prison in one state and who may have been incarcerated subsequently in another state. This is a reflection of the self-report data gathering process of the Pew/ASCA study. State departments of correction reported on people who returned to one of their facilities, which would not count a former offender who was incarcerated in another state. The BJS study, on the other hand, did include out-of-state incarceration data. This is likely to impact states differently, depending on proximity to high-crime areas in neighboring states or major interstate drug corridors, for example.

Finally, the BJS study collected data on inmates who were being released for the first time since beginning their current sentence. Any individual who had been released in a prior year and was released again during 1994 on the same sentence

Exhibit A2

How States Classify the Reasons Offenders Were Returned to Prison

NEW CONVICTION	TECHNICAL VIOLATION
Alabama	Alaska
Arizona	Arkansas
Indiana	California
Iowa	Connecticut
Kansas	Georgia
Massachusetts	Kentucky
Michigan	Louisiana
Minnesota	Montana
Missouri	New Hampshire
Nebraska	New Mexico
North Carolina	New York
Ohio	Rhode Island
Pennsylvania	West Virginia
South Carolina	
Texas	
Utah	
Washington	
Wisconsin	

NOTES: Illinois, Mississippi, New Jersey, Oklahoma, Oregon and Wyoming did not verify in all cases whether a person returning to prison for a technical violation ultimately would be updated and reclassified as a new conviction subsequent to the final disposition of the case. South Dakota and Virginia do not take jurisdictional control of an offender until all outstanding charges have been processed. Idaho and North Dakota did not verify how they classify an offender's return to prison.

would be excluded from their analysis. In the Pew/ASCA study, only 13 states reported data for first releases. The remaining 28 states provided recidivism data for all releases. These state reporting variations and the out-of-state factor are likely to account for a minimal part of the

difference in the recidivism rates between the two methods.

Jurisdictional Notes

Within the 50 states and the District of Columbia there are hundreds of prison, probation and parole agencies (in addition to many more jails and community corrections agencies) operating with different population and budget counting rules. The following notes are provided to explain some of these differences and to account for many of the idiosyncrasies in the reported data. The notes are based on direct communication with state officials, but they are not a complete description of all counting issues.

Alaska—Alaska operates a unified prison and jail system. The number of persons released and returned to the custody of the Department of Corrections includes both prisoners and an unspecified number of individuals housed in jail.

Arkansas—Since 2003 (women) and 2004 (men), the Arkansas Department of Community Corrections has operated two distinct programs that provide alternatives to traditional incarceration for adult offenders who fail to comply with terms of parole supervision. This policy change has impacted the rate of return to prison for a technical violation for the 2004 cohort.

Connecticut—Connecticut operates a unified prison and jail system. The

number of persons released and returned to the custody of the Department of Corrections includes both prisoners and an unspecified number of individuals housed in jail.

Georgia—Beginning in 2000, Georgia prohibited misdemeanants from being supervised by state probation officers. Misdemeanants placed on probation were supervised by private probation companies, county or municipal providers. Prior to this change, misdemeanants were subject to revocation to prison as a result of their probation status. As a result, an unspecified number of misdemeanants may be present in the 1999 release cohort.

Iowa—Iowa reported data for its state fiscal year (July 1 through June 30) rather than calendar year.

Kansas—Kansas reported data for its state fiscal year (July 1 through June 30) rather than calendar year. Data include offenders paroled to another criminal justice jurisdiction if the offender was later released from that jurisdiction during the stated time frame. The data also include offenders whose sentence has expired and who will no longer be under the Kansas Department of Corrections jurisdiction. For readmissions, if the offender had been discharged, he or she can be admitted and classified only as “with a new sentence.” For every readmission, the state’s conviction file was checked to

APPENDIX: METHODOLOGY

see if there were any convictions entered with the admission in which the offense was committed while the offender was in the community. This would then count as an admission with a new sentence. Any crimes committed while the offender was incarcerated were not included. The admission was to have occurred within 36 months of release. Offenders who were on post release/parole and readmitted were counted as technical violators if no new conviction (that was committed in the community while the offender was on post release/parole) was found with the new admission.

Massachusetts—Massachusetts did not have data on releases to probation for 1999 so, in the interest of reporting comparable data, releases to probation were excluded for the 2004 release cohort as well.

New Hampshire—New Hampshire reported data for its state fiscal year (July 1 through June 30) rather than calendar year.

Texas—Texas reported data for its state fiscal year (September 1 through August 31) rather than calendar year.

Wisconsin—Wisconsin monitors persons three years from the day of release, plus any subsequent reconfinement time in a Department of Corrections (DOC) facility experienced

during the three-year follow-up period. For example, if an individual is returned to custody for 30 days within the three-year follow-up period, an additional 30 days will be added to time during which he or she is monitored for the purposes of calculating a recidivism rate. Wisconsin counts case dispositions that go beyond the three-year follow-up period if the new crime took place during the follow-up period and disposition took place later. For example, there is a 322-day span between the crime date and a final court disposition. A person in the 2004 release cohort who was subsequently re-admitted to prison at the very end of the follow-up period (12/31/2007), whose admission was classified as violator-no new sentence, but who later received a conviction for the crime that took place during the three-year follow-up period, would be counted as a new conviction for the 2004 release cohort.

In addition, Wisconsin represents persons as recidivists (new conviction) who committed a crime within the three-year at-risk period, and whose disposition for that crime resulted in a prison admission. This means that, for example, a person in the 1999 release cohort who committed a crime in 2000, but who was not apprehended, charged, convicted and sentenced to prison until 2008, is still counted as a recidivist (new conviction) under the Wisconsin DOC numbers.

Endnotes

- 1 Pew Center on the States, *Prison Count 2010: State Population Declines for the First Time in 38 Years* (Washington, DC: The Pew Charitable Trusts, April 2010).
- 2 National Association of State Budget Officers, *2009 State Expenditure Report* (Washington, DC: National Association of State Budget Officers, December 2010).
- 3 Ibid.
- 4 United States Census Bureau, *State Government Employment Data: March 2009*, <http://www2.census.gov/govs/apes/09stus.txt>.
- 5 “Sourcebook of Criminal Justice Statistics Online,” <http://www.albany.edu/sourcebook/pdf/t31062009.pdf>.
- 6 William Spelman, “The Limited Importance of Prison Expansion,” in *The Crime Drop in America*, eds. Alfred Blumstein and Joel Wallman (Cambridge University Press, 2000), 97–129; Steven D. Levitt, “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not,” *Journal of Economic Perspectives* 18, no. 1 (Winter 2004): 163–190, <http://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf>.
- 7 The 19 states are Alaska, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Oklahoma, South Carolina, Texas, Utah and Wisconsin.
- 8 Washington State Institute for Public Policy, *The Criminal Justice System in Washington State: Incarceration Rates, Taxpayer Costs, Crime Rates, and Prison Economics* (Olympia, WA: Jan. 2003).
- 9 Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: The Pew Charitable Trusts, March 2009).
- 10 Appendix provides more information about the methodology of this study.
- 11 This report does not measure the impact of probation revocations to prison.
- 12 Releases for 1999 from Allen J. Beck, Jennifer C. Karberg and Paige M. Harrison, *Prison and Jail Inmates at Midyear 2001*, U.S. Department of Justice, Bureau of Justice Statistics, (2002); releases for 2004 from “Sourcebook of Criminal Justice Statistics Online,” <http://www.albany.edu/sourcebook/pdf/t600092008.pdf>.
- 13 Allen J. Beck and Bernard Shipley, *Recidivism of Prisoners Released in 1983*, U.S. Department of Justice, Bureau of Justice Statistics, (1989); Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994*, U.S. Department of Justice, Bureau of Justice Statistics, (2002). Both reports are available online at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=44>.
- 14 For a comprehensive analysis of state laws regarding responses to parole and probation violations, see National Conference of State Legislature’s *Parole and Probation Violations: State Responses*, <http://www.ncsl.org/Portals/1/documents/cj/violationsreport.pdf>; Pew Center on the States, *When Offenders Break the Rules—Smart Responses to Parole and Probation Violations*, http://www.pewcenteronthestates.org/report_detail.aspx?id=32104.
- 15 See discussion of evidence-based practices in Pew Center on the States, *Policy Framework to Strengthen Community Corrections* (Washington, DC: The Pew

ENDNOTES

- Charitable Trusts, December 2008), <http://www.pewcenteronthestates.org/uploadedFiles/Policy%20Framework.pdf>.
- 16 *The Continuing Fiscal Crisis in Corrections: Setting a New Course* (New York, NY: Vera Institute of Justice, October 2010).
- 17 Ibid; Pew Center on the States, *Ten Steps Corrections Directors Can Take to Strengthen Performance* (Washington, DC: The Pew Charitable Trusts, May 2008).
- 18 Ibid; Pew Center on the States, *One in 100: Behind Bars in America 2008* (Washington, DC: The Pew Charitable Trusts, February 2008); Pew Center on the States, *Prison Count 2010*; Pew Center on the States, *South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs* (Washington, DC: The Pew Charitable Trusts, June 2010); Adrienne Austin, *Criminal Justice Trends: Key Legislative Changes in Sentencing Policy, 2001–2010* (New York: Vera Institute of Justice, September 2010).
- 19 Many offender reentry programs are funded by the U.S. Department of Justice, Bureau of Justice Assistance, through the Second Chance Act of 2007.
- 20 Don A. Andrews, et al., "Does Correctional Treatment Work: A Clinically Relevant and Psychologically Informed Meta-analysis," *Criminology* 28 (1990): 369–404.
- 21 Pew Center on the States, *The Impact of Arizona's Probation Reforms* (Washington, DC: The Pew Charitable Trusts, March 2011).
- 22 Council of State Governments, Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (New York, NY: January 2005), <http://reentrypolicy.org/>; <http://www.nationalreentryresourcecenter.org/>.
- 23 Amy L. Solomon, Jenny W.L. Osborne, Laura Winterfield, et al., *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (Washington, DC: The Urban Institute, 2008), http://www.urban.org/uploadedpdf/411791_public_safety_first.pdf.
- 24 National Governors Association, *Improving Prisoner Reentry Through Strategic Policy Innovations*, (Washington, DC: National Governors Association, September 2005), <http://www.nga.org/Files/pdf/0509PRISONERREENTRY.PDF>.
- 25 Meghan Guevara and Enver Solomon, *Implementing Evidence-Based Policy and Practice in Community Corrections*, Second Edition, (Washington, DC: National Institute of Corrections, October 2009), <http://nicic.gov/Library/024107>.
- 26 Pew Center on the States, *Policy Framework to Strengthen Community Corrections*.
- 27 Kansas SB 50 (1989).
- 28 Kansas SB 14 (2007).
- 29 Arizona SB 1476 (2008); California SB 678 (2009); Illinois SB 1289 (2009); South Carolina SB 1154 (2010).
- 30 Arizona SB 1476 (2008); Pew Center on the States, *Getting in Sync: State-Local Fiscal Partnerships for Public Safety* (Washington, DC: The Pew Charitable Trusts, July 2008). See also the discussion of performance incentive funding in Pew Center on the States, *Policy Framework to Strengthen Community Corrections*.
- 31 National Research Council Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* (Washington, DC: The National Academies Press, 2007); Steve Aos, Marna Miller, and Elizabeth Drake, *Evidence-Based Adult Corrections Programs: What Works and What Does Not* (Olympia, WA: Washington State Institute for Public Policy, January 2006), <http://www.wsipp.wa.gov/rptfiles/06-01-1201.pdf>; Peggy B. Burke and Michael Tonry, *Successful Transition and Reentry for Safer Communities: A Call to Action for Parole* (Silver Spring, MD: Center for Effective Public Policy, 2006).
- 32 Solomon et al., *Putting Public Safety First*.
- 33 Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York, NY: Oxford University Press, 2003); Michael Jacobson, *Downsizing Prisons* (New York, NY: New York University Press, 2005); California Department of Corrections and Rehabilitation, Expert Panel on Adult Offender

ENDNOTES

- Reentry and Recidivism Reduction Programs, *Report to the California State Legislature: A Roadmap for Effective Offender Programming in California* (Sacramento, CA: California Department of Corrections and Rehabilitation, 2007); Jeremy Travis, "Reflections on the Reentry Movement," *Federal Sentencing Reporter* 20, no.2 (December 2007), http://www.jjay.cuny.edu/extra/president_articles/ReflectionsOntheReentryMovement.pdf.
- 34 See, for example, Solomon et al., *Putting Public Safety First*; James Austin, Todd Clear, Troy Duster, et al., *Unlocking America: Why and How to Reduce America's Prison Population* (Washington, DC: The JFA Institute, 2007); Jacobson, *Downsizing Prisons*; Petersilia, *When Prisoners Come Home*.
- 35 Don A. Andrews, "Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy," *Criminology and Public Policy* 5, no 3 (2006): 595–602; Aos, Miller, and Drake, *Evidence-Based Adult Corrections Programs*; James Austin, "What Should We Expect from Parole?" *Perspectives* 30, no. 2 (2006): 46–53; Peggy B. Burke, *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Transition to the Community* (Washington, DC: National Institute of Corrections, 2004); Burke and Tonry, *Successful Transition and Reentry for Safer Communities*; Francis T. Cullen and Paul Gendreau, "Assessing Correctional Rehabilitation: Policy, Practice, and Prospects," in *Criminal Justice 2000, Vol. 3: Policies, Processes, and Decisions of the Criminal Justice System* (Washington, DC: National Institute of Justice, 2000); Jacobson, *Downsizing Prisons*; Doris L. MacKenzie, *What Works in Corrections?* (New York, NY: Cambridge University Press, 2006); National Research Council, *Parole, Desistance from Crime, and Community Integration*; Faye S. Taxman, "Supervision: Exploring the Dimensions of Effectiveness," *Federal Probation* 66, no. 2 (2002): 14–27; Faye S. Taxman, "What Should We Expect from Parole," 38–45; Faye S. Taxman, "Reentry and Supervision: One Is Impossible Without the Other," *Corrections Today* 69 no. 2 (2007): 98–105, http://www.dpscs.state.md.us/publicinfo/publications/pdfs/dpp_corrections_today.pdf.
- 36 Aos, Miller, and Drake, *Evidence-Based Adult Corrections Programs*; National Research Council, *Parole, Desistance from Crime, and Community Integration*.
- 37 New Hampshire SB 500, 2010.
- 38 Illinois SB 1289, 2009.
- 39 Aos, Miller, and Drake, *Evidence-Based Adult Corrections Programs*.
- 40 Austin et al., *Unlocking America*; Peggy B. Burke, Adam Gelb, and Jake Horowitz, *When Offenders Break the Rules: Smart Responses to Parole and Probation Violations* (Washington, DC: Pew Center on the States, 2007); Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (New York, NY: Council of State Governments, 2005), <http://www.reentrypolicy.org/Report/About>.
- 41 Pew Center on the States, *The Impact of Hawaii's HOPE Program on Drug Use, Crime and Recidivism*, (Washington, DC: The Pew Charitable Trusts, January 2010).
- 42 Petersilia, *When Prisoners Come Home*; Joan Petersilia, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology and Public Policy* 6, no. 4 (2007): 807–814 (2007); Jacobson, *Downsizing Prisons*; California Department of Corrections and Rehabilitation, Expert Panel on Adult Offender Reentry and Recidivism Reduction Programs, *Report to the California State Legislature: A Roadmap for Effective Offender Programming in California* (Sacramento, CA: California Department of Corrections and Rehabilitation, 2007); Jeremy Travis, "Reflections on the Reentry Movement," *Federal Sentencing Reporter* 20, no. 2 (December 2007), http://www.jjay.cuny.edu/extra/president_articles/ReflectionsOntheReentryMovement.pdf.
- 43 Arizona SB 1476 (2008); South Carolina SB 1154 (2010).
- 44 Nevada AB 510 (2007); New Hampshire S 500 (2010).
- 45 Timothy A. Hughes and Doris J. Wilson, *Reentry Trends in the United States*, (Washington, DC: U.S. Department of Justice Bureau of Justice Statistics, 2002).



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Illinois

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After the 2000 Census, Illinois counted 26,304 mostly Black and Latino residents of Chicago as residents of downstate prison towns, which had a staggering impact on democracy at both the state, and county levels. Most of the state's prisoners (60%) are Chicago residents, but the vast majority of them (90%) are counted as residents of downstate prisons. This miscount of incarcerated people misrepresents Illinois' demographic makeup and skews its system of legislative representation. The Census Bureau continues to count Illinois' incarcerated residents at the prison locations rather than at home, but a growing campaign seeks to eliminate prison gerrymandering by changing how the state and counties *use* the Census data.

Every prison built in Illinois after 1941 was built more than 100 miles away from Chicago; the average distance from Chicago to a prison is more than 200 miles. The State bars people in prison from voting, but their presence in the Census boosts the population of the downstate districts whose legislators favor prison expansion. After the 2001 redistricting 11 downstate House districts were padded with substantial prison populations, skewing district boundaries throughout the state.

The problem is even more serious in county government, where large prisons can dominate the comparatively small populations of county legislative and supervisory districts. After redistricting following the 2010 Census, for example, 34% of LaSalle County's 6th district is incarcerated, giving every group of 66 residents in that district the same voting power as 100 residents in any other district.

Counties and municipalities, however, need not wait for state action to solve prison-based gerrymandering problems. The City of Crest Hill, for example, adjusts population data when drawing its districts, and excludes the prison population. Crest Hill's District 2 contains Stateville Correctional Center, it would be about 60% prisoners if the City included the prison in population data when redistricting in 2012.

Legislation

Current session:

A bill was introduced in the House to collect the home addresses of incarcerated people,

001825

and to require the state and county governments to draw legislature districts on the basis of Census Bureau data corrected to count incarcerated people at their home addresses:

- [HB 1489](#), "No Representation Without Population Act," cosponsored by Representatives LaShawn K. Ford, Mary E. Flowers, Eddie Lee Jackson, Sr., Camille Y. Lilly, Jehan A. Gordon-Booth, Emanuel Chris Welch, Carol Ammons, Kenneth Dunkin and Arthur Turner, filed on February 5, 2015.

Previous legislation:

- [HB 62](#) No Representation Without Population Act, prefiled by Rep. LaShawn K. Ford, January 3, 2013
- Prisoner Census Adjustment Act, [HB94 Prisoner Census Adjustment Act](#), introduced by Rep. LaShawn K. Ford, January 12, 2011. Amended and passed out of committee, but failed to pass a floor vote.
- [Fact sheet about HB94](#) [PDF]

Testimony

- [Josina Morita](#), Director of the United Congress of Community and Religious Organizations, 3/20/13

Organizations in Illinois

It's impossible to include everyone who is working toward fair districting in Illinois, but if you are looking to get involved, these are some of the people and organizations you might want to contact:

- [Josina Morita](#), [United Congress of Community and Religious Organizations](#)
- [Dan Johnson-Weinberger](#) at [Progressive Public Affairs](#)

Endorsements

- The *New York Times* editorial board has supported this movement in over 10 editorials, including [Phantom Voters in New York](#), [Prison-Based Gerrymandering](#), and [Phantom Voters, Thanks to the Census](#).

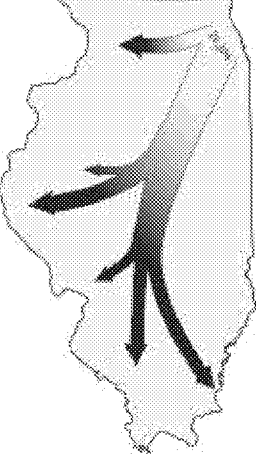
Fact sheets

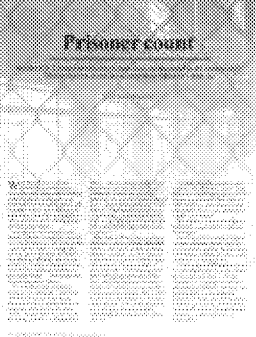
- [Support HB 62](#) [PDF] No Representation without Population Act: Ensuring fair representation for all Illinoisans (United Congress of Community and Religious Organizations)
- [Prison-Based Gerrymandering in Illinois](#) [PDF]
- [Majority of Illinois counties & cities with large prisons reject prison-based gerrymandering](#) [PDF]
- [Fact sheet about the bill](#) [PDF]

- [Prison-based Gerrymandering in Lee County, Illinois \[PDF\]](#)
- [Prison-based Gerrymandering in Clinton County, Illinois \[PDF\]](#)
- [Prison-based Gerrymandering in Rock Island County, Illinois \[PDF\]](#)
- [Prison-based Gerrymandering in Vermilion County, Illinois \[PDF\]](#)
- [Prison-based Gerrymandering in Will County, Illinois \[PDF\]](#)

Additional reading

- [Prison-based gerrymandering is a problem for all Illinoisans, especially for those in counties near prisons](#), by Josina Morita, Executive Coordinator, *The United Congress of Community and Religious Organizations*, March, 2011

-  [Importing Constituents: Prisoners and Political Clout in Illinois \(2010\)](#) is our district-by-district analysis of how crediting Chicago’s incarcerated residents to downstate districts distorts democracy and flouts federal and state law. Analysis is based on redistricting after the 2000 Census.

-  [Prisoner Count: Should U.S. Census tabulations include those incarcerated in the prison's community? Voting rights activists are among those who don't think so](#), [PDF] by Jessica Pupovac, *Illinois Issues*, February, 2010

Illinois State Commission on Criminal Justice and Sentencing Reform

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Illinois State Commission on Criminal Justice and Sentencing Reform

Illinois prison overview

Introduction

To safely reduce the Illinois prison population by 25 percent in 10 years, research and data must focus on laws, policies, and practices that determine prison admissions and lengths of stay.

There is widespread belief that more prisons will deter criminals and reduce offending. However, research shows the rate of incarceration has only a minimal relationship to crime reduction <https://www.brennancenter.org/sites/default/files/analysis/What_Caused_The_Crime_Decline.pdf>.

In fact, research indicates the use of prison has reached a point of diminishing returns and incarceration may do more harm to public safety than good <<http://www.prisonpolicy.org/scans/sp/DimRet.pdf>>.

The following is a brief description of trends related to the Illinois prison populations supported by local and national research to foster discussion of what is possible in reform.

Historical perspective

Illinois Governor Bruce Rauner is the fourth of the last five governors to convene a group of legislators, stakeholders, and criminal justice experts to address the consequences of the state's use of prison. Testimony from Illinois Criminal Justice Information Authority (ICJIA) Executive director John Maki, highlights key historic points that led to Governor Rauner's Executive Order establishing the Illinois State Commission on Criminal Justice and Sentencing Reform.

Historically, Illinois has had a costly overreliance on prison which has grown exponentially in the last four decades, from 6,000 inmates in 1974 to almost 49,000 today. The growth has continued despite space

constraints - today's prison system was designed to hold only 32,000 - and falling crime rates since the early 1990s. Figure 1 offers a timeline of significant events in the recent history of Illinois' prisons.

Figure 1 - Timeline of Illinois Prisons

1977 Illinois abolishes indeterminate sentencing in favor of determinate sentencing; new felony classification scheme created Class X for the most serious offenders; Governor Thompson reestablished the death penalty.

1977 - 1983 Prison admissions increase, longer lengths of stays increase prison population from 10,000 to 14,000.

Governor James R. Thompson's Task Force on Prison Overcrowding recommends comprehensive correction reform - diverting low-level offenders, building new prisons.

1991 Prison population fills new prisons, adds 29,000 inmates. Crime rates for property, violent offenses peak in early 1990s and fall over two decades.

1993 Prison pop. reaches 32,000 -- twice its capacity. Governor Jim Edgar's Task Force on prison overcrowding recommends continuum of community-based sanctions and moratorium on sentence enhancements. Task Force estimates the plan will reduce the prison population over 20 percent (7,500 inmates in four years). Good-time sentence credits expands for prison programs. Illinois creates new boot camp diversion programs. Tamms Correctional Center built, is Illinois' only "supermax" facility (until 2013 closure).

1998 Truth in Sentencing almost doubles length of time most serious offenders served in prison by removing their ability to earn time off their sentences.

1991 - 1999 State prisons add an additional 15,000 inmates during Governor Edgar administration.

2000 Governor George Ryan issued a moratorium on executions.

2003 Governor Rod Blagojevich focuses on reentry, reducing recidivism creates,

- (1) a graduated sanctions system for mandatory supervised release (formerly parole),
- (2) Sheridan drug treatment prison, and,
- (3) commission to examine and improve reentry systems.

State creates Illinois Capital Punishment Reform Study Committee.

2003 - 2009 Prison population stabilizes at about 45,000 inmates.

2009 Governor Pat Quinn grants sentence credits to short-term prisoners to reduce the prison pop. After suspending the policy, prison population increases from about 45,000 to 48,000.

2011 Illinois abolishes the death penalty.

2013 Prison population approaches 49,000. Property and violent crime rates at record lows.

2015 Prison population remains just below 49,000.

Illinois Prison Population

Demographics

The 2013 demographic and offense characteristics of the Illinois prison population and state population are compared in Figure 2. The Illinois prison population was primarily male. Women accounted for 6 percent of the prison population but half of the Illinois general population. Almost 60 percent of the prison population were Black compared to 15 percent of the general population. And while nearly 65 percent of the general population is White, Whites made up less than 30 percent of the prison population. Geographically, half of all inmates were sent to the Illinois Department of Corrections (IDOC) from Cook County. Twelve percent were from the Collar counties of DuPage, Kane, Lake, McHenry, and Will, and 21 percent were from other urban counties in the state. Only 17 percent of offenders in prison in December 2013 were from rural counties.

Figure 2 - Characteristics of Illinois prison and general population, 2013

Prison Population*		Illinois General Population		
Number	Percent	Number	Percent	
Total	48,652	100.0%	12,882,135	100.0%
Race/Ethnicity				
White	14,137	29.1%	8,173,563	63.5%
Black	28,190	57.9%	1,887,329	14.7%
Hispanic	6,059	12.5%	2,121,248	16.5%
Other	266	0.5%	699,995	5.4%
Sex				
Male	45,737	94.0%	6,326,483	49.1%
Female	2,915	6.0%	6,555,652	50.1%
County				
Cook	24,121	49.6%	5,240,700	40.7%
Collar	5,645	11.6%	3,149,026	24.4%
Other Urban	8,488	17.4%	2,321,061	18.0%
Rural	10,398	21.4%	2,171,348	16.9%

*as of 12/31/2013

By offense

In 2013, 45 percent of Illinois prisoners were incarcerated for a violent offense, which varied by gender. Almost half of male offenders were in prison for a violent crime (45 percent) compared to 34 percent of female offenders. About 20 percent of male and females were in prison for property and drug crimes. Few male offenders were in prison for a property (19 percent) or drug crime (21 percent). However, a larger percentage of female offenders were in prison for a property crime (30 percent) or drug crime (29 percent). Small number of men and women were in prison for a sex crime, 13 percent and 3 percent respectively.

In Illinois, felony and misdemeanor offenses are classified by degree of severity. In order of decreasing severity, these classifications are first degree murder, Class X felonies, Class 1, 2, 3, and 4 felonies. State statute mandates imprisonment first degree murder (Class M), all Class X offenses, and certain Class 1 and 2 felonies. Nearly 40 percent of the prison population were incarcerated for a Class M or X felony offenses. Few prisoners (12 percent) were incarcerated for Class 4

felony offenses.

Figure 3 - Prison Population: Admission Types and Offense

Characteristics	Offense Class Number	Percent
Class 4	5,739	11.8%
Class 3	4,234	8.7%
Class 2	10,933	22.5%
Class 1	8,036	16.5%
Class X	12,099	24.9%
Class M	7,081	14.6%
Other/unknown	530	1.0%
Offense type		
Person	21,768	44.7%
Property	9,507	19.5%
Drug	10,317	21.2%
Sex	5,968	12.3%
Other/unknown	1,092	2.2%
Admission type		
New court	43,158	89.5%
Technical violator	4,988	10.3%
Other/unknown	146	0.1%

*as of 12/31/2013

Illinois Crime Trends

Crime rates in Illinois measured by I-UCR

<<http://www.isp.state.il.us/crime/ucrhome.cfm>> property and violent offenses reported to the police have fallen significantly since the early 1990s. At its peak in 1991, rates showed more than 5,000 property crimes and more than 1,000 violent crimes per 100,000 residents. These rates fell to 2,500 property crimes and 415 violent crimes per 100,000 in 2012, a 50-percent drop.

While the violent crime rate decreased 30 percent and the property rate decreased 40 percent over 40 years, by 2013, the incarceration rate had increased 600 percent. At the peak of the crime rates in 1991, 250 individuals per 100,000 residents were in Illinois prisons. In 2012, close to 400 individuals per 100,000 residents were in Illinois prisons. The drug arrest rate in Illinois increased from 181.3 arrests per 100,000 people in 1975 to nearly 900 arrests per 100,000 people in 1999, varying between 700 and 900 arrests per 100,000 people in the past 15 years. The trends of arrests and the prison population in Illinois are shown in Figure 4.

Created with Highcharts 4.1.5
 Chart context menu
 I-UCR offense and drug arrest rates per 100,000 people
 IDOC prison incarceration rate per 100,000 people
 Figure 4 - UCR Crime Indicators and Incarceration Rate
 incarceration rate
 I-UCR property offense rate
 I-UCR violent offense rate
 I-UCR drug arrest rate
 1973 1975 1977 1979 1981 1983 1985 1987 1989 1991 1993 1995 1997 1999 2001 2003 2005 2007 2009 2011 2013
 1000 2000 3000 4000 5000 6000 10020030040050060000100200300400500600
 Highcharts.com

Illinois Court Trends

In Illinois, after an arrest for a felony offense, the prosecutor may choose to file a felony case against a defendant that could end in any one of several outcomes, including conviction and subsequent sentence. A felony filing occurs when a felony case is officially entered in a court against one or more defendants by the prosecutor. A felony sentence occurs when the defendant pleads guilty or is convicted of a felony and sentenced to probation, prison, or another punishment. Trends of arrests, felony filings, and felony sentences are shown in Figure 5.

Created with Highcharts 4.1.5
 Chart context menu
 Calendar Year
 Count
 Figure 5 - Illinois Arrests, Felony Filings, and Felony Sentences
 I-UCR
 property, violent, and controlled substance arrests
 Felony Filings
 Felony Sentences
 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
 0k 50k 100k 150k 200k 250k
 Highcharts.com

Trends in arrests, felony filings, and felony sentences are shown as ratios in Figure 6. The ratio of felony sentences per total I-UCR violent, property, and controlled substance arrests more than doubled between 1982 and 2013 from roughly 0.25 to 0.5 felony sentences per one of these arrests. From 1982 to 2013, the ratio of felony sentences per felony filing remained about the same at 0.6 to 0.7 sentences per filing.

These data indicate that a person charged with a felony today does not have a considerably higher probability of being convicted and sentenced compared to years past. However, a person arrested for violent, property, or controlled substance offense may have a higher probability of being charged with a felony. This could be a result of legislative initiatives and increased charging severity. If the probability of an arrest resulting in a felony filing increases, the number of sentences to prison could increase even if the probability of being sentenced to prison for a conviction or for a felony filing does not change. The National Research Council Committee on Law and Justice noted a similar national trend showing an increase in the probability of an arrest leading to incarceration
<http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

Created with Highcharts 4.1.5
 Chart context menu
 Calendar Year
 Ratio
 Figure 6 - Ratios of Arrests, Felony Filings, and Felony Sentences
 Sentencing as a ratio of filings and arrests
 Felony Sentences per Felony Filings
 Felony Sentences per Total I-UCR Controlled Substance, Property, and Violent Arrests
 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
 0.25 0.50 0.75
 51
 Highcharts.com

Illinois sentences by type

The distribution of Illinois court sentence dispositions, shown in Figure 7, differs for misdemeanors and felonies. The prison population

does not include misdemeanants, but the distribution of misdemeanor sentences may be important if offenses that are currently felonies are reclassified. Probation and supervision make up one-third of all felony dispositions and almost two-thirds of all misdemeanor dispositions. Incarceration in either jail or prison composes almost half of all felony dispositions and 16 percent of all misdemeanor dispositions.

Created with Highcharts 4.1.5
 Chart context menu
 Sentence Dispositions
 Figure 7 - Illinois Sentences for Felonies and Misdemeanors
 Probation: 21,776.0 (25.0%)
 Probation: 8,664.0 (7.6%)
 Fines, Costs, Restitution: 16,276.0 (18.7%)
 Fines, Costs, Restitution: 28,653.0 (25.3%)
 Supervision: 6,562.0 (7.5%)
 Supervision: 58,363.0 (51.5%)
 Imprisonment - Jail: 11,345.0 (13.0%)
 Imprisonment - Jail: 17,643.0 (15.6%)
 Imprisonment - IDOC: 31,228.0 (35.8%)
 Imprisonment - IDOC: 0.0 (0.0%)
 Probation
 Fines, Costs, Restitution
 Supervision
 Imprisonment - Jail
 Imprisonment - IDOC
 Felonies
 Misdemeanors
 0k25k50k75k100k125k
 Highcharts.com

Illinois Prison admission trends

After a felony conviction, an offender may be sentenced to prison and admitted to IDOC. Overall, admissions to IDOC have substantially increased over the past 30 years, but are lower than their peak in the mid-2000s. Between fiscal years 1984 to 2013, the number of admissions to IDOC almost tripled, from 9,943 to 31,250 admissions. The growth in admissions varies by offense class and offense type.

Admissions to IDOC by class also changed considerably during that time period (Figure 8). Admissions from new court sentences (including those convicted of new crimes and sentenced while on mandatory supervised release) nearly tripled over the past 30 years but are below their peak period, in the mid-2000s. The largest growth in admissions was for Class 4 felonies. Class 4 admissions were roughly 10 percent of all new court admissions in the early 1980s but 35 to 40 percent of all new court admissions in the past 10 years.

Class 4 felony sentences range from one to three years, with the majority of Class 4 felony offenders being admitted on a property or drug offense. Although Class 4 is the least severe felony class in Illinois, Class 4 admissions typically have more extensive criminal histories and higher recidivism rates. When entering an IDOC facility on a new sentence, a Class 4 offender will have an average of 17 arrests. Nearly 75 percent will have at least one prior violent arrest on their record as well as a prior probation sentence and 60 percent having at least one prior admission for a crime against a person. Due to relatively short sentences and eligibility for jail and sentence credits, Class 4 offenders typically spend less than a year in prison; roughly half spend 6 months or less. This can be problematic for corrections-based programming that has better results for those in programming longer.

Created with Highcharts 4.1.5
 Chart context menu
 Fiscal Year
 New Court Admissions
 Figure 8 - Illinois Prison Admissions by Class
 Class 4
 Class

3Class 2Class 1Class XClass
 M198419851986198719881989199019911992199319941995199619971998199920002001
 2002200320042005200620072008200920102011201220130k5k10k15kHighcharts.com

Technical violator admissions, admissions due to a violation of parole, fluctuate considerably over time, but overall they have increased substantially in Illinois and nationally. These admissions are not due to a new conviction while on parole but can be triggered by a new arrest while on MSR. Various parole policies, staffing levels and decisions, MSR population levels, and legislation have influenced technical violator readmission levels over time
 <<http://www.icjia.state.il.us/spac/pdf/SPAC%20Report%20MSR%20violator%209-13.pdf>>.

Like offense class, the admissions to IDOC vary over time by offense type (Figure 9). The largest increase by offense type has been for drug admissions, although the number has largely declined since the mid- to late- 2000s. The numbers of admissions for violent, property, and sex offenses have doubled to tripled over the past 30 years, but the number of drug admissions, even after accounting for the recent decline, has increased by a factor of approximately 15. Reported property offenses peaked in the early 1990s and violent offenses reported to police peaked in the mid-1990s. Both have had a relatively steady decline into the present day, but new court admissions to prison for violent and property offenses have yet to return to pre-1990 levels and are both about twice as high as in 1989.

Created with Highcharts 4.1.5Chart context menuFiscal
 YearAdmissionsFigure 9 - Illinois Prison Admissions by Offense and
 Admission TypeNew court - PersonNew court - PropertyNew court - DrugNew
 court - SexNew court - Other/UnknownTechnical
 violator19841985198619871988198919901991199219931994199519961997199819992
 00020012002200320042005200620072008200920102011201220130k5k10k15kHighchar
 ts.com

Illinois Prison Population

By class and offense type

Trends in Illinois prison population by offense class are shown in Figure 10. The number of Class 3 felons remained stable over time while the number of murders, Class 1, and Class 2 felonies more than doubled. The largest growth was seen in Class 4 felonies: IDOC held more than seven times more Class 4 felons in 2013 than in 1989. Figure 11 shows the growth of the IDOC population by offense type. Person and drug crimes fueled the largest growth, while modest increases were seen in property and sex crimes.

Created with Highcharts 4.1.5Chart context menuFiscal yearPersons in
 IDOCFigure 10 - IDOC Inmate Population by ClassClass 4Class 3Class
 2Class 1Class XClass

MOther/Unknown1984198519861987198819891990199119921993199419951996199719981999200020012002200320042005200620072008200920102011201220130k20k40k60kHighcharts.com
 Created with Highcharts 4.1.5Chart context menuFiscal yearPersons in IDOCFigure 11 - IDOC Inmate Population by Offense TypePersonPropertyDrugSexOther/Unknown19891990199119921993199419951996199719981999200020012002200320042005200620072008200920102011201220130k20k40k60kHighcharts.com

By bed-years and length of stay

Bed-years is a metric that allows another perspective on resource consumption by IDOC. Bed-years are the number of years a person sentenced to IDOC will actually spend in prison. For example, a person sentenced on a class 4 felony sentenced may only spend half of one year in prison (0.5 bed-years), while a person sentenced for a class M felony may spend 20 years in prison (20 bed-years). Figure 12 shows the relationship between bed-years and the number of inmates held by the Illinois Department of Corrections. Bed-years are appropriate for fiscal and operational analysis, as the state pays for beds over time. A person who stays less than a year in prison does not occupy a full bed-year, while the state taxpayers must pay 20 bed-years for a person on a 20 year sentence.

Created with Highcharts 4.1.5Chart context menuPeople in IDOC prison populationBed-yearsFigure 12 - Illinois Bed-Years and Number of InmatesPeople in IDOC prison populationBed-years1989199019911992199319941995199619971998199920002001200220032004200520062007200820092010201120122013020000400006000080000100000050000010000001500002000000250000Highcharts.com

While the number of inmates has risen 8 percent since 2000, the length of time served by inmates exiting IDOC has continued to increase the total bed-years used by the prison system by 28 percent over the same time period. That increase can be attributed to increased sentence terms due to mandatory minimums, extended terms based on aggravating factors, and the effect of truth-in-sentencing laws. Truth-in-sentencing, a trend that occurred in Illinois and other states, required those convicted and sentenced to prison to serve a large proportion (usually 85%) of their court-imposed sentence. The bed-year impact of truth-in-sentencing provisions passed after 1999 will continue to increase the upward trend in bed-years as lengths of stay of those leaving prison increases. A detailed analysis of the impact of truth in sentencing laws in Illinois is available here

<<http://www.icjia.state.il.us/public/pdf/ResearchReports/FINAL%20REPORT%20The%20Impact%20of%20Illinois%20Truth-in-Sentencing%20Law%200609.pdf>>.

Small changes to sentence credits can have a large impact on the prison population. Crediting a small amount of sentence credit across thousands of offenders creates a large bed-years and fiscal savings. Dr. David Olson described in his evaluation of drug treatment programs

<http://www.icjia.state.il.us/public/pdf/ResearchReports/SWICC_Year_3_Evaluations_Report_March_2011.pdf>

in Illinois the sizable impact of allowing credits for program participation. During the four-year period under study in his evaluation of Southwestern Illinois Correctional Center, Olson found that 34,355 days of good conduct credit were earned per year, or more than 137,343 days total. This sentence credit time is equivalent to 94 years of reduced incarceration per fiscal year. With a current per capita cost of \$22,201, that creates a savings of \$2.1 million annually.

Actual time served among Class M and X felony exits steadily increased both before and after truth-in-sentencing laws passed in 1998 (Figure 13). From 1989 through 2013, the actual time served in prison (excluding technical violators and any additional time served due to technical violations) by class M offenders exiting nearly doubled from 8.6 to 17.1 years and for class X offenders exiting increased 50 percent from 3.6 to 5.4 years.

Created with Highcharts 4.1.5
 Chart context menu
 Fiscal Year
 Years in IDOC
 Figure 13 - Average length of stay for Class M and X Prison exits
 Class X
 Class
 M
 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
 05101520
 Highcharts.com

Actual time served by offenders in Class 4 through Class 1 felony offense categories that exited (excluding technical violators and any additional time served due to technical violations) show similar patterns since 1989 (Figure 14). A large increase in time served occurred in recent years due to the suspension of awarding meritorious and supplemental meritorious good conduct credits in 2009. This effectively added several months of incarceration for inmates who would previously have been allowed such credits and increased the size of the prison population.

Created with Highcharts 4.1.5
 Chart context menu
 Fiscal Year
 Years in IDOC
 Figure 14 - Average length of stay for Class 1-4 Prison exits
 Class 4
 Class 3
 Class 2
 Class 1
 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
 00.511.522.5
 Highcharts.com

The aging prison population

Over the past several decades people admitted to Illinois prisons have been getting older. This trend is true for both new admissions and offenders returning to prison for a technical violation of parole. The increasing age of inmates admitted to Illinois prisons over time is seen at every level of offense severity, but especially those convicted of murder. Figure 15 shows the average age by offense class over time. Inmates sentenced for Murder from 1993 to 2013 had the largest increased average age, over seven years, while others increase from four to six years.

Created with Highcharts 4.1.5
 Chart context menu
 Fiscal Year
 Years
 Figure 15

- Average Age of Illinois Prisoners by Offense Class
Class 4
Class 3
Class 2
Class 1
Class X
Class M
Overall 1993 1998 2003 2008 2013 27.53 32.53 37.54 42.5
Highcharts.com

Illinois Prison Costs

Since 1999, Illinois has appropriated over \$1 billion for adult prisons and parole. For fiscal year 2014, the state appropriated and spent almost \$1.3 billion on the prison budget. Off budget items, including pension contributions and group health benefits for state corrections employees, were an additional \$600 million spent on the adult corrections system. The budget for IDOC, not adjusted for inflation, can be seen longitudinally in Figure 16.

Created with Highcharts 4.1.5
Chart context menu
Fiscal year
Dollars
Figure 16 - IDOC Budget GRF
Appropriated in Nominal dollars GRF
Appropriation 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014
2015 0M 500M 1,000M 1,500M
Highcharts.com

Note on data sources

Data on IDOC admissions, prison population, length of stay, and budget are from SPAC and ICJIA analyses of data provided by the IDOC Planning and Research Unit as well as IDOC statistical reports and correspondence with IDOC officials. I-UCR offense and arrest data are from Crime in Illinois reports and data published by the Illinois State Police. Data on felony filings is from annual reports published by the Administrative Office of the Illinois Courts. Felony sentences in Figure 5 and 6 are also from these reports. Felony sentence dispositions in Figure 7 are from SPAC and ICJIA analysis of electronic criminal history data from the Illinois State Police.

// 2016 by the Illinois State Commission on Criminal Justice and Sentencing Reform <<http://www.icjia.org/cjreform2015/index.html>> |
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<<https://www.surveygizmo.com/s3/2097986/Submit-Your-Comments-to-the-Illinois-State-Commission-on-Criminal-Justice-Sentencing-Reform>>
| Join our mailing list
<http://visitor.r20.constantcontact.com/manage/optin?v=001MqUcqqvjwLCJX1LMSWbTe3zHHmEQgFeBuHvBcJWtBwgrxFbDSGx4HayPFh6Pb5cQUYKWO7Cbzfa98fxhycho07-tHaayZQdJKeqM8rxPD_ccdyiqivsCkf91cJTtJd3KWRBvXQ7ov6mAzfFB8pnunBQDX16dAw2VXJbn0385-b_j5Wgb6z4Iv-Z6ByJ9lmM6BAqqD75q__Y%3D>

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Illinois Prison Overview
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2020 CENSUS PROGRAM MEMORANDUM SERIES: 2018.04

Date: February 5, 2018

MEMORANDUM FOR: The Record

From: Albert E. Fontenot, Jr. **(signed February 5, 2018)**
Associate Director for Decennial Census Programs

Subject: 2020 Census Residence Criteria and Residence Situations

Contact: Burton Reist, Chief
Decennial Communications and Stakeholder Relations
301-763-4155
Burton.H.Reist@census.gov

This memorandum documents the release of the "Final 2020 Census Residence Criteria and Residence Situations" in the Federal Register. The residence criteria and residence situations determine who should be counted and where they should be counted.

Overview

Every decade, the Census Bureau undertakes a review of the decennial residence criteria and residence situations to ensure that the concept of "usual residence" is applied in a way that is consistent with the Census Bureau's commitment to count every person once, only once, and in the correct place, and to fulfill the Constitutional requirement to apportion the seats in the U.S. House of Representatives among the states according to their respective numbers.

Discussion

From the very first census in 1790, Congress established the principle of counting people where they usually reside, which is defined as the place where a person lives and sleeps most of the time, in order to be fair and consistent. The census has followed that principle ever since. For most people, determining their usual residence is straightforward. For others, like members of the military, college students, and other people living in group quarters, knowing where to count them can be more complicated.

For the 2020 Census, the Census Bureau has updated where we count people in five specific residence situations:

1. *Overseas military and civilian employees of the U.S. government* — The 2020 Census will count military and civilian employees of the U.S. government who are temporarily *deployed* overseas on Census Day at their usual home address in the United States, as part of the resident

population, instead of their home state of record. Military and civilian employees of the U.S. government who are *stationed or assigned* overseas on Census Day, as well as their dependents living with them, will continue to be counted in their home state of record for apportionment purposes only.

2. *Overseas federal employees who are not U.S. citizens* — The 2020 Census will count any non-U.S. citizens who are military or civilian employees of the U.S. government who are deployed, stationed, or assigned overseas on Census Day in the same way as U.S. citizens who are included in the federally affiliated overseas count.
3. *Maritime/Merchant Vessel Crews* — The 2020 Census will count the crews of U.S. flag maritime or merchant vessels who are sailing between a U.S. port and a foreign port on Census Day at their usual home address, or at the U.S. port if they have no usual home address.
4. *Juveniles in Treatment Centers* — The 2020 Census will count juveniles staying in non-correctional residential treatment centers on Census Day at their usual home address, or at the facility if they have no usual home address.
5. *Religious Group Quarters Residents* — The 2020 Census will count people living in religious group quarters on Census Day at the facility.

The 2020 Census will not change where prisoners, college students, and people in other residence situations are counted.

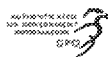
The 2020 Census Memorandum Series

The 2020 Census Memorandum Series documents significant decisions, actions, and accomplishments of the 2020 Census Program for the purpose of informing stakeholders, coordinating interdivisional efforts, and documenting important historical changes.

A memorandum generally will be added to this series for any decision or documentation that meets the following criteria:

1. A major program-level decision that will affect the overall design or have significant effect on 2020 Census operations or systems.
2. A major policy decision or change that will affect the overall design or significantly impact 2020 Census operations or systems.
3. A report that documents the research and testing for 2020 Census operations or systems.

Visit 2020 Census on [Census.gov](https://www.census.gov) to access the Memorandum Series, the 2020 Census Operational Plan, and other information about preparations for the 2020 Census.



listed in the ADDRESSES section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the NPRM

Subsequent to publication of the NPRM, the FAA identified an error within a set of True (T) and Magnetic (M) coordinates along V-113. The intersection coordinates "INT Modesto 208°(T) 19(M) and El Nido 277°(T) 262°(M) radials" were misidentified as PATYY intersection in the NPRM; when in fact these coordinates are for WINDY intersection. The FAA is changing the coordinates to "INT Modesto 208° (T) 191° (M) and El Nido 298° (T) 283° (M)" as the correct coordinates for PATYY intersection.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to amend VOR Federal Airways V-113 and V-244 in the western United States due to the scheduled decommissioning of the Manteca and Maxwell VOR facilities. The routes are outlined below.

V-113: V-113 currently extends between Morro Bay, CA (MQO) and Lewistown, MT (LWT) with a gap between Panoche, CA (PXN) and Linden, CA (LIN). The FAA is filling the gap between Panoche, CA (PXN) and Linden, CA (LIN). The unaffected portions of the existing route will remain as charted.

V-244: V-244 currently extends between Oakland, CA (OAK) and Salina, KS, (SLN). The FAA is relocating the segment of the route from Oakland, CA by rerouting the airway approximately 10 nautical miles north of the previous airway until tied back into the previous route at Coaldale, NV. The unaffected portion of the existing route will remain as charted.

All radials in the regulatory text route descriptions below are stated in True degrees.

VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

Regulatory Notices and Analyses

The FAA has determined that this 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action modifying VOR Federal airways V-113 and V-244 qualifies for categorical exclusion under the National Environmental Policy Act and its agency-specific implementing regulations in FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" regarding categorical exclusions for procedural actions at paragraph 5-6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. Therefore, this airspace action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017 and effective September 15, 2017, is amended as follows:

Paragraph 6010—Domestic VOR Federal Airways

V-113 (Amended)

From Morro Bay, CA; Paso Robles, CA; Priest, CA; Panoche, CA; INT Modesto 208° and El Nido 298° radials; Modesto, CA; Linden, CA; INT Linden 046° and Mustang, NV, 208° radials; Mustang; 42 miles, 24 miles, 115 MSL, 95 MSL, Romo, OR; 61 miles, 85 MSL, Boise, ID; Salmon, ID; Coppertown, MT; Helena, MT; to Lewistown, MT

V-244 (Amended)

From Oakland, CA; INT Oakland 077° and Linden, CA, 248° radials; Linden; 30 miles, 153 MSL, INT Linden 094° and Hangtown, CA, 157° radials; 58 miles, 153 MSL, INT Coaldale, CA, 267° and Friant, CA, 022° radials; 23 miles, 153 MSL, INT Coaldale 267° and Bishop, CA, 337° radials; 43 miles, 125 MSL, Coaldale, NV; Tonopah, NV; 40 miles, 115 MSL, Wilson Creek, NV; 28 miles, 115 MSL, Milford, UT; Hanksville, UT; 63 miles, 13 miles, 140 MSL, 36 miles, 115 MSL, Montrose, CO; Blue Mesa, CO; 33 miles, 122 MSL, 27 miles, 155 MSL, Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; 20 miles, 116 miles, 65 MSL, Hays, KS; to Salina, KS. The airspace within R-2531A and R-2531B is excluded.

Issued in Washington, DC, on January 29, 2018.

Sean E. Hook,

Acting Manager, Airspace Policy Group.

(FR Doc. 2018-02133 Filed 2-7-18; 8:45 am)

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Chapter I

[Docket Number 160526465-8033-03]

RIN 0607-XC026

Final 2020 Census Residence Criteria and Residence Situations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Final criteria.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is providing notification of the Final 2020 Census Residence Criteria and Residence Situations. In addition, this document contains a summary of comments received in response to the June 30,

2016, 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: The final criteria in this document are effective on March 12, 2018.

FOR FURTHER INFORMATION CONTACT: Jason Devine, Population and Housing Programs Branch, U.S. Census Bureau, 6H173, 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.¹ 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 Bureau's enumeration procedures are guided by the constitutional and statutory mandates to count all residents of the several states. [U.S. Const. Art. 1, Section 2, cl.3, Title 13, United States Code, Section 141.] The 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. This is not always the same as a person's legal residence, voting residence, or where they prefer to be counted. This concept of "usual residence" is grounded in the law providing for the first census, the Act of March 1, 1790, expressly specifying that persons be enumerated at their "usual place of abode."

¹ Apportionment is based on the resident population, plus a count of overseas federal employees, for each of the 50 states. Redistricting data include the resident population of the 50 states, District of Columbia, and Puerto Rico.

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 of these living arrangements include people experiencing homelessness, people with a seasonal/second residence, people in group facilities,² 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.

2. Reviewing the 2020 Census Residence Criteria and Residence Situations

Every decade, the Census Bureau undertakes a review of the Residence Criteria and Residence Situations to ensure that the concept of usual residence is interpreted and applied, 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 address those situations in the guidance 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 one residence situation.)

On June 30, 2016, the Census Bureau published the "Proposed 2020 Census Residence Criteria and Residence Situations" in the Federal Register (81 FR 42577).³ In that publication, the Census Bureau included a summary of comments on the May 2015 Federal Register document, as well as the Bureau's responses to those comments.

² 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.

³ The Proposed 2020 Census Residence Criteria and Residence Situations are the same as the Final 2020 Census Residence Criteria and Residence Situations that are provided in Section C.

During the 60-day comment period that ended on September 1, 2016, the Census Bureau received 77,958 comment submissions⁴ that contained 77,995 total comments in response to the proposed residence criteria and situations. A summary of these comments and the Census Bureau's responses are included in section B of this document.

Section C of this document provides the Final 2020 Census Residence Criteria and Residence Situations.⁵

B. Summary of Comments Received in Response to the "Proposed 2020 Census Residence Criteria and Residence Situations"

On June 30, 2016, the Census Bureau published a document in the Federal Register asking for public comment on the "Proposed 2020 Census Residence Criteria and Residence Situations." Of the 77,995 comments received, 77,867 pertained to prisoners,⁶ and 44 pertained to overseas military personnel. There were four comments on health care facilities. There were three comments on each of the following residence situations: Foreign citizens in the United States, juvenile facilities, and people in shelters and/or experiencing homelessness. There were two comments on each of the following residence situations: Boarding school students, college students, group homes and residential treatment centers for adults, transitory locations, visitors on Census Day, people who live or stay in more than one place, merchant marine personnel, and religious group quarters. There was one comment on each of the rest of the residence situations (people away from their usual residence on Census Day [e.g., on vacation or business trip]; people living outside the United States; people moving into or out of a residence around Census Day; people who are born or who die around

⁴ Of the 77,958 comment submissions, 2,958 contained unique content and 75,000 were duplicates.

⁵ The Census Bureau used the term "Residence Rule and Residence Situations" when referring to the 2010 version of this documentation and in portions of previous publications in the Federal Register in 2015 and 2016 regarding this topic. However, in this document, and in the foreseeable future, the Census Bureau will use the term "Residence Criteria and Residence Situations."

⁶ The majority of comments received on this topic used the terms 'prisoner,' 'incarcerated,' or 'inmate.' Although the terminology is not exactly what we use in the residence criteria documentation, we believe 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 and Correctional Facilities intended for juveniles. References in this document to "prisons," or "prisoners," should be interpreted as referring to all of these types of facilities.

Census Day; relatives and nonrelatives; residential schools for people with disabilities; housing for older adults; U.S. military personnel; and workers' residential facilities). The Census Bureau also received one comment on the concept of usual residence, seven general comments on the overall residence criteria, and 18 comments on other issues not directly related to the residence criteria or any specific residence situation.

1. Comments on Prisoners

Of the 77,887 comments pertaining to prisoners, 77,863 suggested that prisoners should be counted at their home or pre-incarceration address. The rationales included in these comments were as follows.

- Almost all commenters either directly suggested, or alluded to the view, that counting prisoners at the prison inflates the political power of the area where the prison is located, and deflates the political power in the prisoners' home communities. These commenters stated that this distorts the redistricting process by allowing officials to count prisoners as "residents" of the districts where they are imprisoned, even though the prisoners are not allowed to vote during the time that they are confined in that district.

- Similarly, many commenters suggested that counting prisoners away from their home address goes against the principle of equal representation. Some commenters more specifically suggested that the practice potentially violates the Voting Rights Act and/or the U.S. constitutional commitment to one person, one vote. A couple of commenters stated that the practice differs from certain international guidelines.

- A few commenters stated that counting prisoners at the correctional facilities can also negatively impact the communities in which the prisons are located by distorting and/or complicating the redistricting process at the local level (e.g., county commissions, city councils, and school boards).

- Some commenters stated that the current residence criteria for prisoners are inconsistent with certain states' laws regarding residency for elections (i.e., some state laws specifically say that a correctional facility is not a residence).

- Some commenters stated that some states and many local governments already adjust their population data to remove prisoners when drawing their districts. However, these commenters also suggested that this "piecemeal" approach at the local level is inefficient

and cannot fully resolve the issues associated with where prisoners are counted.

- Most commenters suggested that counting prisoners at the prison inaccurately represents the population counts and demographic characteristics of prisoners' home communities, as well as the communities where the prisons are located. These commenters stated that prisoners typically come from urban, underserved communities whose populations are disproportionately African-American and Latino, while prisons are more likely to be located in largely White (non-Hispanic) rural communities, far from the actual homes of the prisoners. Therefore, most commenters also suggested that counting prisoners at the prisons disproportionately harms communities with high proportions of minorities, by preventing their home communities from receiving their fair share of representation and funding.

- Many commenters stated that the incarcerated population has increased significantly in recent decades. Some commenters also stated that, throughout the long history of the decennial census, the Census Bureau has previously evolved and reevaluated its residence criteria in response to other historical changes in demographics and normative living situations (e.g., the 1950 change to how college students were counted). Therefore, they suggested that the changes in the prisoner population and patterns of prison locations during recent decades warrant a similar evolution of the residence criteria.

- Some commenters suggested that the Census Bureau should change its interpretation of the concept of "usual residence" (i.e., as the place where a person lives and sleeps most of the time), as it relates to incarcerated people. To support this suggestion, commenters used various rationales.

- Some commenters suggested that prisoners do not have enduring social ties or allegiance to the community where they are incarcerated. To explain this, some commenters more specifically stated that prisoners cannot interact with the community where they are incarcerated, are there involuntarily, and generally do not plan to remain in that community upon their release. A few commenters also stated that the governmental representatives of the community where the prison is located do not serve the prisoners, or they stated that prisoners are not constituents of the community where the prison is located. These commenters further stated that prisoners rely, instead, on the representative services of the legislators in their pre-incarceration communities.

- Some commenters suggested that the correctional facility where a prisoner is located on Census Day is not where a prisoner spends most of their time.

- Some supported this suggestion by stating that counting incarcerated people at the facility in which they are housed on Census Day ignores the transient and temporary nature of incarceration. These commenters stated that incarcerated people are typically transferred multiple times between various correctional facilities during the time between when they are arrested and when they are released.

- Some supported this suggestion by focusing on local jails. They stated that, while the length of incarceration for prison inmates is typically more than one year, about a third of all inmates (in prisons and jails) are jail inmates, and the typical length of incarceration for jail inmates is much shorter than one year (i.e., a few days to a few weeks). A few also stated that the majority of jail inmates have not been convicted of a crime, or stated that they are awaiting trial and presumed innocent until proven guilty.

- A few supported this suggestion by stating that, if your measuring stick is the 10-year period for which the decennial census counts affect representation, funding, and policies, most prisoners are incarcerated for less than 10 years.

- A few commenters suggested that multiple factors must be considered together when determining the correct place to count certain types of people, such as prisoners, who do not easily align with the standard definition of usual residence. Therefore, they stated that a one-size-fits-all approach of focusing solely on where people live and sleep most of the time is not appropriate for determining where to count prisoners.

- A few commenters suggested that only prisoners who are serving long-term sentences, such as longer than six months or a year, should be counted at the facility, and that prisoners serving shorter terms should be counted at their usual residence outside of the facility.

- Some commenters suggested that the treatment of prisoners is inconsistent with the treatment of other residence situations in which people are temporarily living or staying away from their permanent address (e.g., travelers and snowbirds). A few stated that the proposed residence criteria make it appear as if the Census Bureau plans to count boarding school students, deployed military personnel, truck drivers, members of Congress, and/or juveniles in residential treatment

facilities at their home address, even if they do not spend most of their time there.

- Some commenters suggested that the number/proportion of comments submitted on this issue indicates that there is an overwhelming consensus urging a change to how prisoners are counted in the census.

- A few commenters suggested that the Census Bureau has acknowledged the need to correct its own data by proposing to help states with post-census population adjustments.

- Some of these commenters suggested that "this ad hoc approach is neither efficient nor universally implementable." Some also stated that many states have laws that would prevent them from using such alternative data to adjust their Census counts for redistricting, and that many states may not have the resources to gather the necessary data to provide to the Census Bureau. Some also expressed concerns about the states' inability to provide data on federal prisoners and prisoners who are incarcerated in another state.

- Therefore, some of these commenters suggested that the only way to implement a consistent solution for the entire United States is for the Census Bureau to change the way it counts prisoners. A few also suggested that the Census Bureau would be best able to accomplish this change if all correctional facilities (local, state, and federal) and/or all state and federal corrections departments were required to collect and maintain accurate records on each prisoner's home/pre-incarceration address.

Four comments were in support of counting prisoners at the correctional facility. All of these commenters suggested that the correctional facility is the prisoner's usual residence, or where they live and sleep most of the time (*i.e.*, prisoners are usually in prison, or away from their pre-incarceration address, for relatively long periods of time, such as one year or more). One commenter further stated that, because people are usually sent to prison for more than one year, they are not considered to be only "temporary residents" of the prison under many government regulations (other than the Census Bureau's). One commenter suggested that it makes sense to count prisoners at the facility because the communities in which the facilities are located are responsible for providing emergency response and certain law enforcement services to those facilities, as well as providing road maintenance and hospitality services (*e.g.*, hotels and restaurants) for

the family and friends of the prisoners who travel to the facility for visitation.

One commenter suggested that counting prisoners at their "home address" would create unreasonable burden on the census process because of the considerable time and effort that would be necessary, both on the part of the facility administrators who would need to research and maintain the address records, and on the census enumerators who would need to collect and ensure the accuracy of the addresses. One commenter stated that any approach that would count prisoners somewhere other than the prison would likely result in a national undercount due to the difficulty in tracking inmates in transit. One commenter stated that it is not the Census Bureau's responsibility to facilitate states' redistricting activities beyond their currently proposed activities (*i.e.*, providing the redistricting data file, identifying the group quarters counts at the block level, and the proposed option to geocode prisoner addresses if they are provided by the state to the Census Bureau).

Twenty comments were neutral regarding where to count prisoners, in that they did not state whether they thought that prisoners should be counted at the facility or at some other address. Many of these commenters stated the importance of equal representation for all. Some stated that prisoners should have the right to vote. A few further clarified that prisoners should have the right to vote if they are going to be counted as residents (of any place) for redistricting purposes, or vice versa (*i.e.*, if prisoners do not have the right to vote, then they should not be counted). One specifically stated that incarcerated people should not be counted at all (either at the facility or elsewhere) because they committed a crime and are not legally eligible to vote. A few commenters stated concerns regarding the fairness or effectiveness of the criminal justice system.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for correctional facilities (Sections C.13.e, C.15, and C.17.a). The practice of counting prisoners at the correctional facility is 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 be less consistent with 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 state-provided data 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 early⁷ 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 information in the standard *Redistricting Data (Public Law 94-171) Summary File* for 2020.

2. Comments on the Military Overseas

Of the 44 comments received pertaining to the military overseas, 40 supported the Census Bureau proposal

⁷ The *Advance Group Quarters Summary File* was released on April 26, 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 (Public Law 94-171) Summary File*, which was released on February 3–March 24, 2011.

to 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, most of these commenters suggested that military personnel who are deployed overseas should be counted at their usual residence in the United States where they were stationed at the time they were deployed, and included in the local community-level resident population counts.

Many commenters stated that counting deployed military personnel at their usual residence (where they are stationed) in the United States would more accurately reflect the social and economic impact that these personnel members have on the communities where they usually work, recreate, and reside. Many commenters similarly stated that deployed personnel should be counted at their usual residence in the United States in order to ensure that the communities surrounding military bases are able to obtain the necessary resources and funding to support the soldiers who serve our country and their families, as well as accurate data to inform community planning. These commenters stated that the aforementioned planning, funding, and other resources would support community services such as police and fire departments, schools, roads, parks, utilities, and other infrastructure and amenities.

Some commenters stated that deployments from specific military bases typically happen in surges to support specific events, such as combat missions or natural disasters. Therefore, these commenters suggested that, if an event like this happens around the time of the census enumeration, then the population of the community surrounding that military base would be grossly undercounted if the deployed personnel were not counted there. One commenter suggested that counting deployed personnel at their usual residence would produce more consistent results than counting them at their home of record because the Department of Defense records on military personnel members' home of record^a were not well maintained prior to the 2010 Census.

^a Home of record is generally the permanent home of the person at the time of entry or re-enlistment into the Armed Forces, as included on personnel files. For the 2010 Census, if home of record information was not available for a person, the Department of Defense 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.

Some commenters suggested that the military member's permanent duty station from which they were deployed is their usual residence (*i.e.*, where they live and sleep most of the time), and some commenters stated that counting deployed personnel at their usual residence in the United States would be consistent with how the Census Bureau counts other people who are temporarily away for work purposes. A few commenters stated that deployments are typically short in duration, and one commenter stated that the Army plans to further shorten the length of deployments in the future. A few commenters stated that deployed personnel must return to their permanent duty station in the United States after the deployment ends, and a few commenters stated that many deployed personnel have families that live with them at their permanent duty station and maintain their residence while the military member is deployed.

Some commenters stated that many of the family members of deployed military were confused during the 2010 Census about whether they should count themselves at their usual residence because they were instructed that their deployed family member would be counted through administrative records, and they assumed the same would be true for them as well. One of these commenters stated that proposed residence guidance for how deployed personnel would be counted in the 2020 Census should reduce some of this confusion. However, all of these commenters encouraged the Census Bureau to conduct a strong communication and outreach program to ensure that all family members of deployed personnel are made aware of the fact that they still need to complete the census questionnaire for themselves.

One commenter expressed concern about footnote 5 in the proposed residence criteria documentation, which said: "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." The commenter was worried that the proposed change for counting deployed military might not be implemented if the research and evaluations are not completed before final decisions must be made, and they suggested that such research is not necessary because the Census Bureau already uses data from the Defense Manpower Data Center when producing annual population estimates at the national, state, and county levels. This commenter also recommended that if the proposed

change for counting deployed military is implemented for the 2020 Census, then the Census Bureau should also ensure that the methodology used to produce the annual population estimates is revised accordingly.

One commenter expressed support for the proposal to include 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) in the Federally Affiliated Overseas Count, because these people have met the requirements to qualify for federal employment and have pledged to serve our country. They also stated that this proposal would be consistent with the fact that citizenship status is not a requirement for determining a person's residence.

Three comments opposed the proposal to count deployed military at their usual residence in the United States from which they were deployed. One commenter suggested that all overseas military personnel should be counted in the same way, and that there is not a good reason to treat deployed personnel as a separate category from personnel who are stationed overseas. One commenter suggested that the Census Bureau should continue to count all overseas military personnel, including those who are deployed, in the state where they lived when they enlisted (*i.e.*, their home of record) because military personnel are typically reassigned to a different permanent duty station every few years throughout their career, and their home of record is where they have the strongest ties. One commenter suggested that the Census Bureau should not implement the proposed change to how deployed military are counted because that change would weaken the argument for continuing to count prisoners at the correctional facility where they are incarcerated on Census Day. This commenter also recommended that the Census Bureau should make a stronger case for the distinction between these two large populations (*i.e.*, deployed military personnel versus prisoners).

One comment was neutral regarding when to count overseas military personnel, in that they did not state where they thought deployed personnel should be counted. They simply stated that it appeared that not all of the locally stationed military personnel and their dependents were being counted, and asked for more information on whether this was true and/or how to ensure they were counted in the future.

Census Bureau Response: For the 2020 Census, the Census Bureau will

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: 7/24/2020 10:42:50 AM
To: Risko, Daniel (Federal) [DRisko@doc.gov]
Subject: CUI/PRIV FW: New civil action filed in connection with new memorandum
Attachments: 1_20cv2023, Common Cause Et Al V. Trump Et Al Complaint.pdf

b(5) - AC

Stephanie Olson
Acting Deputy General Counsel for Litigation
D: 202.482.5981
M: [redacted] b(6)

From: Heller, Megan (Federal) <MHeller@doc.gov>
Sent: Friday, July 24, 2020 10:28 AM
To: Cannon, Michael (Federal) <MCannon@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiacomo@doc.gov>; Creech, Melissa L <melissa.l.creech@census.gov>; Ryan, Miles F III <miles.f.ryan.iii@census.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>; Paranzino, Anthony (Federal) <AParanzino@doc.gov>; Zimmerman, Paul (Federal) <PZimmerman@doc.gov>
Cc: Olson, Stephanie (Federal) <SOlson@doc.gov>; Brebbia, Sean (Federal) <SBrebbia@doc.gov>; Nowell, Laura (Federal) <LNowell@doc.gov>; Davis, Caitlin (Federal) <CDavis4@doc.gov>; Gorey, Lauren (Federal) <LGorey@doc.gov>; Herbert, Stephanie (Federal) <SHerbert@doc.gov>; Meredith, Ethan (Federal) <EMeredith@doc.gov>
Subject: New civil action filed in connection with new memorandum

Good morning -

b(5) - DP/AC/WP

b(5) - DP/AC/WP

The complaint is attached

b(5) - DP/AC/WP

Megan

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: Heller, Megan (Federal)
Sent: Monday, March 16, 2020 11:32 AM
To: Heller, Megan (Federal) <MHeller@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiacomo@doc.gov>; Creech, Melissa L <melissa.l.creech@census.gov>; Ryan, Miles F III <miles.f.ryan.iii@census.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>; Paranzino, Anthony (Federal) <AParanzino@doc.gov>; Zimmerman, Paul (Federal) <PZimmerman@doc.gov>
Cc: Olson, Stephanie (Federal) <SOlson@doc.gov>; Brebbia, Sean (Federal) <SBrebbia@doc.gov>; Nowell, Laura (Federal) <LNowell@doc.gov>; Davis, Caitlin (Federal) <CDavis4@doc.gov>; Gorey, Lauren (Federal) <LGorey@doc.gov>; Herbert, Stephanie (Federal) <SHerbert@doc.gov>; Meredith, Ethan (Federal) <EMeredith@doc.gov>
Subject: Census Litigation Team Meeting
When: Friday, July 24, 2020 4:00 PM-4:30 PM.
Where: Brian DiGiacomo's Office - HCHB 5896 ; **b(6)**

Call in number: **b(6)**
Leader Code: **b(6)**
Participant Code: **b(6)**

Short meeting to discuss/stay up-to-date on Census Litigation. Come if your schedule permits. May not take the entire 30 minutes.

**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

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Attached are plaintiffs' Motion for Partial Summary Judgment or to Expedite Trial.

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Heads up. Common Cause filed a motion for PI and to expedite case. Haven't read them yet or downloaded them.

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

**NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, EXPEDITED TRIAL ON THE MERITS**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 7(h), Plaintiffs hereby move the Court for partial summary judgment with respect to Counts I, IV, and V of their First Amended Complaint (ECF No. 28), or in the alternative, expedited trial on the merits.

Plaintiffs request that the Court declare that the July 21, 2020 Presidential Memorandum, *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020) (the “Memorandum”), violates Article I and the Fourteenth Amendment to the U.S. Constitution; declare that the Memorandum violates 2 U.S.C. § 2(a), 13 U.S.C. § 195, and 13 U.S.C. § 141; and enjoin Defendants and all others acting in concert with them from taking any steps to comply with, implement, or enforce the Memorandum.

In support of this motion, Plaintiffs rely on the accompanying Memorandum of Law; their Statement of Undisputed Material Facts; the Declaration of Peter A. Nelson dated

August 19, 2020; the exhibits attached to that Declaration; the pleadings and papers on file in this action; and any argument and evidence that is presented on the hearing of this motion.

DATED: August 19, 2020

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**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, EXPEDITED TRIAL ON THE MERITS**

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Dep’t of Commerce, <i>Census Undercount Adjustment: Basis for Decision</i> , 45 Fed. Reg. 69366 (Oct. 20, 1980).....	17, 33
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Reply Br. for the Federal Appellants, <i>Franklin v. Massachusetts</i> , No. 91-1502 1992 U.S. S. Ct. Briefs LEXIS 390 (U.S. Apr. 20, 1992),	29
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Statement of John G. Keane, Director of the Census Bureau, <i>Enumeration of Undocumented Aliens in the Decennial Census</i> , H’g Before the Subcommittee on Energy, Nuclear Proliferation, and Gov’t Processes of the Senate Commit- tee on Govt’l Affairs, 99th Cong., 1st Sess., Sept. 18, 1985	24, 25
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Plaintiffs Common Cause, et al. (“Plaintiffs”) hereby move pursuant to Fed. R. Civ. P. 56 for partial summary judgment with respect to Counts I, IV, and V of their First Amended Complaint (ECF No. 28). In the alternative, if the Court determines that any genuine dispute(s) of material fact prevent entry of summary judgment, Plaintiffs request an expedited trial on the merits with respect to such dispute(s).

PRELIMINARY STATEMENT

Under the Constitution and Census Act, representatives in the U.S. House must 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, cl. 1 (emphasis added); *see also* 2 U.S.C. §2a(a). Consistent with that command, from the ratification of the Constitution in 1788 to the present day, all human beings residing in each state have been counted by the census and included in the congressional apportionment base. Only two exceptions have ever been made, both also based in the Constitution’s plain text: notoriously, slaves were counted as three-fifths of a person (though that clause was stricken in 1868), and “Indians not taxed” were excluded altogether (though such persons no longer exist). No President has ever maintained that other, implicit exceptions have been lurking in the Constitution for the last 232 years.

Until now. On July 21, 2020, President Donald J. Trump issued a memorandum titled *Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census* (the “Memorandum”). Breaking with the plain text of the Constitution and the Census Act, as well as centuries of practice, the Memorandum declared that it was 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.” The Memorandum also announced that, upon completion of the 2020 census, the President will “exclude” such persons when preparing ap-

portionment tables for transmission to Congress, and it ordered the Department of Commerce to assist him in carrying out that plan.

The Memorandum is unlawful in multiple respects. For starters, the Constitution compels the inclusion of undocumented immigrants in the apportionment base. Again, the plain text of both Article I, § 2 and the Fourteenth Amendment states that the apportionment base shall consist of “the whole number of persons in each state,” and whatever their status under federal immigration law, undocumented immigrants are “people.” The contemporaneous statements of the Founding Fathers and the framers of the Fourteenth Amendment reflect this same understanding. All three branches of government have explicitly and repeatedly recognized it. And over two centuries of consistent practice confirm it.

The Census Act also commands that apportionment calculations be based on “the whole number of persons in each state.” 2 U.S.C. §2a(a). Congress assigned the task of performing those calculations to the President, but that task they delegated was purely a ministerial one. Congress did not grant the President authority to unilaterally remove categories of “persons” from the apportionment base when performing those calculations. The Memorandum, therefore, is not just unconstitutional; it also exceeds the President’s statutory authority and is *ultra vires*.

Finally, even if it were not inherently unlawful to exclude undocumented immigrants from the apportionment base, the Memorandum cannot be implemented lawfully because Defendants lack an actual count of undocumented immigrants in each State. Article I, § 2 demands that all data used in the apportionment process be generated through “actual Enumeration”—*i.e.*, direct, household-by-household inquiry—rather than estimation or other substitute processes. Statutory law adds to this requirement by prohibiting the use of statistical sampling in connection with apportionment. *See* 13 U.S.C. § 195. Absent a direct headcount of undocumented immi-

grants, anything that Defendants might do to implement the Memorandum would necessarily violate these constitutional and statutory requirements.

In sum, the President does not have the power to order a sea change in how legislative power is allocated in this country by unilaterally declaring that disfavored groups are not “persons” under the Constitution and stripping the states where they reside of the representation to which they are entitled. The Memorandum, and any attempt by Defendants to implement it, should be declared unlawful and enjoined.

BACKGROUND

A. Throughout American History, All Immigrants Have Been Included in the Congressional Apportionment Base

From the ratification of the Constitution until today, no one has ever been excluded from the congressional apportionment base based on their citizenship or compliance with immigration laws. To the contrary, throughout American history, noncitizen immigrants (both documented and undocumented) have been counted in every census and in the base for every resulting congressional apportionment. Plaintiffs’ Rule 56.1 Statement of Undisputed Material Facts (“Stat.”) ¶ 1; *see also Fed’n. for Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C.) (three-judge court) (stating that, for over “two centuries,” the “population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders”), *appeal dismissed*, 447 U.S. 916 (1980).

B. Partisans Seek to Exclude Noncitizens from Apportionment

As described further below, proposals to exclude noncitizens from congressional apportionment have periodically been advanced over the years. They have all been roundly rejected. But that has not stopped the idea from resurfacing.

The latest effort to shrink the apportionment base began in 2014. Backed by a prominent activist, two Texas voters filed a lawsuit alleging that the Constitution *requires* states to exclude persons ineligible to vote (including noncitizens) when apportioning state legislative bodies. *See Evenwel v. Perry*, No. A-14-CV-335, 2014 U.S. Dist. LEXIS 156192, at *8 (W.D. Tex. Nov. 5, 2014) (three-judge court); Emily Bazelon and Jim Rutenberg, *The Next Big Voting-Rights Fight*, *New York Times Magazine*, Dec. 31, 2015, <https://nyti.ms/3kYA3jg>. The Supreme Court unanimously rejected that claim. *See Evenwel v. Abbott*, 136 S. Ct. 1120 (2016). As the Court observed, the Fourteenth Amendment expressly includes all people in the congressional apportionment base; “[i]t 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.

As part of the same strategic push, while *Evenwel* was pending before the Supreme Court, a partisan political strategist named Dr. Thomas Hofeller prepared a study analyzing “how a switch from the current norm of drawing legislative districts of equal total population ... to using [eligible-voter population] data ... could shift political power.” *Kravitz v. Dep’t of Commerce*, 382 F. Supp. 3d 393, 398 (D. Md. 2019); Stat. ¶ 2. Dr. Hofeller concluded that excluding those ineligible to vote from the apportionment base would take power “away from Hispanic voters” and shift it to “Non-Hispanic Whites.” *Kravitz*, 382 F. Supp. 3d at 398; Stat. ¶ 2. At the same time, Dr. Hofeller noted that precinct-by-precinct data on citizenship did not exist, and that “a citizenship question would need to be added to the 2020 Census” in order to “to generate the ... data necessary to make this switch.” *Kravitz*, 382 F. Supp. 3d at 398; Stat. ¶ 2.

C. The Administration Attempts to Add a Citizenship Question to the Census

Shortly after *Evenwel* was decided, President Donald Trump was elected. His Administration picked up Dr. Hofeller’s suggestion and attempted to add a citizenship question to the

census. Two courts have found active coordination between Dr. Hofeller and the Administration in this process. *See Kravitz*, 382 F. Supp. 3d at 399 (finding that Dr. Hofeller “spoke several times” about adding the question with an advisor to the Secretary of Commerce and “worked with [him] to concoct the [Voting Rights Act] pretext that [the advisor] then provided to [the Justice Department] on the Secretary’s behalf”); *New York v. Dep’t of Commerce*, No. 18-cv-2921, 2020 U.S. Dist. LEXIS 89470, at *37 (S.D.N.Y. May 21, 2020) (similar); Stat. ¶¶ 3-5.

In March 2018, Secretary Ross announced his intent “to reinstate a question about citizenship on the 2020 decennial census questionnaire.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2562 (2019); Stat. ¶ 6. Ross’s publicly stated rationale for adding the question was to help the Department of Justice “enforc[e] the Voting Rights Act.” *New York*, 139 S. Ct. at 2564; Stat. ¶ 6. Soon thereafter, lawsuits were filed to block the citizenship question. After a bench trial, a federal district court in New York ruled “that the Secretary’s action was arbitrary and capricious” and “based on a pretextual rationale.” *New York*, 139 S. Ct. at 2564; Stat. ¶ 7.

The Supreme Court affirmed, agreeing that “the Secretary’s decision must be set aside because it rested on a pretextual basis.” *New York*, 139 S. Ct. at 2573; Stat. ¶ 8. In particular, the Supreme Court found that “the [Voting Rights Act] played an insignificant role in the decisionmaking process.” 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 motive. *New York*, 139 S. Ct. at 2574-76; Stat. ¶ 8.

D. After Losing the Census Case, The Administration Continues its Efforts to Remove Noncitizens from the Apportionment Base

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.” Stat. ¶ 9.

With the citizenship question now quashed, the Administration sought another way to implement its goal. Thus, on July 11, 2019, the President issued Executive Order 13880, titled *Collecting Information About Citizenship Status in Connection with the Decennial Census*. 84 Fed. Reg. 33821. In that Executive Order, the President acknowledged the true reason why the Administration had been so intently set on collecting citizenship data: enabling the “design ... [of] legislative districts based on the population of voter-eligible citizens,” rather than total population. *Id.* at 33823-24; Stat. ¶ 11.

The Executive Order recognized that it was now “impossible ... to include a citizenship question on the 2020 decennial census questionnaire.” 84 Fed. Reg. at 33821; Stat. ¶ 12. Thus, as a backup plan, the President ordered “all executive departments and agencies” to “provide the [Commerce] Department the maximum assistance permissible ... in 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.” The Executive Order also “direct[ed] the [Commerce] Department to strengthen its efforts ... to obtain State administrative records concerning citizenship.” 84 Fed. Reg. at 33821; Stat. ¶ 12.

E. The President Issues the Memorandum

The other shoe dropped on July 21, 2020, less than six months before the President was required to certify census results to Congress for reapportionment. On that date, the President issued a proclamation titled *Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census* (the “Memorandum”). Stat. ¶ 15. The Memorandum unilaterally declared 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....” Stat. ¶ 15. The Memorandum makes no serious attempt to square this new “policy” with the governing statutory and constitutional provisions or with over two centuries of contrary practice. Instead, it purports to justify its “policy” based on the President’s own belief that “[e]xcluding ... illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government.” Stat. ¶ 15.

To implement this new “policy,” the Memorandum states that, following the 2020 census, when the President “transmits ... to the Congress” his report of the “number of Representatives to be apportioned to each State,” he will unilaterally “exclude ... aliens who are not in a lawful immigration status” from the base of apportionment. Stat. ¶ 18. 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.” Stat. ¶ 19.

To enable the President to prepare this manipulated apportionment, the Memorandum orders the Secretary of Commerce (and through him, the Commerce Department, the Census Bureau, and the Director of the Census Bureau) to “take all appropriate action ... to provide information permitting the President ... to carry out the policy set forth in ... this memorandum.” Stat. ¶ 20. Presumably, this includes providing the President with “data on the number of citi-

zens, non-citizens, and illegal aliens in the country,” which the President had earlier commanded the Department of Commerce to collect. Stat. ¶¶ 12-13, 20.

In an accompanying statement, President Trump declared: “Today, I am ... directing the Secretary of Commerce to exclude illegal aliens from the apportionment base following the 2020 census.” Stat. ¶ 21. He expressly linked the Memorandum to his own partisan and nativist views, stating: “There used to be a time when you could proudly declare, ‘I am a citizen of the United States.’ But now, the radical left is trying to erase the existence of this concept and conceal the number of illegal aliens in our country. This is all part of a broader left-wing effort to erode the rights of American citizens, and I will not stand for it.” Stat. ¶ 21.

Two days after President Trump issued the Memorandum, his reelection campaign sent a mass email to supporters characterizing the Memorandum as an “EXECUTIVE ORDER BLOCKING ILLEGAL ALIENS FROM BEING COUNTED IN [THE] U.S. CENSUS.” Stat. ¶ 22. The email went on to state that “President Trump just signed an Executive Order that will block illegal aliens from receiving congressional representation, and ultimately, being counted in the U.S. Census.” Stat. ¶ 22. The email once again linked the Memorandum to the President’s own partisan, nativist views, asserting that this “Executive Order” was necessary because “Democrats are prioritizing dangerous, unlawful immigrants over American Citizens.” Stat. ¶ 22.

F. Defendants are Now Endeavoring to Implement the Memorandum

The Commerce Department and Census Bureau have provided few public details about how they intend to calculate the number of undocumented immigrants in each state. Nevertheless, it is clear that they are actively working to do so. At a recent congressional hearing, Census Bureau Director Steven Dillingham testified that the Secretary of Commerce had already “giv[en] [the Bureau] the directive ... to proceed with the requirements of the Presidential Memorandum,” and that the “process [was] underway” and “moving rapidly as possible.” Stat. ¶ 23.

In particular, he testified that the Bureau “ha[d] received most of the data” and that its experts were “beginning the process of looking at methodologies.” Stat. ¶ 23.

STANDARD OF REVIEW

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “The mere existence of some factual dispute is insufficient on its own to bar summary judgment; the dispute must pertain to a ‘material’ fact.” *Wood v. Am. Fed’n of Gov’t Employees*, 316 F. Supp. 3d 475, 480 (D.D.C. 2018), *aff’d*, 2019 WL 668337 (D.C. Cir. Feb. 12, 2019). “Nor may summary judgment be avoided based on just any disagreement as to the relevant facts; the dispute must be ‘genuine,’ meaning that there must be sufficient admissible evidence for a reasonable trier of fact to find for the non-movant.” *Id.* “[I]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 481.

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO CHALLENGE THE MEMORANDUM

“For a legal dispute to qualify as a genuine case or controversy, at least one plaintiff must have standing to sue.” *New York*, 139 S. Ct. at 2565. “To have standing, a plaintiff must ‘present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.’” *Id.*

A. Plaintiffs Will Imminently Suffer Injury-in-Fact

As the Amended Complaint reflects, this case involves a number of different plaintiffs and several distinct theories of harm. But because only “one plaintiff” need demonstrate standing, Plaintiffs focus here on (1) the plaintiffs who are individual voters and (2) a membership

organization, Common Cause, whose members include voters in every state. Stat. ¶¶ 27, 32-51.¹ To simplify matters further, Plaintiffs focus on just one form of harm: vote dilution.

The Supreme Court has held that voters who live in a state that is “expected [to] los[e] ... a Representative” due to a challenged apportionment practice “undoubtedly satisf[y] the injury-in-fact requirement of Article III standing,” because “[t]hey are asserting ‘a plain, direct and adequate interest in maintaining the effectiveness of their votes.’” *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 331-32 (1999) (citation omitted) (finding that “[w]ith one fewer Representative, Indiana residents’ votes will be diluted”). Indeed, for purposes of Plaintiffs’ claim regarding statistical sampling, it is sufficient that a Plaintiff “reside[] [in] a State whose congressional representation or district could be changed as a result of the use of [the challenged] statistical method.” Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1998 (“1998 Appropriations Act”), § 209(d)(1), Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note).

The first question, then, is whether at least one plaintiff or Common Cause member lives in a state that is “expected [to] los[e]” a House seat if the Memorandum is implemented. The answer to that question is yes. Stat. ¶¶ 27, 32-51. Plaintiffs’ expert, Dr. Christopher Warshaw, conducted an analysis showing that, if undocumented immigrants are removed from the apportionment base, several states are likely to lose seats. Stat. ¶¶ 58-63; *cf. House of Representatives*, 525 U.S. at 330 (holding that an Indiana voter-plaintiff demonstrated standing via an expert analysis showing that “it [was] a virtual certainty that Indiana [would] lose a seat ... under the

¹ Common Cause has standing to sue on behalf of its members because those members are individual voters who “would otherwise have standing to sue in their own right,” Stat. ¶¶ 27, 32-35, 39, 41, 43, 46, 47, 50, 51; the “interests at stake” in this litigation “are germane to [its] purpose” as a nonprofit that promotes democracy and good government, Stat. ¶¶ 28-31; and “neither the claim asserted nor the relief requested requires participation of [its] individual members in the lawsuit.” *Friends of Earth, Inc. v. Laidlaw Envt’l Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

[Commerce] Department’s Plan”); *id.* at 332-33 (holding that other voter-plaintiffs demonstrating standing via an expert analysis showing that “it [was] substantially likely” that voters in their counties “w[ould] suffer vote dilution ... as a result of the [Bureau’s] Plan”).

As Dr. Warshaw showed, Texas—the home state of multiple named voter-plaintiffs—has the highest likelihood of losing a seat, at 98%. Stat. ¶¶ 38, 41, 59. Dr. Warshaw also determined that the probability that *at least one* of the five states where the voter-plaintiffs live (Texas, California, New Jersey, New York, and Florida) would lose a seat was 100%. Stat. ¶¶ 33-51, 60. Likewise, because Common Cause has members in every state, Dr. Warshaw determined that the probability that at least one U.S. state would lose a seat was also 100%. Stat. ¶¶ 27, 32, 63. If that were not enough, the Memorandum states on its face that, under its new “policy,” one state will likely lose “two or three ... congressional seats.” Stat. ¶ 16. It is clear from context that this state is California, where multiple named voter-plaintiffs live—but whichever state it is, Common Cause has members there. Stat. ¶¶ 27, 32, 36-37, 39, 42, 45, 59. All of this demonstrates that the dilution of at least one Plaintiff’s vote (or the vote of one Common Cause member) is a “virtual certainty”—and *a fortiori*, that it is “substantially likely.” *House of Representatives*, 525 U.S. at 330, 332-33. Surely it “could” occur. 1998 Appropriations Act, § 209(d)(1), Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note).

The only remaining question is whether the implementation of the Memorandum is sufficiently “imminent.” *New York*, 139 S. Ct. at 2565. Again, the answer is yes. The deadline for the President to prepare and transmit apportionment tables to Congress is in January 2021—less than five months from now. Stat. ¶ 25. Even if there were some possibility that the President might change his mind between now and then, that would not defeat standing. All that is required is a “substantial risk” that the Memorandum will be implemented. *Susan B. Anthony List*

v. Driehaus, 573 U.S. 149, 158 (2014); *see also N.Y. Republican State Comm. v. SEC*, 927 F.3d 499, 504-05 (D.C. Cir. 2019) (discussing “substantial risk” standard); *see, e.g., Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 517-18 (N.D. Cal. 2017) (holding that California counties had standing to challenge President Trump’s Executive Order on sanctuary cities, even though the government “ha[d] not yet designated [them] as ‘sanctuary jurisdictions’ or withheld funds,” as there was a “credible threat” of enforcement), *aff’d*, 897 F.3d 1225 (9th Cir. 2018).

That “substantial risk” test is easily met here. For starters, “[i]n assessing whether enforcement [of a presidential directive] is likely, courts look to ... the government’s statements and representations.” *Id.* at 521. Here, the Memorandum declares on its face that it is “*the policy of the United States* to exclude [undocumented immigrants] from the apportionment base ... *to the maximum extent feasible.*” Stat. ¶ 15 (emphasis added). It also announces the President’s intent “to carry out the policy set forth ... in th[e] [M]emorandum.” Stat. ¶ 20; *cf. League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985, 998 (D. Alaska 2018) (finding standing to challenge an Executive Order that had not yet been implemented, where “[t]he Executive Order itself demonstrate[d] that the ... activities [that it authorizes] are intended to be imminent”).

In his accompanying public statement, the President stated unequivocally that he was “*directing* the Secretary of Commerce *to exclude* illegal aliens from the apportionment base following the 2020 census.” Stat. ¶ 21. And his reelection campaign told Americans in no uncertain terms that “President Trump just signed an Executive Order that *will* block illegal aliens from receiving congressional representation.” Stat. ¶ 22. Since then, neither the President nor any of the other Defendants has “disavowed [the] intention” to implement it. *Woodhull Freedom Found. v. United States*, 948 F.3d 363, 373 (D.C. Cir. 2020); Stat. ¶¶ 23-24. To the contrary, as the Director of the Census Bureau testified to Congress, the Secretary of Commerce has already

“giv[en] [the Bureau] the directive ... to proceed with the requirements of the Presidential Memorandum,” and that “process is underway.” Stat. ¶ 23.

In evaluating imminence, courts also consider “the past conduct of the government.” *Cnty. of Santa Clara*, 250 F. Supp. 3d at 521. This Administration has already gone to great efforts to exclude noncitizens from apportionment. Secretary Ross added a citizenship question to the census, misled the public and the courts about the reason, and litigated the issue all the way to the Supreme Court. Stat. ¶ 3-8. After the Supreme Court blocked that path, the President immediately issued an Executive Order declaring it “imperative” that “all agencies ... share information” about citizenship with the Commerce Department. Stat. ¶ 12. The Memorandum was the next step in this effort. Finally, on August 3, 2020—less than two weeks after the Memorandum was issued—the Census Bureau abruptly reversed its earlier decision to extend all census deadlines in light of the COVID-19 pandemic, shortening data collection by a month and putting the integrity of the decade-long census effort at severe risk. The Administration offered no public explanation for this sudden about-face, but the only plausible motivation is to ensure that the count is finalized in time for President Trump to implement the Memorandum before his current term in office ends on January 20, 2021. Stat. ¶ 25. All of this history confirms that Defendants are deeply committed to the policy set forth in the Memorandum and will make every effort to implement it. *A fortiori*, there is a “substantial risk” that they will do so.

Finally, Congress has expressed its view that challenges to statistical methods employed in the census be resolved as early as possible—and that view matters. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (noting that “Congress[’s] ... judgment is ... instructive and important” when assessing injury-in-fact). In particular, Congress found that “it would be impracticable for ... the courts of the United States to provide[] meaningful relief after [the census]

has already been conducted.” *See* 1998 Appropriations Act § 209(a)(8), Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note). It determined that an “Operational Plan” of the Census Bureau is “sufficiently concrete and final to ... be reviewable in a judicial proceeding” even before its implementation. *Id.* § 209(c)(2). And it provided that “[i]t shall be the duty” of the Article III courts “to expedite to the greatest possible extent the disposition” of any challenge to such a statistical method. *Id.* § 209(e)(2). Article III’s imminence requirement must be interpreted with these directives in mind.

B. Plaintiffs’ Injuries are Fairly Traceable to the Challenged Conduct

The traceability element of standing requires “a causal connection between the injury and the conduct complained of.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Here, there is no question that Plaintiffs’ impending loss of representation in Congress is “fairly traceable” to the implementation of the Memorandum. Both Dr. Warshaw’s analysis and the Memorandum’s own language show that the exclusion of undocumented immigrants from the apportionment base is intended to cause, and will cause, the loss of representation at issue. *Cf. House of Representatives*, 525 U.S. at 332 (“[A]s [Plaintiffs’ expert’s] affidavit demonstrates, ... [t]here is undoubtedly a ‘traceable’ connection between the [challenged apportionment practice] and Indiana’s expected loss of a Representative”).

C. Plaintiffs’ Injuries are Redressable

Finally, the redressability element of standing requires that it “be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 561. Here, an injunction prohibiting Defendants from implementing the Memorandum would prevent the harm of which Plaintiffs complain. *Cf. House of Representatives*, 525 U.S. at 332 (“[T]here is a substantial likelihood that the requested relief—a permanent injunction against the proposed uses of sampling in the census—will redress the alleged injury.”).

Plaintiffs recognize that the law is somewhat unclear as to whether and when the President himself may be enjoined. *See Franklin v. Massachusetts*, 505 U.S. 788, 802-03 (1992). However, even if this Court may not enjoin the President, that does not defeat redressability. The Court may still enjoin the other Defendants, and all others working with the President, from providing him with the data and assistance necessary to carry out the Memorandum. Moreover, the Court “may assume it is substantially likely that the President ... would abide by an authoritative interpretation of the census statute and [relevant] constitutional provision[s] ..., even [if he] would not be directly bound by such a determination.” *Id.* at 803; *see also Adams v. Clinton*, 90 F. Supp. 2d 35, 43-44 (D.D.C. 2000) (three-judge court).

II. THE MEMORANDUM VIOLATES THE CONSTITUTION BY EXCLUDING UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT BASE

A. Article I, Section 2 Requires Inclusion of Undocumented Immigrants in the Apportionment Base

As originally ratified, the Constitution provided that “Representatives” in the U.S. House “shall be apportioned among the several States ... 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.” U.S. Const., art. I, § 2, cl. 3 (emphasis added). In other words, “Indians not taxed” were excluded from the apportionment base altogether, and slaves (*i.e.*, “other Persons”) were counted as a fraction of a “free person.” But the Framers did not exclude anyone else—such as noncitizens.

As this Court has previously recognized, the presence of these two express exclusions signifies that no other, implicit exclusions were intended—*i.e.*, that “the whole number of free persons” was meant to be “all-inclusive.” *FAIR*, 486 F. Supp. at 576; *cf. Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018) (discussing and applying the canon *expressio unius est exclusio alterius*). Undocumented immigrants “are clearly ‘persons,’” and thus within the compass of the

Framers' language. *FAIR*, 486 F. Supp. at 576; *see also Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ [within the meaning of] the Fifth and Fourteenth Amendments.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (holding that the Fourteenth Amendment’s references to “persons” are “universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of ... nationality”).

The Framers’ contemporaneous statements point to the same conclusion. Madison stated that it was “a fundamental principle of the proposed Constitution, that ... the aggregate number of representatives allotted to the several States [would] be determined by a federal rule, founded on the aggregate number of *inhabitants*,” *The Federalist* No. 54 (emphasis added)—not, for example, the aggregate number of “citizens,” or “persons in compliance with federal immigration law.” Indeed, Madison recognized that “in every State, a certain proportion of inhabitants”—noncitizens included—“are deprived of [the] right [to vote],” but that they would nonetheless “be included in the census by which the federal Constitution apportions the representatives.” *Id.*; *see also Evenwel*, 136 S. Ct. at 1127. Madison was not alone: “[e]ndorsing apportionment based on total population, Alexander Hamilton declared: ‘There can be no truer principle than this—that every individual of the community at large has an equal right to the protection of government.’” *Id.* (quoting 1 Records of the Federal Convention of 1787, p. 473 (M. Farrand ed. 1911)).

B. The Fourteenth Amendment Requires Inclusion of Undocumented Immigrants in the Apportionment Base

Any doubt about the original intent of the Founding Fathers was dispelled by the ratification of the Fourteenth Amendment following the Civil War. That amendment eliminated the

odious “three-fifths” clause, but otherwise “retained total population as the congressional apportionment base.” *Evenwel*, 136 S. Ct. at 1128.

Specifically, the Fourteenth Amendment provided 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, cl. 1 (emphasis added).² Notably, Congress used the word “persons,” not “citizens,” in the apportionment formula—even though it used “citizens” in other provisions of the Fourteenth Amendment. *See, e.g., id.* § 1 (providing that states may not “abridge the privileges or immunities of *citizens* of the United States,” but that all “*person[s]*” in the United States are entitled to due process and equal protection (emphasis added)). That choice was intentional.

During the debates over the Fourteenth Amendment, Congress considered this apportionment formula at length. *See Evenwel*, 136 S. Ct. at 1127-28. In particular, Congress debated whether to revise it to exclude persons ineligible to vote—a category, all recognized, that included the “unnaturalized foreign-born.” Cong. Globe, 39th Cong., 1st Sess. 1256 (1866) (remarks of Sen. Wilson). The proposal was driven by the fact that substantial immigration from Europe to the Northeast had resulted in a high concentration of unnaturalized immigrants in those states. *See* Joseph B. James, *The Framing of the Fourteenth Amendment* 23, 185 (1956).

The proposal was soundly rejected, however, on the ground that “non-voting classes”—immigrants included—“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)). Senator Johnson of Maryland explained that non-

² Although the “Indians not taxed” exception remains, no such persons have existed for many years. *See* Dep’t of Commerce, *Census Undercount Adjustment: Basis for Decision*, 45 Fed. Reg. 69366, 69372 (Oct. 20, 1980) (“Since the passage of the income tax laws, there are no longer any Indians not taxed ... to be excluded from the apportionment population.”).

voters are among those whom the government represents, and “the basis of representation” must depend upon “the entire number of people to be represented.” Cong. Globe, 39th Cong., 1st Sess. 2767-68 (1866). As the amendment’s lead drafter, Representative Bingham of Ohio, made clear: “Under the Constitution as it now is and as it always has been, *the entire immigrant population* of this country is included in the basis of representation,” including those “not naturalized.” *Id.* at 432 (emphasis added).

C. Congressional Action Since the Fourteenth Amendment Confirms that Undocumented Immigrants Must be Included in the Apportionment Base

On several occasions since the Fourteenth Amendment’s passage, Congress has considered measures to exclude “aliens,” including undocumented immigrants, from the census count and apportionment base. All such proposals have failed, as it was “generally accepted that such a result would require a constitutional amendment.” *FAIR*, 486 F. Supp. at 576-77.

For example, in advance of the 1930 census, Congress considered removing “aliens” from the apportionment base. *See* New York Times, *Census Bill Passed; Amendments Killed*, June 7, 1929, <https://nyti.ms/2FtL1wV>. This proposal “was known as the Evans plan after the head of the Ku Klux Klan, Hiram Wesley Evans.” Charles W. Eagles, *Democracy Delayed: Congressional Reapportionment and Urban-Rural Conflict in the 1920s* 70 (2010). But the Senate Legislative Counsel concluded that “statutory exclusion of aliens from the apportionment base would be unconstitutional,” and the proposal failed. *FAIR*, 486 F. Supp. at 576-77 (citing 71 Cong. Rec. 1821 (1929)).

Again in 1940, Congress considered whether “aliens who are in this country in violation of law have the right to be counted and represented.” *FAIR*, 486 F. Supp. at 576-77 (quoting 86 Cong. Rec. 4372 (1940)). Representative Emanuel Celler of New York explained:

The Constitution says that all persons shall be counted. I cannot quarrel with the founding fathers.... 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....

Id. (emphasis added). On that basis, Congress rejected the proposal. *Id.*

Once again in 1980, the subject arose in Congress. In opposition to exclusion, Senator Jacob Javits of New York explained that the Constitution permitted no apportionment rule “other than as described in the Federalist papers, the aggregate number of inhabitants, which includes aliens, *legal and illegal*.” 1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov’tl Affairs, 96th Cong. 10 (1980) (emphasis added). Once again, Congress failed to enact the proposal.

D. The Executive Branch Has Repeatedly Stated that Excluding Undocumented Immigrants from the Apportionment Base Would Violate the Constitution

The Executive Branch—under Presidents of both parties—has repeatedly agreed that the Constitution requires that noncitizens, including undocumented immigrants, be included in the congressional apportionment base.

For example, in 1980, under Democratic President Jimmy Carter, certain plaintiffs filed a lawsuit in this District seeking to exclude “illegal aliens” from the census and the apportionment base. *FAIR*, 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).

“[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.

In 1988, under Republican President Ronald Reagan, the Director of the Office of Management and Budget sought the views of the DOJ on another proposal to exclude “illegal aliens” from congressional apportionment. The DOJ again concluded that the proposed legislation was “unconstitutional.” Letter from Thomas M. Boyd, Acting Assistant Attorney General, dated June 29, 1988, at 5.³ 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 apportionment base. *Id.* at 2 (emphasis added). The DOJ noted that 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. Moreover, the DOJ explained, the Fourteenth Amendment makes no distinction between “aliens” who are and are not lawfully present in the United States. *Id.* at 3-4 (citing *Plyler*, 457 U.S. at 210).

In 1989, under Republican President George H. W. Bush, the DOJ issued a similar opinion. Once again, a Senator had “requested the views of the [DOJ] concerning the constitutionality of proposed legislation excluding illegal ... 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 pro-

³ *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, 100th Cong., 2d Sess., June 24, 1988 at 240.

vides 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).

In 2015, under Democratic 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 (filed Sept. 25, 2015). 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.

Multiple Directors of the Census Bureau, serving under Presidents of both parties, have expressed the same position. In a recent hearing before the House Committee on Oversight and Reform, four former Directors of the Bureau testified that exclusion of undocumented immigrants from the apportionment base would be unconstitutional.⁴ Those who so testified were:

- Vincent Barabba, Director of the Census Bureau from 1973–76 and 1979–81, under Presidents Nixon, Ford, and Carter, who oversaw the 1980 census;
- Kenneth Prewitt, Director of the Census Bureau from 1998–2001, under President Clinton, who oversaw the 2000 census;
- Robert M. Groves, Director of the Census Bureau from 2009–12, under President Obama, who oversaw the 2010 census; and
- John H. Thompson, Director of the Census Bureau from 2013–17, under Presidents Obama and Trump, who prepared for the 2020 census.

⁴ Counting Every Person: H’g on Safeguarding the 2020 Census Against the Trump Administration’s Unconstitutional Attacks Before the House Comm. on Oversight & Reform, 116th Cong. (2020), <https://www.youtube.com/watch?v=SKXS8e1Ew7c>.

Political appointees of the present Administration excluded, Plaintiffs are not aware of anyone in the DOJ or Census Bureau who has ever taken the opposite view.

E. The Judiciary Has Confirmed that Excluding Undocumented Immigrants from the Apportionment Base Would be Unconstitutional

The judiciary, too, has echoed this consensus. For over fifty years, the 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*”—*i.e.*, not by the number of citizens or voters. *Wesberry v. Sanders*, 376 U.S. 1, 13 (1964) (emphasis added). Just four years ago, the Supreme Court 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 (emphasis added). Because undocumented immigration was at the center of the controversy in *Evenwel*, the Supreme Court surely had those persons in mind as part of the “total population” when it made this declaration.⁵

Lower courts, including a three-judge panel of this Court, have also determined that “illegal aliens ... are clearly ‘persons,’” and that “the population base for purposes of [congressional] apportionment” must therefore “include[] all persons, *including aliens both lawfully and unlawfully within our borders.*” *FAIR*, 486 F. Supp. at 576 (emphasis added); *see also New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019) (observing that “the Constitution mandates that [the Census must] count every single person residing in the United States ... whether living here with legal status or without,” and that “[t]he population count derived from

⁵ Compare Brief of City of Los Angeles et al. as *Amicus Curiae* for Appellees, *Evenwel v. Abbott*, No. 14-940 (filed Sept. 25, 2015), at 21-22 (discussing the rights of undocumented immigrants as members of the political community) with Br. of Immigration Reform Law Institute as *Amicus Curiae* for Appellants, *Evenwel v. Abbott*, No. 14-940 (filed Aug. 7, 2015), at 1 (complaining of the “harms ... posed by mass migration to the United States, both lawful and unlawful”).

that effort is used ... to apportion Representatives”), *aff’d in relevant part*, 139 S. Ct. 2551 (2019). To Plaintiffs’ knowledge, no court has ever held otherwise.

F. 232 Years of Unbroken Practice Confirm This Reading of the Constitution

What the above sources suggest, “settled practice confirms.” *Evenwel*, 136 S. Ct. at 1132. To wit, immigrants—whether documented or undocumented—have in fact been counted in every census, and included in every congressional apportionment, since the Constitution was ratified in 1788. *FAIR*, 486 F. Supp. at 576; Stat. ¶ 1. Such “[l]ong settled and established practice is a consideration of great weight in a proper interpretation of [the relevant] constitutional provisions....” *NLRB v. Noel Canning*, 573 U.S. 513, 524 (2014); *see also New York*, 139 S. Ct. at 2567 (“[In the census context], as in other areas, our interpretation of the Constitution is guided” by “early understanding of and long practice”).

G. The Memorandum’s Constitutional Reasoning is Meritless

The Memorandum makes no effort to square its “policy” with any of this. Instead, it declares that the relevant constitutional language—“the whole number of persons in each State”—is ambiguous, and that “[d]etermining” its true meaning “requires the exercise of judgment.” Stat. ¶ 17. To the contrary, as this Court has found, “[t]he language of the constitution is not ambiguous” on this question. *FAIR*, 486 F. Supp. at 576.

The Memorandum’s attempt to create ambiguity in that language is sophistic. It points out that “aliens who are only temporarily in the United States, such as for business and tourism, and certain foreign diplomatic personnel are ‘persons’ who have been excluded from the apportionment base in past censuses.” Stat. ¶ 17. From this, the Memorandum speciously reasons that there must be leeway to exclude other categories of “persons,” such as undocumented immigrants. But both of the Memorandum’s purported examples are easily explained.

All that the “foreign visitors” example shows is that a state’s “numbers,” as a matter of plain meaning, encompasses all the people—and only the people—who actually *live* there. That is how the Framers understood the Constitution’s language. *See* Madison, The Federalist No. 54 (stating that the “number of representatives allotted” to a state would be “determined by ... [its] aggregate number of *inhabitants*” (emphasis added)). That is how the first Congress understood the Constitution’s language when it drafted the original Census Act. *See* Census Act of Mar. 1, 1790, § 5, 1st Cong., 2d Sess. (specifying that persons be enumerated at their “usual place of abode,” *i.e.*, “that place in which [they] usually reside[]”).

That is how the Census Bureau understood its constitutional mandate throughout the intervening centuries. *See* Statement of John G. Keane, Director of the Census Bureau, *Enumeration of Undocumented Aliens in the Decennial Census*, H’g Before the Subcommittee on Energy, Nuclear Proliferation, and Gov’t Processes of the Senate Committee on Gov’t Affairs, 99th Cong., 1st Sess., Sept. 18, 1985, at 22-23. And that is how the Census Bureau understood its mandate for purposes of conducting the 2020 census after full notice-and-comment rulemaking. *See Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018) (stating that “[t]he state in which a person resides” for purposes of the census is “the place where [that] person lives and sleeps most of the time”). In sum, “foreign tourists ... do not ‘reside’ here.” *FAIR*, 486 F. Supp. at 567. Undocumented immigrants do.⁶

The example of foreign diplomatic personnel does not help the Defendants either. The Memorandum acknowledges that only “certain” such personnel have been excluded from apportionment. Conveniently, however, it fails to note which ones those are: diplomats living in for-

⁶ *See* Jynnah Radford, Key Findings About U.S. Immigrants, Pew Research Ctr. (June 17, 2019), <https://perma.cc/USU7-L9BM> (noting that, in 2017, 66% of “unauthorized immigrants” had lived in the United States more than 10 years).

eign nations' embassies. *See FAIR*, 486 F. Supp. at 567 (“everyone is counted except foreign diplomatic personnel living on embassy grounds”); Statement of John G. Keane, *supra*, at 24 (same). As a matter of international law, foreign embassies have long been “considered ‘foreign soil,’ and thus not within any state.” *Id.*; *see also United States v. Corey*, 232 F.3d 1166, 1182 (9th Cir. 2000) (noting that historically, “the official residences of envoys were in every respect considered to be outside the territory of the receiving state” (quoting 1 Oppenheim’s International Law § 494, at 1076 (Robert Jennings & Arthur Watts eds., 9th ed. 1992))). Thus, the exclusion of foreign embassy residents from the apportionment base does not create any constitutional ambiguity or imply any authority to exclude immigrants who do, in fact, live on U.S. soil.

In any event, if there were any ambiguity in the Constitution, the body entitled to exercise “judgment” in this area would be Congress—not the President. The Constitution places the task of apportionment within Article I, which deals with the powers of Congress, since that task determines the composition of Congress itself. Article II, which deals with the President’s powers, says nothing about apportionment. This is no accident: the Framers were deeply concerned about the “concentration of the several powers [of government] in the same department [*i.e.*, branch],” and they took pains prevent any one branch from exercising undue influence over another. James Madison, *The Federalist* No. 51 (1788).

Relevant here, to help ensure that “each department [w]ould have a will of its own,” the Framers endeavored to give “the members of each [department] . . . as little agency as possible in the appointment of the members of the others.” *Id.*; *cf.* U.S. Const., art. I, § 5, cl. 1 (“Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members.”). If the President had inherent power to exercise “judgment” regarding the legislative apportionment base, he could alter the composition of the House of Representatives at his whim, thereby ag-

grandizing power to the executive. That would have been anathema to the Framers, and the Constitution gives the President no such power.

* * *

For all of the above reasons, Article I, § 2 and the Fourteenth Amendment require that undocumented immigrants—like all other “persons”—be included in the Congressional apportionment base. The Memorandum, therefore, is unconstitutional and should be enjoined.

III. THE MEMORANDUM VIOLATES FEDERAL STATUTES BY EXCLUDING UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT BASE

For much the same reasons that the Memorandum violates the Constitution, it also violates 13 U.S.C. § 141 and 2 U.S.C. § 2a, the statutes that Congress has duly enacted to regulate the census and apportionment.

A. The Statutory Scheme Requires the President to Calculate Apportionment Using “the Whole Number of Persons in Each State”

The Constitution tasks Congress with passing legislation to “direct” the “manner” in which the census and the resulting apportionment shall occur. *See* U.S. Const., art. I, § 2, cl. 3. Congress has assigned the responsibility of conducting the census to the Secretary of Commerce, and the Census Bureau acting under him or her. *See* 13 U.S.C. §§ 2, 4, 141. As is well known, the Census Bureau sends a questionnaire to every household in the United States, to which every resident (documented or otherwise) is legally required to respond. *See* 13 U.S.C. § 221. The Census Bureau then counts responses from every household to determine the population count in the various states. Within nine months of the census date (in this case, by December 31, 2020), 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).

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* in each State, excluding Indians not taxed, as ascertained under the ... decennial census of the population.” 2 U.S.C. § 2a(a) (emphasis added). Second, based on that figure, the President must calculate “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.” *Id.* “Each State” shall thereupon “be entitled” to the number of representatives “shown in” the President’s statement to Congress. 2 U.S.C. § 2a(b).

This statutory scheme does not authorize the Secretary of Commerce to transmit to the President for use in apportionment any number other than “the total population by States,” as determined by the census. Nor does it authorize the President to base the apportionment calculation that he or she transmits to Congress on something other than “the whole number of persons in each State,” as determined by the census. As discussed above, this phrasing comes straight from the Constitution itself, and there is no ambiguity about what it means.

B. The Statutory Scheme Does Not Delegate the President Any Discretion Regarding the Apportionment Base

Nor do these statutes contain an implicit grant of discretion to the President to alter the apportionment base in accordance with his personal view of what is (in the Memorandum’s words) “mo[st] consonant with the principles of representative democracy.”

As this Court has held, since “[t]he apportionment function” is so important to the Legislative Branch, “impact[ing] not only the distribution of representatives among the states, but also the balance of political power within the House,” it is not plausible that Congress would have left such fundamental choices “to the discretion of the [Executive Branch] without a more direct congressional pronouncement.” *U.S. House of Representatives v. Dep’t of Commerce*, 11 F.

Supp. 2d 76, 100 (D.D.C. 1998) (three-judge court), *aff'd*, 525 U.S. 316 (1999); *cf. Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (“The idea that Congress gave the Attorney General such broad and unusual authority through an implicit delegation ... is not sustainable.”).

The statutory history, too, underscores that Congress never delegated such discretion to the President. The present framework, under which the President calculates apportionment tables and transmits them to Congress, dates back to 1929. Before then, following each census, Congress calculated its own apportionment and enacted it through a new statute. *See Franklin*, 505 U.S. at 808-09 (Stevens, J., concurring in part). “After the 1920 census, however, Congress failed to pass a reapportionment Act” as a result of internal “deadlock.” *Id.*; *see also Dep’t of Commerce v. Montana*, 503 U.S. 442, 451-52 & n.25 (1992). This impasse “provided the impetus for the 1929 [Census] Act,” which “established [the] self-executing apportionment [process]” that remains in place today. *See Franklin*, 505 U.S. at 809 (Stevens, J., concurring in part) (citing S. Rep. No. 2, 71st Cong., 1st Sess. 2-4 (1929)); *see also Montana*, 503 U.S. at 451 n.25.

In particular, the new Act “produced an automatic reapportionment through the application of a mathematical formula to the census.” *Franklin*, 505 U.S. at 809-10 (Stevens, J., concurring in part). The original bill tasked the Secretary of Commerce with “appl[ying] [the] mathematical formula to the census figures and . . . transmit[ting] the resulting apportionment calculations to Congress.” *Id.* “A later version made the President responsible for performing the mathematical computations and reporting the result.” *Id.* But as this history makes clear, Congress did not intend to endow the President with discretion to make wholesale changes to the apportionment base. To the contrary, Congress’s sole intention in involving the President was “to make the apportionment proceed automatically based on the census.” *Id.* at 810.

Indeed, the sponsor of the 1929 Act stressed that the “function [to be] served by the President” in the apportionment determination was “*as purely and completely a ministerial function as any function on earth could be.*” 71 Cong. Rec. 1858 (1929) (statement of Sen. Vandenberg) (emphasis added). The President was simply “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 act “pursuant to a purely ministerial and mathematical formula”).

The Executive Branch has similarly agreed that the President’s statutory role in translating the census data to an apportionment determination is purely ministerial. See Reply Br. for the Federal Appellants at 24, *Franklin v. Massachusetts*, No. 91-1502, 1992 U.S. S. Ct. Briefs LEXIS 390 (U.S. Apr. 20, 1992), (“[I]t is true that the method ... calls for application of a set mathematical formula to the state population totals produced by the census”). As now-Chief Justice Roberts argued to the Supreme Court in his capacity as Deputy Solicitor General: “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.’” Tr. of Oral Argument at 12-13, *Franklin v. Massachusetts*, No. 91-1502 (U.S. Apr. 21, 1992). Until now, “[n]o President—indeed, no member of the Executive Branch—has ever suggested that the statute authorizes the President to modify the census figures when he performs the apportionment calculations.” *Franklin*, 505 U.S. at 812-13 (Stevens, J., concurring in part).

The courts, as well, have recognized that the Census Act gives the President “no discretion in calculating the numbers of Representatives,” and that his or her role in “the apportion-

ment calculation” is therefore “admittedly ministerial”—even if his role in other aspects of the census process is not. *Franklin*, 505 U.S. at 799; *see also Utah Ass’n of Counties v. Bush*, 316 F. Supp. 2d 1172, 1189 (D. Utah 2004) (noting that the Census Act assigns the President “only ministerial functions, such as making apportionment calculations according to set formulae”).

C. The Actions in the Memorandum are *Ultra Vires* and Should be Enjoined

For the reasons above, by ordering the Commerce Department to prepare and transmit to the President a number other than “the tabulation of total population by States” for use in the apportionment process, the President has directed the Commerce Department to violate 13 U.S.C. § 141(b). And by pledging to transmit an apportionment calculation to Congress based on something other than “the whole number of persons in each State,” the President will imminently violate 2 U.S.C. § 2a(b). Thus, the entire course of action set forth in the Memorandum exceeds the statutory authority delegated to Defendants by Congress.

As the Supreme Court has explained, “[t]he responsibility of determining the limits of statutory grants of authority ... is a judicial function entrusted to the Courts by Congress by the statutes establishing courts and marking their jurisdiction.” *Stark v. Wickard*, 321 U.S. 288, 310 (1944). Thus, “judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers,” such as Defendants’ actions here. *Harmon v. Brucker*, 355 U.S. 579, 581-82 (1958); *see also Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 681 (1986) (courts “ordinarily presume that Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command”).

The D.C. Circuit, too, has recognized that “[w]hen an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988); *see also Trudeau v. FTC*, 456 F.3d 178, 189-90 (D.C. Cir. 2006)

(“[J]udicial review is available when an agency acts *ultra vires*,’ even if a statutory cause of action is lacking.” (citation omitted)). And it has applied that principle in the specific context of presidential proclamations and executive orders, similar to the Memorandum. *See, e.g., Mtn. States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (challenge to six presidential proclamations designating national monuments); *Chamber of Comm. of U.S. v. Reich*, 74 F.3d 1322, 1328 (D.C. Cir. 1996) (invalidating executive order barring federal government from contracting with employers who hire strike-breakers).

Plaintiffs, therefore, are entitled to a declaration that the actions required by the Memorandum are unlawful and *ultra vires* and an injunction against their implementation.

IV. THE MEMORANDUM VIOLATES THE CONSTITUTION AND FEDERAL LAW BECAUSE IT CANNOT BE IMPLEMENTED VIA “ACTUAL ENUMERATION” AND MUST RELY ON PROHIBITED STATISTICAL SAMPLING

As Plaintiffs have shown, the Memorandum is unlawful on its face. But even if it were lawful in principle to exclude undocumented immigrants from apportionment, the way in which the Memorandum will be implemented by Defendants will violate independent provisions of the Constitution and statutory law. Namely, any attempt by Defendants to implement the Memorandum would necessarily violate the constitutional requirement of an “actual Enumeration” and the statutory prohibition on statistical sampling.

A. Implementing the Memorandum Would Violate the Constitutional Requirement of “Actual Enumeration”

1. *The Constitution Requires that Apportionment Data be Determined Exclusively via “Actual Enumeration”*

From the beginning, the Constitution has provided that all data used in congressional apportionment “shall be determined” via an “*actual Enumeration.*” U.S. Const., art. I, § 2, cl. 3 (emphasis added).

At the time the Constitution was ratified, this phrase had a well-settled meaning. “To ‘enumerate,’ according to Samuel Johnson, was to ‘reckon up singly’ or ‘count over distinctly.’” Brief for Appellee U.S. House of Representatives, No. 98-404, *Dep’t of Commerce v. House of Representatives* (“1998 House Br.”), 1998 WL 767637, at *45 (U.S. filed Nov. 3, 1998) (quoting *A Dictionary of the English Language* (4th ed. 1773)). “Similarly, Noah Webster wrote that ‘to enumerate’ meant ‘[t]o count or tell, number by number; to reckon or mention a number of things, each separately,’” and that the noun “enumeration” constituted “the act of ‘counting or telling a number, by naming each particular[.]’” *Id.* (quoting 1 *An American Dictionary of the English Language* (1828)). The Framers underscored that they meant this requirement literally, rather than figuratively, by emphasizing that the “enumeration” must be an “actual” one.

The Supreme Court has confirmed as much, observing that “the Framers expected census enumerators to seek to reach each individual household” one by one when making determinations that bear on apportionment. *Utah v. Evans*, 536 U.S. 452, 477 (2002); *see also House of Representatives*, 525 U.S. at 346-47 (Scalia, J., concurring) (in the Framers’ day, “an ‘enumeration’ require[d] an actual counting, and not just an estimation”). Thus, to the extent other “methods substitute for any such effort, ... the Framers did not believe that the Constitution authorized their use.” *Evans*, 536 U.S. at 477.

As the Supreme Court stressed just last year, “early understanding” and “long and consistent historical practice” are also important when interpreting the Enumeration Clause. *New York*, 139 S. Ct. at 2567; *see also Noel Canning*, 573 U.S. at 524. And centuries of practice, starting with the first Congress, confirm that an “actual Enumeration” requires a literal head-count. “From the very first census” in 1790, Congress required that “enumeration ... be made by ***an actual inquiry at every dwelling-house ... and not otherwise.***” *House of Representatives*,

525 U.S. at 335 (emphasis added) (quoting Act of Mar. 26, 1810, § 1, 2 Stat. 565-566); *see also New York*, 351 F. Supp. 3d at 520 (“Since 1790, the government has conducted the required ‘actual enumeration’ through questions—initially asked in person by U.S. Marshals and ‘specially appointed agents’ and later by means of written questionnaire—... of those living in each American household.”); 1998 House Br., 1998 WL 767637, at *34-35, *49-50 (similar).

Defendants have elsewhere conceded this very point. When the State of New York recently challenged the citizenship question as a violation of, *inter alia*, the Enumeration Clause, the DOJ—appearing on behalf of Defendants—maintained that “the Constitution’s reference to ‘actual Enumeration’ is simple: population [for purposes of apportionment] is to be determined ***through a person-by-person headcount, rather than through estimates or conjecture.***” Brief in Support of Defendants’ Mot. to Dismiss (ECF 155) at 30, *New York v. Dep’t of Commerce*, No. 1:18-cv-02921-JMF (S.D.N.Y. filed May 25, 2018) (emphasis added); *see also id.* at 25 (stating that the Enumeration Clause “provides a simple judicial standard for determining the constitutionality” of a practice used in creating data used for apportionment: “***the Secretary must perform a person-by-person headcount***, rather than an estimate” (emphasis added)).

Defendants’ predecessors in the Executive Branch have agreed with this view. For example, in 1980, the Secretary of Commerce recognized “the constitutional mandate and historical precedent of using the ‘actual Enumeration’ for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated.” *Census Undercount Adjustment: Basis for Decision*, 45 Fed. Reg. at 69372. As he emphasized: “the framers of the Constitution drew a clear distinction between an ‘actual Enumeration’ and an estimate, regardless of its underlying methods.” *Id.*

The House of Representatives advanced the same argument to the Supreme Court in 1998. *See* 1998 House Br., 1998 WL 767637, at *44-50. “When the Framers used the term ‘actual Enumeration,’” the House argued, “they anticipated a procedure by which the government would actually ‘count’ or ‘reckon-up’ the people, one by one.” *Id.* at 46. The House rejected the view that “an ‘actual enumeration’ means no more than the ‘action of ascertaining an official count of the number of persons who exist,’ and the ‘manner’ of ascertaining that official count is entirely up to Congress or its delegate.” *Id.*

It also bears emphasizing why the Framers were insistent on an “actual Enumeration.” Besides selecting a method that was simple and unambiguous, they sought to guard against political “manipulation” of the census and the resulting apportionment. Brief. of National Republican Legislators Ass’n as Amici Curiae, No. 98-404, *Dep’t of Commerce v. House of Representatives* (“Republican Legislators Br.”), 1998 WL 767644, at *6 (U.S. filed Nov. 3, 1998). To that end, the Framers required a census every ten years, rather than whenever Congress might deem fit, because “those who have power in their hands will not give it up while they can retain it.” 1 Records of the Federal Convention of 1787 at 578 (Max Farrand ed., 1911). Likewise, the Framers placed the entire census process in the hands of the national legislature, since the States were “too much interested to take an impartial [count] for themselves.” *Id.* at 580.

The Framers adopted the “actual enumeration” requirement in that same spirit. *See* 1998 House Br., 1998 WL 767637, at *48; Republican Legislators Br., 1998 WL 767644, at *8. A literal headcount constituted a “permanent and precise standard” that would “t[ie] the hands” of future Congresses so that they “could not sacrifice their trust to momentary considerations.” 1 Records of the Federal Convention of 1787 at 578, 580 (Max Farrand ed., 1911). This method also “had the recommendation of great simplicity and uniformity in its operation, of being gener-

ally acceptable to the people, and of being less open to fraud and evasion, than any other, which could be devised.” 2 Joseph Story, Commentaries on the Constitution of the United States § 633 (1833); see also 3 Joseph Story, Commentaries on the Constitution of the United States § 676, at 143 (1833) (“[T]he rule” established by the Enumeration Clause was intended “always [to] work the same way . . . , and be as little open to cavil, or controversy, or abuse, as possible.”).

2. “Actual Enumeration” of the Number of Undocumented Immigrants in Connection with the 2020 Census is Not Possible

Having set forth what the Enumeration Clause requires and why the Framers required it, it is clear that any attempt to implement the Memorandum in connection with the 2020 census would violate that clause’s mandate.

The Census Bureau did not inquire about respondents’ compliance with immigration laws (*i.e.*, their documented/undocumented status) in connection with the 2020 census. Stat. ¶ 52. By Defendants’ admission, it is far too late to add such a question to the census now. Stat. ¶ 53. Nor, as Plaintiffs’ experts explain, is there any other available source of data that would constitute an “actual Enumeration” of all 50 states’ undocumented immigrant populations—*i.e.*, a person-by-person “reckoning” of who is an undocumented immigrant and who is not, produced through a direct inquiry of each household in the country. Stat. ¶¶ 69, 77, 81, 87, 109.

Therefore, at the conclusion of the census, the Bureau will lack anything constituting an “actual Enumeration” of who in each State is an undocumented immigrant. Stat. ¶¶ 69, 81, 87, 108. Any estimate of the undocumented immigrant population that the Bureau might be able to make with the partial administrative records that it is attempting to piece together will be just that: an estimate, not an “actual Enumeration.” Stat. ¶¶ 80-102. And once that estimate is subtracted from the “whole number of persons in each state,” as determined by the Bureau through the census, the resulting difference—which the President intends to use as the apportionment

base—will also be an estimate, not an “actual Enumeration.” See Athel Cornish-Bowden, *Basic Mathematics for Biochemists* 18 (1981) (“[J]ust as a chain is no stronger than its weakest link, the result of a calculation ... is no more accurate than the most inaccurate value used in it.”).

B. Implementing the Memorandum Would Violate the Statutory Ban on Statistical Sampling

1. 13 U.S.C. § 195 Prohibits Statistical Sampling in Connection with Determining the Apportionment Base

As discussed above, starting with the very first Congress, all Census Acts have “require[d] enumerators to ‘visit [or otherwise contact] personally each dwelling house ...’ in order to obtain ‘every item of information and all particulars required’” for the census process. *House of Representatives*, 525 U.S. at 335 (quoting Act of Aug. 31, 1954, § 25(c), 68 Stat. 1012, 1015). These acts, therefore, implicitly “prohibited the use of statistical sampling in calculating the population for purposes of apportionment.” *Id.*

In 1957, however, Congress made that prohibition explicit. The Secretary of Commerce asked Congress to amend the Census Act “to permit the [Census] Bureau to use statistical sampling” to gather certain “supplemental, nonapportionment census information regarding population, unemployment, housing, and other matters collected in conjunction with the decennial census.” *Id.* at 336-37. In response, Congress enacted 13 U.S.C. § 195, which gives the Secretary the limited authority to employ “the statistical method known as ‘sampling’”—“[e]xcept for the determination of population for apportionment purposes.” As the Supreme Court has held, “[13 U.S.C.] § 195 *directly prohibits the use of sampling* in the determination of population for purposes of apportionment”—whether “as a ‘supplement’ [to] or as a ‘substitute’” for actual enumeration. 525 U.S. at 338, 342 (emphasis added).

In 1997, Congress reiterated its view that 13 U.S.C. § 195 prohibits the use of “statistical sampling or adjustment in conjunction with an actual enumeration.” 1998 Appropriations Act,

§ 209(a)(7), Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note). It further clarified that this includes “the use of representative sampling, or any other statistical procedure, including statistical adjustment, to add *or subtract* counts to or from the enumeration of the population as a result of statistical inference.” *Id.* § 209(h)(1) (emphasis added).

The reason why Congress prohibited statistical sampling in apportionment is the same reason why the Framers insisted on an “actual enumeration”: the danger that “the census could become just a tool to further the political ends of [the methodology’s] designers, the political party that controls the executive branch.” Republican Legislators Br., 1998 WL 767644, at *8. President George H. W. Bush’s Secretary of Commerce, Robert Mosbacher, explained that sampling would “open the door to political tampering with the census” and “subject the Census Bureau to partisan pressures,” because such methods “depend[] heavily on assumptions,” and their results change “in important ways” when those assumptions change. Dep’t of Commerce, *Adjustment of the 1990 Census for Overcounts and Undercounts of Population and Housing, Notice of Final Decision*, 56 Fed. Reg. 33582, 33583, 33605 (July 22, 1991); *see also Wisconsin v. City of New York*, 517 U.S. 1, 11-12 (1996) (summarizing these concerns).

In short, as Congress put it in 1997: the use of sampling techniques “to carry out the census with respect to any segment of the population poses the risk of *an inaccurate, invalid, and unconstitutional census.*” 1998 Appropriations Act, § 209(a)(7), Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note) (emphasis added).

2. *Any Method of Implementing the Memorandum Available to the Census Bureau Would Require Statistical Sampling*

In addition to violating the Enumeration Clause, any process that Defendants might use to implement the Memorandum would violate 13 U.S.C. § 195, because “[w]ithout an actual enu-

meration, there is no known method of excluding undocumented immigrants” from the apportionment count “that does not rely on statistical sampling.” Stat. ¶ 80.

Absent an “actual Enumeration” of every undocumented immigrant in every state, the Census Bureau has just two ways to implement the Memorandum. The first is to use existing estimates of the undocumented immigrant population created by third parties, such as the Pew Research Center, the Center for Migration Studies, and other think-tanks. Stat. ¶¶ 57, 69. These estimates are useful for many purposes, including predicting the results of the upcoming census, but they do not provide the level of certainty and definiteness that the Constitution and federal statutes require for the actual task of apportionment. Instead, they all rely on statistical sampling, which necessarily yields accompanying bands of uncertainty. They cannot be used for purposes of apportionment under 13 U.S.C. § 195. Stat. ¶¶ 57, 72-79.

The only other option available to the Census Bureau is to use whatever administrative records it has been able to piece together to attempt to quantify the undocumented population. Stat. ¶¶ 69, 80-87. This option, too, would require significant statistical sampling and adjustment. Stat. ¶¶ 80, 90-102. Unsurprisingly, there are very few administrative records that directly document those whose status is undocumented. Stat. ¶ 88. The records that do exist “represent a tiny fraction of those in the country without formal legal immigration status.” Stat. ¶ 88. Moreover, those records are riddled with errors and inconsistencies and are out of date. Stat. ¶ 89. Thus, any attempt to project this data to the present day and extrapolate it to a count of the entire undocumented population “would require extensive statistical modeling.” Stat. ¶ 90.

3. *The Adjustment Required Would Not Constitute Lawful “Imputation”*

In *Utah v. Evans*, 536 U.S. 452, the Supreme Court recognized that one specific type of adjustment to the census totals, known as “imputation,” does not violate § 195’s ban on sampling. Occasionally, even after repeated follow-up attempts, the Census Bureau will be unable to

identify “whether [an address] represents a housing unit,” or “the number of persons an occupied unit contains.” *Id.* at 457-58. In such circumstances, the Bureau may lawfully “impute” that missing information, based on observations about similar nearby addresses. *Id.* As the Court explained, several things differentiate this lawful process of imputation from unlawful sampling—and none of those indicia of lawful imputation are present here. Stat. ¶¶ 83-86, 91-102.

First, “the Bureau turns to imputation only after ordinary questionnaires and interviews have failed” to enumerate a given residence. 536 U.S. at 470, 477. Here, however, Defendants would not be turning to inferential techniques “only after ... exhaust[ing] [their] efforts to reach each individual” and ask them directly about their immigration status. *Id.* at 477. To the contrary, Defendants would be using inferential techniques as a first resort. Stat. ¶¶ 95-100.

Second, imputation is used “sparingly,” to fill in gaps involving only “a tiny percent of the [total] population”—such as the 0.4% gap at issue in *Evans*. 536 U.S. at 471, 477, 479 (suggesting that, if the number of missing responses had been as high as 10%, imputation would be improper). Here, by contrast, Defendants would not be using inference “sparingly” to fill in a “tiny” gap in an actual enumeration of Americans by immigration status. To the contrary, Defendants would be inferring immigration status for virtually the entire population—a scale “orders of magnitude larger” than that at issue in *Evans*. Stat. ¶ 101.

Third, the type of “count imputation” at issue in *Evans* is politically neutral and cannot be used “to manipulate results” toward a desired partisan outcome. 536 U.S. at 471-72, 479; *see also Montana*, 503 U.S. at 464 & n.42 (rejecting Enumeration Clause claim where challenged technique was adopted in “good faith,” rather than as an attempt to “favor[] a particular party” or “maintain partisan political advantage”). But the process proposed here is anything but neutral. Indeed, reducing the representation of certain known states is the entire reason for its existence.

Fourth, the Court noted that the type of imputation at issue in *Evans*—inferring whether an address is residential and how many people live there using data about neighboring addresses—resembles the long-accepted practice of “ask[ing] ... neighbors, landlords, postal workers, or other proxies about the number of inhabitants in a particular place” after direct inquiry had failed. 536 U.S. at 477. “Such reliance on hearsay,” the Court concluded, had a long historical pedigree, and “need be no more accurate” than “the Bureau’s method of imputation.” *Id.* Here, however, the data that Defendants seek to estimate—how many people in each state are “in a lawful immigration status under the Immigration and Nationality Act”—is far different. Neighbors, landlords, postal workers, and other third-party “proxies” generally do not have accurate first-hand knowledge of whether a given individual in their community is in compliance with immigration laws. The use of inferential techniques to divine that data, therefore, would not resemble anything ever done the history of the decennial census. Stat. ¶ 101, 109.

Finally, unlike traditional “imputation” of the number of people living in a given house, any model that Defendants might devise to predict undocumented immigrant status in the absence of direct records will presumably treat Hispanic race or ethnicity, or Latin American national origin, as a key predictive variable. Stat. ¶¶ 101-102. Removing persons from the apportionment base even in part based on their race, ethnicity, or national origin would raise fundamental equal protection concerns not implicated by the type of “imputation” approved in *Evans*. See *Cooper v. Harris*, 137 S. Ct. 1455, 1473 n.7 (2017) (noting that race-based government action “remains suspect even if race is meant to function as a proxy for other ... characteristics”).

* * *

In sum, even if it were not inherently unlawful to exclude undocumented immigrants from the apportionment base, Defendants could not possibly implement the Memorandum in a

lawful manner based on the data available to them. Any estimate that Defendants might make of the number of undocumented immigrants in each state would not meet Article I's requirement of an "actual Enumeration," and it would require the type of statistical sampling and adjustment that 13 U.S.C. § 195 expressly prohibits. These requirements were adopted specifically to prohibit the type of partisan political manipulation in which Defendants are attempting to engage.

CONCLUSION

For the foregoing reasons, the Court should grant partial summary judgment in Plaintiffs' favor with respect to Counts I, IV, and V of the First Amended Complaint. In the alternative, if the Court determines that any genuine dispute(s) of material fact prevent entry of summary judgment, the Court should order an expedited trial on the merits with respect to such dispute(s).

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*Attorney for the Individual and
Organizational Plaintiffs*

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF PETER A. NELSON

I, Peter A. Nelson, pursuant to penalty of perjury under 28 U.S.C. § 1746, hereby state the following:

I am an attorney at Patterson Belknap Webb & Tyler LLP. I submit this Declaration in support of Plaintiffs' Motion for Partial Summary Judgment, or in the Alternative, Expedited Trial on the Merits.

Attached to this Declaration are true and correct copies of the following numbered exhibits:

1. Declaration of Karen Hobert Flynn, National President of Common Cause (August 18, 2020).
2. Declaration of Plaintiff Paula Aguirre (August 14, 2020).
3. Declaration of Plaintiff Roberto Aguirre (August 14, 2020).
4. Declaration of Plaintiff Sheila Aguirre (August 14, 2020).
5. Declaration of Plaintiff Angelo Ancheta (August 14, 2020).
6. Declaration of Plaintiff Cynthia Ming-Hui Dai (August 14, 2020).

7. Declaration of Plaintiff Simon Fischer-Baum (August 16, 2020).
8. Declaration of Plaintiff Connie Galambos Malloy (August 16, 2020).
9. Declaration of Plaintiff Raquel Morsy (August 17, 2020).
10. Declaration of Plaintiff Norma (Robin) Mote (August 17, 2020).
11. Declaration of Plaintiff Lilbert (Gil) Roy Ontai (August 14, 2020).
12. Declaration of Plaintiff Sara Pavon (August 14, 2020).
13. Declaration of Plaintiff Coleen P. Stevens Porcher (August 15, 2020).
14. Declaration of Plaintiff Jeanne Ellen Raya (August 14, 2020).
15. Declaration of Plaintiff Jonathan Allan Reiss (August 14, 2020).
16. Declaration of Plaintiff Inge Spungen (August 15, 2020).
17. Declaration of Plaintiff Irene Sterling (August 16, 2020).
18. Declaration of Plaintiff Dennis Vroegindewey (August 14, 2020).
19. Declaration of Plaintiff Susan N. Wilson (August 14, 2020).
20. Declaration of Plaintiff Myra Young (August 17, 2020).
21. Expert Declaration of Dr. Christopher Warshaw, Assistant Professor of Political Science at George Washington University (August 18, 2020).
22. Expert Declaration of Dr. D. Sunshine Hillygus, Professor of Political Science and Public Policy at Duke University (August 18, 2020).

23. Expert Declaration of John Thompson, former Director of the U.S. Census Bureau from August 2013 to June 2017 (August 14, 2020).

DATED: August 19, 2020

By: /s/Peter A. Nelson
Peter A. Nelson*

PATTERSON BELKNAP WEBB & TYLER LLP
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New York, NY 10036
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Attorney for Plaintiffs
* admitted *pro hac vice*

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF COMMERCE, and

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, 4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as Director of the Bureau of the Census, 4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF KAREN HOBERT FLYNN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Karen Hobert Flynn, hereby declare:

1. I am the national president of Common Cause. I manage all staff, including our redistricting and representation policy team. In that capacity, I raise funds, determine the allocation of resources, and approve our advocacy strategy for ensuring that the decennial census is accurate and provides equal representation for all people living in the United States.
2. 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.
3. 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 who are voters or who are eligible to vote in all 50 states and in every congressional district.
4. Since its founding by John Gardner 50 years ago, Common Cause has been dedicated to making government at all levels more representative, open, and responsive to the interests of ordinary people—including undocumented immigrants, and people that live in communities with high numbers of undocumented immigrants.
5. Common Cause’s mission is to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.
6. Because the census is a cornerstone of our democratic system, ensuring a fair and accurate census that counts all Americans is pivotal to Common Cause’s mission. To that end, Common Cause has conducted public education about the importance of responding

to the census and encouraged its members to lobby their representatives for a fair, accurate, and fully funded count.

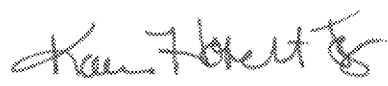
7. By discouraging immigrants (both documented and undocumented) from responding to the census, and by seeking to exclude undocumented immigrants from the apportionment base, the Memorandum directly impairs and undermines Common Cause's organizational mission of ensuring equal representation for all. It also requires Common Cause to divert its limited resources from projects and priorities that it would otherwise pursue to counter the adverse effect of the Memorandum on its mission to ensure a fair and accurate census.
8. Specifically, Common Cause has increased its efforts to promote census participation among communities that are likely to be adversely affected by the Memorandum, including urban and immigrant communities.
9. Through my work with Common Cause, I have developed knowledge and familiarity with voting rights issues, including the relationship between the census and congressional apportionment, as well as other issues flowing from the undercount of specific communities.
10. Certain areas within the United States—such as Houston and Los Angeles—are home to a large number of undocumented immigrants, as compared to the rest of the United States.
11. Because of this concentration in the population of undocumented immigrants, certain states—specifically, California, Texas, Florida, New York, and New Jersey—are likely to lose a congressional representative if undocumented immigrants are excluded from the population for purposes of congressional apportionment.
12. If a state loses a congressional representative, it will lose an elector. As a result, the votes of voters in that state will hold less weight over the Electoral College and the selection of

the President and Vice President than they would if undocumented immigrants were counted for purposes of congressional apportionment.

13. In addition, if a state loses a congressional representative, there would be fewer elected officials responding to and advocating for the needs of that state. The congressional representatives for that state would have a greater volume of constituents, and would be less able to respond to individual constituents' concerns. The state would also likely lose some funding because it would have fewer advocates involved in the legislative process.
14. Because Common Cause has members who are voters or who are eligible to vote in all 50 states, including California, Texas, Florida, New York, and New Jersey, it has some members that will lose a congressional representative because of the exclusion of undocumented immigrants from the apportionment calculations.
15. Common Cause's goal in this litigation is to promote equal rights, opportunity, and representation for all, by ensuring that the census population data and congressional apportionment reflects the actual distribution of population across the United States.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 18, 2020

By: 

Karen Hobert Flynn

DECLARATION OF PAULA AGUIRRE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Paula Isabella Aguirre, hereby declare:

1. I am a natural-born U.S. citizen and a resident of Queens, New York City, New York.
2. My zip code is 11370.
3. I am a member of Common Cause.
4. I am of Latina ethnicity and Ecuadorean heritage.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 
Paula Isabella Aguirre

DECLARATION OF ROBERTO AGUIRRE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Roberto Aguirre, hereby declare:

1. I am a naturalized U.S. citizen and a resident of Queens, New York City, New York.
2. My zip code is 11370.
3. I am a member of Common Cause.
4. I am of Latino ethnicity and Ecuadorean national origin.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. My children attend public schools. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 

Roberto Aguirre

DECLARATION OF SHEILA AGUIRRE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Sheila Aguirre, hereby declare:

1. I am a natural-born U.S. citizen and a resident of Queens, New York City, New York.
2. My zip code is 11370.
3. I am a member of Common Cause.
4. I am of Latina ethnicity and Ecuadorean heritage.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 
Sheila Aguirre

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC


DECLARATION OF ANGELO N. ANCHETA IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Angelo N. Ancheta, hereby declare:

1. I am a natural-born U.S. citizen and a resident of San Francisco, California.
2. My zip code is 94112.
3. My racial identity is Asian and I am of Filipino heritage.
4. I am a registered voter, and I regularly exercise my right to vote.
5. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
6. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose one or more congressional representatives. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
7. I believe that, if my state loses a congressional representative, my state and my district will be less able to obtain favorable legislation.
8. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
9. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 
Angelo N. Ancheta

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF CYNTHIA MING-HUI DAI IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Cynthia Ming-hui Dai, hereby declare:

1. I am a natural-born U.S. citizen and a resident of San Francisco, California.
2. My zip code is 94110.
3. My racial identity is Asian and I am of Chinese heritage.
4. I am a registered voter, and I regularly exercise my right to vote.
5. I regularly contact my congressional representatives to express my concerns on various legislative issues.
6. I rely on the integrity of the infrastructure in my area, including the roads.
7. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
8. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
9. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
10. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 
Cynthia Ming-hui Dai

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF SIMON FISCHER-BAUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Simon Fischer-Baum, hereby declare:

1. I am a natural-born U.S. citizen and a resident of Houston, Texas.
2. My zip code is 77007.
3. My racial identity is Caucasian.
4. I am a registered voter, and I regularly exercise my right to vote.
5. My child attends public schools. I rely on the integrity of the infrastructure in my area, including the roads.
6. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
7. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
8. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
9. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 16, 2020

A handwritten signature in black ink, appearing to read 'SFB', is positioned above a horizontal line.

By: _____

Simon Fischer-Baum

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCEHTA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

No. 1:20-cv-02023-CRC

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF COMMERCE, and

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, 4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as Director of the Bureau of the Census, 4600 Silver Hill Road, Washington, DC 20233,

Defendants.

DECLARATION OF CONNIE GALAMBOS MALLOY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Connie Galambos Malloy, hereby declare:

1. I am a natural-born U.S. citizen and a resident of Pasadena, California.
2. My zip code is 91104
3. I am a member of Common Cause.
4. My racial identity is Black. I am of Latina ethnicity and Colombian heritage.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. My children attend public schools. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.

- Case 1:20-cv-02023-ERC Document 31-10 Filed 08/19/20 Page 2 of 2
8. It is my understanding that if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
 9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
 10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
 11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 16, 2020

By:

Connie Galambos Malloy



**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF RAQUEL MORSY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Raquel Morsy, hereby declare:

1. I am a U.S. citizen and a resident of Hillside, New Jersey.
2. My zip code is 07025.
3. I am of Latina ethnicity.
4. I am a registered voter, and I regularly exercise my right to vote.
5. I rely on the integrity of the infrastructure in my area, including the roads.
6. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
7. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
8. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
9. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 17, 2020

By:

A handwritten signature in cursive script, appearing to read "Raquel Morsy", written over a horizontal line.

Raquel Morsy

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF NORMA (ROBIN) MOTE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

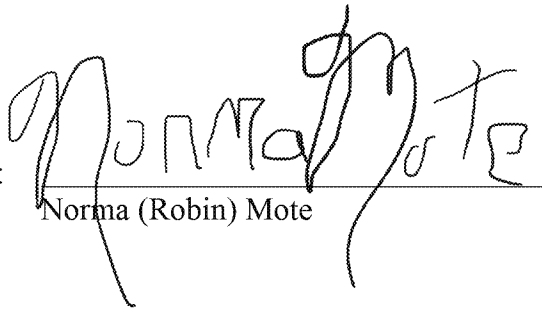
Pursuant to 28 U.S.C. § 1746(2), I, Norma (Robin) Mote, hereby declare:

1. I am a natural-born U.S. citizen and a resident of Dallas, Texas.
2. My zip code is 75209.
3. I am a member of Common Cause.
4. My racial identity is Caucasian.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. My children attended public schools. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 17, 2020

By: 
Norma (Robin) Mote

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF LILBERT (GIL) ROY ONTAI IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Lilbert (Gil) Roy Ontai, hereby declare:

1. I am a natural-born U.S. citizen and a resident of San Diego, California.
2. My zip code is 92116.
3. I am of Native Hawaiian heritage.
4. I am a registered voter, and I regularly exercise my right to vote.
5. My children attend public schools. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
6. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
7. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
8. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
9. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: *Lilbert R. Ontai*
Lilbert (Gil) Roy Ontai

DECLARATION OF SARA PAVON IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Sara Pavon, hereby declare:

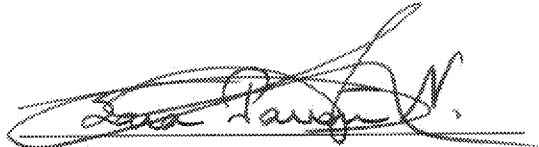
1. I am a naturalized U.S. citizen and a resident of Queens, New York City, New York.
2. My zip code is 11370.
3. I am a member of Common Cause.
4. I am of Latina ethnicity and Ecuadorean national origin.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. My children attend public schools. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By:

A handwritten signature in black ink, appearing to read "Sara Pavon", written over a horizontal line.

Sara Pavon

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCEHTA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF COLEEN P. STEVENS PORCHER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Coleen P. Stevens Porcher, hereby declare:

1. I am a naturalized U.S. citizen and a resident of Montclair, New Jersey.
2. My zip code is 07043.
3. I am of African/Caribbean ancestry and Jamaican national origin.
4. I am a registered voter, and I regularly exercise my right to vote.
5. I regularly contact my congressional representatives to express my concerns on various legislative issues.
6. My child attended public schools. I occasionally take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
7. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
8. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
9. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
10. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 15, 2020

By:

A handwritten signature in black ink, appearing to read "Coleen Stevens Porcher". The signature is written in a cursive, flowing style.

Coleen P. Stevens Porcher

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCHETA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

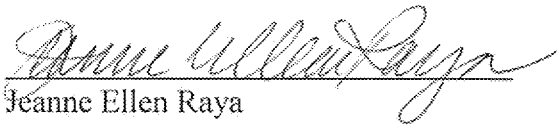
DECLARATION OF JEANNE ELLEN RAYA IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Jeanne Ellen Raya, hereby declare:

1. I am a natural-born U.S. citizen and a resident of San Gabriel, California.
2. My zip code is 91775.
3. I am of Latina ethnicity and Mexican heritage.
4. I am a registered voter, and I regularly exercise my right to vote.
5. I regularly contact my congressional representatives to express my concerns on various legislative issues.
6. I rely on the integrity of the infrastructure in my area, including the roads.
7. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
8. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
9. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
10. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 
Jeanne Ellen Raya

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCEHTA, CYNTHIA DAL, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

No. 1:20-cv-02023-CRC

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

DECLARATION OF JONATHAN ALLAN REISS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Jonathan Allan Reiss, hereby declare:

1. I am a naturalized U.S. citizen and a resident of Manhattan, New York City, New York.
2. My zip code is 10024.
3. I am a member of Common Cause.
4. I am of Caucasian ethnicity and Canadian national origin.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: Jonathan A. Reiss
Jonathan Allan Reiss

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCEITA, CYNTHIA DAL, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAL, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC


DECLARATION OF INGE SPUNGEN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Inge Spungen, hereby declare:

1. I am a naturalized U.S. citizen and a resident of Paterson, New Jersey.
2. My zip code is 07504.
3. I am a member of Common Cause.
4. I am of Caucasian ethnicity and Danish national origin.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 15, 2020

By: 
Inge Spungen

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCEHTA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAL, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF IRENE STERLING IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Irene Sterling, hereby declare:

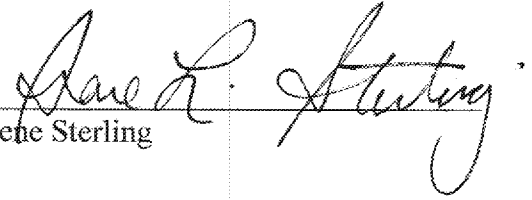
1. I am a U.S. citizen and a resident of Belleville, New Jersey.
2. My zip code is 07109.
3. I am a registered voter, and I regularly exercise my right to vote.
4. I regularly contact my congressional representatives to express my concerns on various legislative issues.
5. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
6. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
7. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
8. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
9. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 16, 2020

By:

Irene Sterling

A handwritten signature in cursive script, appearing to read "Irene Sterling", written over a horizontal line.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, CITY OF ATLANTA, CITY OF DAYTON, CITY OF PATERSON, CITY OF PORTLAND, CENTER FOR CIVIC POLICY, MASA, NEW JERSEY CITIZEN ACTION, NEW MEXICO ASIAN FAMILY CENTER, NM COMUNIDADES EN ACCIÓN Y DE FE, PARTNERSHIP FOR THE ADVANCEMENT OF NEW AMERICANS, ROBERTO AGUIRRE, SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA M. ALEXANDER, ANGELO ANCEHTA, CYNTHIA DAI, SIMON FISCHER-BAUM, STAN FORBES, CONNIE GALAMBOS MALLOY, RAQUEL MORSY, NORMA MOTE, DEBRA DE OLIVEIRA, LILBERT ROY ONTAI, SARA PAVON, COLEEN P. STEVENS PORCHER, JEANNE ELLEN RAYA, JONATHAN ALLAN REISS, JOSANNA SMITH, THAD SMITH, INGE SPUNGEN, IRENE STERLING, DENNIS VROEGINDEWEY, SUSAN N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF COMMERCE, and

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, 4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as Director of the Bureau of the Census, 4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF DENNIS VROEGINDEWEY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

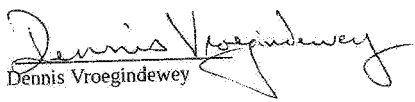
Pursuant to 28 U.S.C. § 1746(2), I, Dennis Vroegindewey, hereby declare:

1. I am a U.S. citizen and a resident of Whippany, New Jersey.
2. My zip code is 07981.
3. I am of Caucasian ethnicity.
4. I am a registered voter, and I regularly exercise my right to vote.
5. I regularly contact my congressional representatives to express my concerns on various legislative issues.
6. My grandchildren attend public schools. I rely on the integrity of the infrastructure in my area, including the roads.
7. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
8. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
9. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

10. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 14, 2020

By: 
Dennis Vroegindewey

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, CITY OF ATLANTA, CITY OF
DAYTON, CITY OF PATERSON, CITY OF
PORTLAND, CENTER FOR CIVIC POLICY,
MASA, NEW JERSEY CITIZEN ACTION, NEW
MEXICO ASIAN FAMILY CENTER, NM
COMUNIDADES EN ACCIÓN Y DE FE,
PARTNERSHIP FOR THE ADVANCEMENT OF
NEW AMERICANS, ROBERTO AGUIRRE,
SHEILA AGUIRRE, PAULA AGUIRRE, ANDREA
M. ALEXANDER, ANGELO ANCHETA,
CYNTHIA DAI, SIMON FISCHER-BAUM, STAN
FORBES, CONNIE GALAMBOS MALLOY,
RAQUEL MORSY, NORMA MOTE, DEBRA DE
OLIVEIRA, LILBERT ROY ONTAI, SARA
PAVON, COLEEN P. STEVENS PORCHER,
JEANNE ELLEN RAYA,
JONATHAN ALLAN REISS, JOSANNA SMITH,
THAD SMITH, INGE SPUNGEN, IRENE
STERLING, DENNIS VROEGINDEWEY, SUSAN
N. WILSON, and MYRNA YOUNG,

Plaintiffs,

v.

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

UNITED STATES DEPARTMENT OF
COMMERCE, and

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,
4600 Silver Hill Road, Washington, DC 20233

and

STEVEN DILLINGHAM, in his official capacity as
Director of the Bureau of the Census,
4600 Silver Hill Road, Washington, DC 20233,

Defendants.

No. 1:20-cv-02023-CRC

DECLARATION OF SUSAN N. WILSON IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Susan N. Wilson, hereby declare:

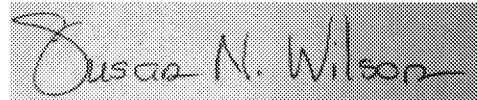
1. I am a natural-born U.S. citizen and a resident of Princeton, New Jersey.
2. My zip code is ____ 08540 _.
3. I am a member of Common Cause.
4. My racial identity is Caucasian.
5. I am a registered voter, and I regularly exercise my right to vote.
6. I regularly contact my congressional representatives to express my concerns on various legislative issues.
7. -. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
8. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
9. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
10. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.

11. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August _14_, 2020

By:

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Susan N. Wilson" with a horizontal line extending to the right.

Susan N. Wilson

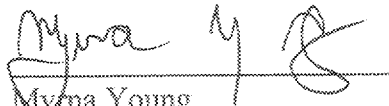
DECLARATION OF MYRNA YOUNG IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, AN EXPEDITED TRIAL

Pursuant to 28 U.S.C. § 1746(2), I, Myrna Young, hereby declare:

1. I am a naturalized U.S. citizen and a resident of Fort Myers, Florida.
2. My zip code is 33908
3. I am a member of Common Cause.
4. My racial identity is Black and I am of Guyanese national origin.
5. I am a registered voter, and I regularly exercise my right to vote.
6. My children attend public schools. I regularly take public transportation. I rely on the integrity of the infrastructure in my area, including the roads.
7. It is my understanding that, if undocumented immigrants are excluded from the tabulation of population for purpose of congressional apportionment, my state is likely to lose a congressional representative. This would mean fewer elected officials responding to and advocating for the needs of my state. In addition, my congressional representative would have a greater volume of constituents, and would be less able to respond to my concerns.
8. I believe that, if my state loses a congressional representative, my state, and my district, will be less able to obtain favorable legislation.
9. It is also my understanding that, if my state loses a congressional representative, my community will receive fewer federal resources.
10. In addition, if my state loses a congressional representative, it will lose an elector. As a result, my vote will hold less influence over the Electoral College and the election of the President.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 17, 2020

By: 
Myra Young

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

EXPERT DECLARATION OF DR. CHRISTOPHER WARSHAW

I. INTRODUCTION

1. My name is Christopher Warshaw. I have been an Assistant Professor of Political Science at George Washington University since August 2017. I was recently awarded tenure, and will become a tenured Associate Professor on September 1, 2020. Prior to working at George Washington University, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

2. I have been asked by counsel representing the plaintiffs in this case to analyze relevant data and provide my expert opinions.

3. More specifically, I have been asked:

- To forecast the populations of every state in the United States in 2020.
- To estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the 2020 Census enumeration used for apportionment.
- To analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

4. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.

A. Qualifications and Publications

5. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School. My academic research and teaching focuses on public opinion based on surveys and Census data, as well as the study of representation, elections, and polarization in American politics. I have also taught courses on statistical analysis.

6. My *curriculum vitae* is attached to this Declaration at Appendix C. All publications that I have authored and published appear in my *curriculum vitae*. I have published 30 academic articles and book chapters. My work is published or forthcoming in peer-reviewed journals such as: the *American Political Science Review*, the *American Journal of Political Science*, the *Journal of Politics*, *Political Analysis*, *Political Science Research and Methods*, the *British Journal of Political Science*, *Political Behavior*, the *Annual Review of Political Science*, the *Election Law Journal*, *Nature Energy*, *Public Choice*, and edited volumes from Cambridge University Press and Oxford University Press. My non-academic writing has been published in the *New York Times* and the *Washington Post*.

7. Most relevantly, I recently provided an expert declaration in *New York Immigration Coalition v. Trump*, No. 20-CV-5770-JMF (S.D.N.Y.) and *State of New York v. Trump*, No. 20-CV-5781-JMF (S.D.N.Y.). In that report, I assessed the same issues that I am asked to assess in this report, namely, (a) to forecast the populations of every state in the United States in 2020, (b) to estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the 2020 Census enumeration used for apportionment, and (c) to analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

8. I also provided an expert report and declaration in *New York Immigration Coalition et al v. United States Department of Commerce*, No. 18-CV-2921-JMF (S.D.N.Y.). In that report, I assessed the consequences of an undercount caused by a potential citizenship question on the U.S. Census. Specifically, I examined the effects of a net differential undercount of people who live in immigrant households on congressional apportionment. I found that the inclusion of a citizenship question on the Census would likely have led to substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives. In that case, the court found my analysis and findings “credible and persuasive.”

9. I have also previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 159 MM 2017 (PA 2018); *League of Women Voters of Michigan v. Johnson*, No. 2:17-cv-14148 (E.D. Mich. 2019); and *PRI et al v. Smith et al.*, No. 18-cv-357 (S.D. Ohio 2018).

10. The opinions in this declaration are my own, and do not represent the views of George Washington University.

B. Research Design

11. President Trump recently issued a presidential memorandum (the “Memorandum”) charging the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”¹ In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, I conduct the following steps:

¹ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

- A. I estimate the baseline population of each state in 2020 based on the Census Bureau's annual estimates of the population of each state from the past three decades.² The populations used for apportionment also include overseas federal employees and their dependents. Then, based on data from the U.S. Military and the Census Bureau, I estimate the number of overseas federal employees and dependents that would be added to the population of each state for apportionment.
- B. I use data from the Pew Research Center to estimate the number of undocumented immigrants in each state in 2020. These are the most widely used data in the academic literature on the undocumented immigrant population. However, I reach very similar conclusions using a variety of alternative sources of data on the number of undocumented immigrants in each state.
- C. Based on all of these data, I estimate the proportion of each state's population that would be excluded from the enumeration used for apportionment due to the Memorandum. I then use the official apportionment table published by the U.S. Census Bureau to estimate the number of congressional seats that states would gain or lose. Finally, I report the uncertainty in all of my analyses.
- D. I evaluate the robustness of my findings to a variety of alternative data sources and modeling strategies. I also compare my findings to four other independent reports from different research groups. My findings are robust to alternative modeling assumptions and are similar to these other groups' findings.

² For the state populations from 2010-2019, I used the file 'nst-est2019-01.xlsx' which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the populations from 2000-2009, I used the file 'st-est00int-01.xls' from <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

C. Summary of Findings

12. Based on my analysis, I have reached the following conclusions:

- The exclusion of undocumented immigrants from the apportionment base (i.e., the population enumeration used for apportionment) is likely to have substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives.
- It will almost certainly (98% probability) lead Texas to lose a seat. It is likely to lead California and New Jersey to lose a congressional seat. It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. My analysis also indicates there is a 100% probability that it will lead at least one of the states where the individual plaintiffs in this lawsuit live (Texas, California, New Jersey, New York, and Florida) to lose a seat. Of necessity, there is also a 100% probability that it will lead at least one state in the United States to lose a seat. These conclusions are similar across multiple data sources on the prevalence of undocumented immigrants. They are also similar to the conclusions reached by a variety of independent analysts and organizations.
- The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

II. PROJECTING THE STATE POPULATIONS IN 2020

13. The first stage of my analysis is to develop baseline projections of the population of each state in the country in 2020. These projections are critical to determining the likely effects of excluding undocumented immigrants from the apportionment base. In order to develop these estimates, I use the Census Bureau's official estimates of the population of each state from

1990-2019. The Census Bureau does not provide public estimates of each geographic unit's populations in future years.

14. In this section, I first discuss several possible approaches for estimating future populations. I show that my preferred approach performs as well or better at a similar modeling problem than alternative approaches. I then discuss how I incorporate uncertainty into my population projections. Finally, I present estimates of the 2020 populations in each state in the country.

A. Data

15. The Census Bureau's Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas. These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.³ My population projections are based on these official population estimates for each state for the period from 1990-2019.⁴

B. Statistical Model for Population Projections

16. There are a number of potential options for forecasting the likely population of each state in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data (see Hyndman and Athanasopoulos 2018, 48-49). Some related methods in this family of forecasting approaches are:

³ I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

⁴ For the state populations from 2010-2019, I used the file 'nst-est2019-01.xlsx' which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the populations from 2000-2009, I used the file 'st-est00int-01.xls' from <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

- Model 1: Linear trend between 2010-2019: One approach would be to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit's population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.
- Model 2: Linear trend between 2016-2019: Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit's population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.
- Model 3: Change between two most recent years (i.e., 2018 to 2019): A third possibility is to focus on the change between each geographic unit's populations in the two most recent years and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

17. As Hyndman and Athanasopoulos (2018, 50) discusses: "Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods [] will be compared to these simple methods to ensure that the new method is better than these

simple alternatives. If not, the new method is not worth considering.” I consider one more complex approach against these benchmarks:

- Model 4: A state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.

C. Validation of Population Projections

18. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model (Hyndman and Athanasopoulos 2018, 62). In order to choose the best model for this analysis, I evaluated each model using a benchmark that is similar to the challenge of forecasting the 2020 populations. Specifically, I forecasted the 2019 population estimates in each state based on 1990-2018 population data. For each analysis I used the following evaluation metrics (see Hyndman and Athanasopoulos 2018, 64-65).

- The mean error across states (ME): This helps assess whether a given metric has a systematic bias in one direction or another.
- The root mean-squared error across states (RMSE): This helps assess the accuracy of the forecasts. It penalizes larger errors more than smaller errors.
- The mean absolute error across states (MAE): This helps assess the accuracy of the forecasts. It penalizes all errors equally.
- The mean percentage error across states (MPE): This helps assess whether a given metric has a systematic bias in one direction or another. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

- The mean absolute percentage error across states (MAPE): This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

Table 1: Validation of State Population Projections at Predicting 2019 State Populations

Model	ME	RMSE	MAE	MPE	MAPE
(1): Linear model (decade)	-20,821	71,748	32,448	-0.29%	0.57%
(2): Linear model (4 years)	-12,219	33,933	14,513	-0.11%	0.21%
(3): Delta in last two years	-2,940	12,129	6,073	-0.02%	0.09%
(4): State space model	-4,034	12,623	6,766	-0.04%	0.13%

19. Table 1 shows the results. Overall, the state space model (4) and delta model (3) perform the best in this validation exercise. These models have much less error than the other models across all the metrics. Other studies have shown that state space models generally outperform other modeling approaches due to its flexibility (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). It also provides measures of uncertainty. As a result, I use this approach in my main analysis. I also show below, however, that I reach very similar findings using the delta model (3) (see Additional Scenario #6).

D. Baseline estimates of 2020 populations

20. The next stage is to use the official Census population estimates to project each geographic unit's population in 2020. Table 2 shows the results.⁵ Note that all of the analysis of apportionment that follow fully incorporate the uncertainties in these projections.

⁵ The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 6 do include these groups.

Table 2: State population projections

State	2010 Population	2019 Population	2020 Population Projection
Alabama	4,779,736	4,903,185	4,918,700
Alaska	710,231	731,545	728,000
Arizona	6,392,017	7,278,717	7,399,400
Arkansas	2,915,918	3,017,804	3,025,900
California	37,253,956	39,512,223	39,724,500
Colorado	5,029,196	5,758,736	5,833,000
Connecticut	3,574,097	3,565,287	3,565,300
Delaware	897,934	973,764	982,000
District of Columbia	601,723	705,749	710,000
Florida	18,801,310	21,477,737	21,706,500
Georgia	9,687,653	10,617,423	10,723,200
Hawaii	1,360,301	1,415,872	1,411,500
Idaho	1,567,582	1,787,065	1,823,600
Illinois	12,830,632	12,671,821	12,622,100
Indiana	6,483,802	6,732,219	6,769,900
Iowa	3,046,355	3,155,070	3,168,400
Kansas	2,853,118	2,913,314	2,915,500
Kentucky	4,339,367	4,467,673	4,474,200
Louisiana	4,533,372	4,648,794	4,650,500
Maine	1,328,361	1,344,212	1,349,400
Maryland	5,773,552	6,045,680	6,071,200
Massachusetts	6,547,629	6,892,503	6,904,900
Michigan	9,883,640	9,986,857	9,986,900
Minnesota	5,303,925	5,639,632	5,676,100
Mississippi	2,967,297	2,976,149	2,972,300
Missouri	5,988,927	6,137,428	6,152,400
Montana	989,415	1,068,778	1,077,400
Nebraska	1,826,341	1,934,408	1,946,500
Nevada	2,700,551	3,080,156	3,132,200
New Hampshire	1,316,470	1,359,711	1,363,300
New Jersey	8,791,894	8,882,190	8,894,300
New Mexico	2,059,179	2,096,829	2,100,400
New York	19,378,102	19,453,561	19,377,200
North Carolina	9,535,483	10,488,084	10,594,600
North Dakota	672,591	762,062	766,100
Ohio	11,536,504	11,689,100	11,706,400
Oklahoma	3,751,351	3,956,971	3,971,200
Oregon	3,831,074	4,217,737	4,260,000
Pennsylvania	12,702,379	12,801,989	12,803,100
Rhode Island	1,052,567	1,059,361	1,059,400
South Carolina	4,625,364	5,148,714	5,213,000
South Dakota	814,180	884,659	891,700
Tennessee	6,346,105	6,829,174	6,886,700
Texas	25,145,561	28,995,881	29,432,600
Utah	2,763,885	3,205,958	3,259,800
Vermont	625,741	623,989	624,100
Virginia	8,001,024	8,535,519	8,570,600
Washington	6,724,540	7,614,893	7,707,400
West Virginia	1,852,994	1,792,147	1,780,000
Wisconsin	5,686,986	5,822,434	5,836,800
Wyoming	563,626	578,759	578,700

III. ESTIMATING THE OVERSEAS FEDERAL POPULATION ALLOCATED TO EACH STATE

21. The population estimates above include all people living in the United States.

However, the populations used for apportionment also include overseas federal employees and

their dependents.⁶ Thus, it is necessary to estimate how overseas federal employees and dependents would be allocated for purposes of apportionment.

22. In the 2010 Census, members of the overseas military population were generally allocated to their “home of record” (the address provided when the service member entered the military) for purposes of apportionment.⁷ For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.⁸ In other words, military personnel will typically be counted as residing in or near the domestic base where they are stationed. Unfortunately, there is no currently available public estimate of how these overseas personnel will be allocated to individual states. The Census Bureau has stated that it plans to count federal personnel living outside the United States, and their dependents living with them outside the United States, using administrative data provided by the Department of Defense and the Department of Homeland Security.⁹

23. I used the following process to estimate the number of overseas federal population that will be allocated to each state for apportionment:

- First, I estimated the number of military personnel overseas in each branch using data from the Department of Defense from March, 2020.¹⁰
- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.¹¹ This approach implicitly assumes that each

⁶ “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.

⁷ See the Census Bureau’s FAQ on Congressional Apportionment in the 2010 Census.

<https://webcache.googleusercontent.com/search?q=cache:WTXwriFql5AJ:https://www.census.gov/population/apportionment/about/faq.html+&cd=2&hl=en&ct=clnk&gl=us&client=safari> and <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁸ See <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁹ See <https://www.doi.gov/sites/doi.gov/files/uploads/oia-02052020-census-and-the-military.pdf>.

¹⁰ I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.

member of the military has an equal probability of being assigned abroad. While this is clearly a simplification, I believe it is the most reasonable analytical approach with currently available data.

- Third, I assumed that military personnel have the same average number of dependents (1.44) as they did in the 2010 Census.¹²
- Finally, I assumed that the overseas federal civilian population is the same as in 2010 (39,674). Since the majority of overseas federal civilian employees are with the State Department,¹³ I assume these are all headquarters staff that work in Washington DC. I use ACS Commuting Flows from the Census to allocate them between the District of Columbia, Virginia, and Maryland.¹⁴ I also assumed that these civilian employees each have 1.44 dependents.
- Of course, this estimation method has considerable uncertainty. So I assumed that there is a standard error associated with my estimates of the overseas federal population for each state that is equal to 10% of the size of the estimates.

24. Based on this methodology, I estimate that there are about 230,000 overseas federal personnel. Including dependents, I estimate there are about 561,000 federal employees and dependents. Overseas population will be included for purposes of apportionment for the 2020 Census. Table 3 shows the state-by-state results. A copy of Table 3 is provided in

¹¹ I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.

¹² I used the “2010 Census Federally Affiliated Overseas Count Operation Assessment Report” that is available at https://www.census.gov/2010census/pdf/2010_Census_Federally_Affiliated_Overseas_Count_Operation_Assessment.pdf.

¹³ See the ‘2010 Census Federally Affiliated Overseas Count Operation Assessment Report’ that is available at https://www.census.gov/2010census/pdf/2010_Census_Federally_Affiliated_Overseas_Count_Operation_Assessment.pdf.

¹⁴ 98% of people that work in Washington DC live in Maryland, Virginia, or Washington, DC. See <https://www.census.gov/data/tables/2015/demo/metro-micro/commuting-flows-2015.html>.

Appendix A to this Declaration. My estimates indicate that California, North Carolina, Texas, and Virginia have the largest overseas federal populations.¹⁵ It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.¹⁶ This likely reflects the reduction in the nation's military deployments in conflict areas over the past decade.¹⁷

IV. ESTIMATING THE NUMBER OF UNDOCUMENTED IMMIGRANTS IN EACH STATE

25. The Memorandum charges the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”¹⁸ In order to assess the impact of the Memorandum, we next need to estimate the number of undocumented immigrants in each state. While I use these estimated numbers of undocumented immigrants for the purpose of predicting the effect of excluding undocumented immigrants on Congressional apportionment in this study, it is my understanding that the Census Bureau cannot use such estimated numbers to exclude undocumented immigrants for the purpose of counting the actual apportionment base because they are not an enumerations.

26. There is no official estimate from the Census Bureau or any other federal government agency of the number of undocumented immigrants in each state that would be affected by the Memorandum. The most commonly used estimates of the number of undocumented people have been developed by the Pew Research Center.¹⁹ There are hundreds of citations in Google Scholar for Pew's estimates of the number of undocumented immigrants in the United States. As a result, I use these estimates in my main analysis. Later, however, I also

¹⁵ These estimates seem to be in-line with discussions in news coverage of apportionment. See <https://www.rollcall.com/2020/02/26/census-troop-counting-rules-could-tip-congressional-balance/>.

¹⁶ I use information on these populations from the 2010 apportionment available at <https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html>.

¹⁷ See Pew's report on the number of overseas military personnel at <https://www.pewresearch.org/fact-tank/2017/08/22/u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/>.

¹⁸ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

¹⁹ See <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

examine the estimates of the number of undocumented immigrants from a number of other organizations that use a variety of slightly different methodologies. Each of these analyses yields a conclusion substantively similar to my main analysis using Pew's data.

27. Pew estimates the U.S. unauthorized immigrant population from 1995-2017 in each state based on a residual estimation methodology that compares the total number of immigrants (as measured by either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS)) with a demographic estimate of the number of documented immigrants residing in the country (i.e., those in compliance with immigration laws).²⁰ The difference between these two quantities is assumed to be the number of undocumented immigrants included in the survey, a number that later is adjusted for omissions from the survey (see below). The basic estimate is:

$$\text{Undocumented Immigrants (U)} = \text{Survey, Total Foreign Born (F)} - \\ \text{Estimated Documented Immigrant Population (L)}$$

28. The documented resident immigrant population was estimated by applying demographic methods to counts of lawful admissions covering the period since 1980 obtained from the Department of Homeland Security's Office of Immigration Statistics²¹ and its predecessor at the Immigration and Naturalization Service, with projections to current years, when necessary. Initial estimates were calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country. This residual method has been used in a wide variety of government reports and peer reviewed articles (e.g., Baker 2018; Warren and Warren 2013; Passel 2016).

²⁰ The next few paragraphs of this section are adapted from Pew's discussion of their methodology at <https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/>.

²¹ See <https://www.dhs.gov/immigration-statistics/yearbook/2016/>.

29. The overall estimates for undocumented immigrants built on these residuals by adjusting for survey omissions in these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, South and East Asia, rest of world) depending on sample size and state. Once the residual estimates were produced, Pew assigned individual foreign-born respondents in the survey a specific status (one option being undocumented immigrant) based on the individual's demographic, social, economic, geographic and family characteristics in numbers that agree with the initial residual estimates for the estimated documented immigrant and undocumented immigrant populations in the survey. A last step in the weighting-estimation process involves developing state-level estimates that take into account trends over time in the estimates.

30. Overall, Pew estimates there were about 10,481,000 undocumented immigrants in the United States in 2017.²² They estimate that the states with the most undocumented immigrants are California, Texas, Florida, New York, and New Jersey. The states with the fewest undocumented immigrants are Maine, Montana, Vermont, and West Virginia.

31. Of course, Pew's estimation process has substantial uncertainties inherent in it. First, there is no way to know that individual respondents to the ACS and CPS are undocumented immigrants. Pew estimates undocumented status based on a variety of pieces of information.²³ Second, the ACS and CPS are constructed based on surveys of a sample of the American public. Therefore, they rely on statistical sampling and are subject to sampling error. There could also be misreporting of country of birth on the ACS and/or unit non response by undocumented immigrants (Brown et al. 2018). In order to characterize these uncertainties, Pew

²² These estimates seem plausible since the Department of Homeland Security estimated there were 12 million undocumented immigrants in the country in January 2015 (Baker 2018). They are also similar to estimates of the number of undocumented immigrants developed by other think tanks (see below).

²³ See <https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/>.

provides a 90% confidence interval for their estimates of the number of undocumented people in each state.

32. Lastly, for my analysis, Pew's data of the number of undocumented immigrants in each state between 1995-2017 need to be projected 3 years forward to 2020.²⁴ To determine how to forecast the number of undocumented immigrants in each state, I compared the same four modeling strategies that I discussed earlier for the total state population projections. For each method, I used data through 2014 to evaluate its performance at predicting the number of undocumented immigrants three years forward in 2017.

33. All of the models generate significant levels of error compared to the total population forecasting validation shown above in Table 4. However, the state space model (4) and a linear time trend (2) using the previous four years of data perform somewhat better than the other models. In my main analysis, I use the state space model to project the number of undocumented immigrants in 2020. Moreover, I ensured that the state space model estimates fully incorporate the uncertainty in Pew's estimates in the number of undocumented immigrants (see Treier and Jackman 2008; Caughey and Warshaw 2018).²⁵ I checked the robustness of my analysis by showing that I reach similar substantive conclusions using the linear time trend model (see Additional Scenario #7).

²⁴ Pew's data are available at <https://www.pewresearch.org/hispanic/interactives/unauthorized-trends/>.

²⁵ Specifically, I used the following approach. First, I constructed 100 simulations of the number of undocumented immigrants in each state from 2005-2017 using Pew's estimates and the associated confidence intervals. For each simulation, I used the state space model to forecast each state's number of undocumented immigrants in 2020. I then constructed a bootstrap sample of the forecast of undocumented immigrants in each state based on the mean and confidence intervals in the state space model's population forecast. Finally, I estimated the number of undocumented immigrants in each state in 2020, and its associated standard error to represent uncertainty, based on these simulations.

Table 4: Validation of Forecasting Pew's Estimates of the Number of Undocumented Immigrants in 2017

Model	ME	RMSE	MAE	MPE	MAPE
(1): Linear model (decade)	-21,998.25	90,634.40	31,639.51	-3.34	14.56
(2): Linear model (4 years)	-10,944.23	50,403.96	25,971.15	-3.95	17.59
(3): Delta in last two years	-12,884.62	58,005.64	28,961.54	-0.40	19.24
(4): State space model	-13,688.05	55,204.49	22,794.32	-3.46	15.48

34. Table 5 shows the estimates of the number of undocumented immigrants in each state (standard errors that represent uncertainty are in parentheses). A copy of Table 5 is provided in Appendix A to this Declaration. It shows that California, Florida, Illinois, New Jersey, New York, and Texas each have at least 400,000 undocumented immigrants.²⁶

35. These final estimates take into account the uncertainty in Pew's initial estimates of the number of undocumented immigrants from 2005-2017. They also take into account the uncertainty in projecting the trends in each state from 2017-2020. In general, the additional uncertainty associated with forecasting to 2020 approximately triples the size of Pew's confidence intervals for their estimates of undocumented immigrants in each state in 2017.

36. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate three sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every state for 2020.
- The uncertainty in the estimates of the overseas federal employees and dependents, and how they are allocated to states.
- The uncertainty in the estimate of the number of undocumented immigrants in each state in 2020.

²⁶ These state-by-state figures are similar to those in a 2015 Department of Homeland Security report, which provided estimates of the number of undocumented immigrants in several states (Baker 2018).

V. STATE-LEVEL EFFECTS OF EXCLUDING UNDOCUMENTED IMMIGRANTS FROM APPORTIONMENT BASE

37. Now that we have calculated population projections and estimates of the number of undocumented immigrants in each state, we are in a position to estimate state-level impacts.

A. Effect on State Population Enumerations

38. To begin, I analyzed the effects on the enumerated population of each state in 2020. The results are shown in Table 6. Column (1) of Table 6 shows the baseline apportionment population projections for each state (including the overseas military population, federal employees, and dependents). Column (2) shows my estimate of the number of undocumented immigrants in each state in 2020. Column (3) shows my estimate of the percentage of the apportionment population in each state that consists of undocumented immigrants.

Table 6: Estimates of Effect on State Population Enumerations in 2020

State	Baseline 2020 Apportionment Population	Undocumented Immigrants (Pew)	Undocumented Percentage
	(1)	(2)	(3)
Alabama	4,926,400	71,900	1.5%
Alaska	735,700	8,400	1.1%
Arizona	7,410,500	274,400	3.7%
Arkansas	3,028,800	65,300	2.2%
California	39,799,200	2,066,000	5.2%
Colorado	5,846,100	190,100	3.3%
Connecticut	3,568,100	148,300	4.2%
Delaware	984,300	29,700	3%
Florida	21,736,600	796,000	3.7%
Georgia	10,749,300	375,700	3.5%
Hawaii	1,428,900	43,800	3.1%
Idaho	1,825,700	38,300	2.1%
Illinois	12,633,400	409,300	3.2%
Indiana	6,773,300	103,200	1.5%
Iowa	3,169,100	51,000	1.6%
Kansas	2,924,300	81,300	2.8%
Kentucky	4,485,300	44,700	1%
Louisiana	4,657,900	100,100	2.1%
Maine	1,350,400	4,000	0.3%
Maryland	6,105,000	261,600	4.3%
Massachusetts	6,907,400	231,900	3.4%
Michigan	9,989,700	103,800	1%
Minnesota	5,677,700	86,800	1.5%
Mississippi	2,979,500	23,000	0.8%
Missouri	6,160,800	63,100	1%
Montana	1,079,300	4,400	0.4%
Nebraska	1,950,200	55,800	2.9%
Nevada	3,137,300	211,200	6.7%
New Hampshire	1,363,700	10,400	0.8%
New Jersey	8,899,400	493,200	5.5%
New Mexico	2,107,400	59,200	2.8%
New York	19,386,100	679,800	3.5%
North Carolina	10,639,700	330,800	3.1%
North Dakota	770,300	5,900	0.8%
Ohio	11,715,100	94,400	0.8%
Oklahoma	3,981,800	90,100	2.3%
Oregon	4,261,500	109,100	2.6%
Pennsylvania	12,809,600	217,800	1.7%
Rhode Island	1,061,000	32,900	3.1%
South Carolina	5,229,800	101,500	1.9%
South Dakota	893,800	5,700	0.6%
Tennessee	6,888,900	139,200	2%
Texas	29,479,700	1,649,100	5.6%
Utah	3,263,900	106,100	3.3%
Vermont	624,400	3,500	0.6%
Virginia	8,639,600	297,600	3.4%
Washington	7,730,300	274,400	3.5%
West Virginia	1,780,600	4,300	0.2%
Wisconsin	5,838,300	72,900	1.2%
Wyoming	580,300	4,800	0.8%

39. Overall, Table 6 indicates that each state would be affected by an exclusion of undocumented immigrants from the apportionment base. Figure 1 shows a map of the percentage of people in each state that would be dropped from the Census apportionment base if

undocumented immigrants are excluded. Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Rhode Island, Texas, Utah, Virginia, and Washington would all lose at least 3% of their population from their apportionment base. Thus, they could be at risk of losing a congressional seat during apportionment.

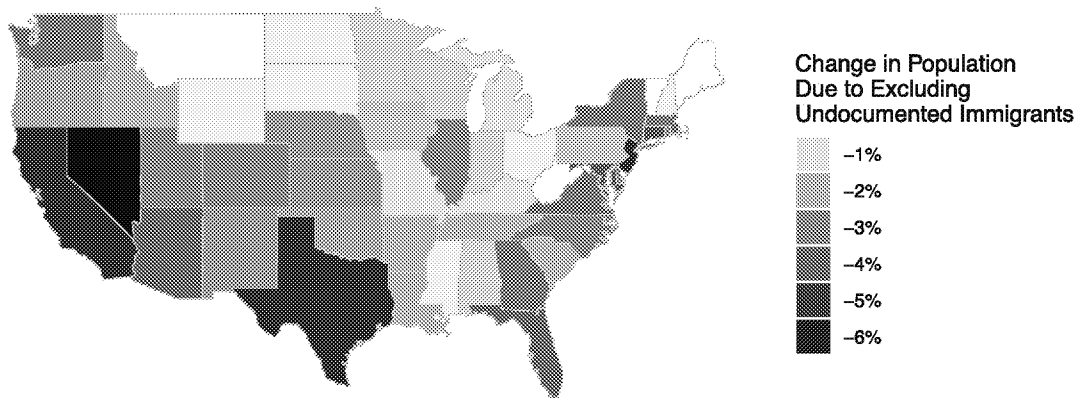


Figure 1: Effects on State Populations

B. Effect on Apportionment

40. Next, I used the population projections and estimates of undocumented immigrants in each state to examine the likely effect of excluding undocumented immigrants from the Census count on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

41. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was

adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are assigned to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.²⁷

42. The next step is to multiply these multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

43. I conducted these steps for 1,000 simulations of the population projections and undocumented populations in each state. Table 7 shows the results.²⁸ Column (1) shows the rounded, baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the rounded projections for the number of seats that each state is likely to receive in 2020 if undocumented immigrants are excluded from the apportionment base. Column (3) shows the rounded, average change in the number of

²⁷ See <https://www.census.gov/population/apportionment/about/computing.html>.

²⁸ Table 12 in the Appendix A shows unrounded numbers for this table.

congressional seats each state would gain or lose due to the exclusion of undocumented immigrants. Finally, column (4) shows the probability that each state would lose at least one seat.

Table 7: Estimates of Effect of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6	7	1	0%
Alaska	1	1	0	0%
Arizona	10	10	-0	0.3%
Arkansas	4	4	0	0%
California	52	51	-1	72.1%
Colorado	8	8	-0	0.3%
Connecticut	5	5	-0	3.4%
Delaware	1	1	0	0%
Florida	29	28	-0	38.4%
Georgia	14	14	0	0%
Hawaii	2	2	0	0%
Idaho	2	2	0	0%
Illinois	17	17	-0	10.1%
Indiana	9	9	0	0%
Iowa	4	4	0	0%
Kansas	4	4	0	0%
Kentucky	6	6	0	0%
Louisiana	6	6	0	0%
Maine	2	2	0	0%
Maryland	8	8	0	0%
Massachusetts	9	9	0	0%
Michigan	13	13	0	0%
Minnesota	7	8	1	0%
Mississippi	4	4	0	0%
Missouri	8	8	0	0%
Montana	2	2	0	0%
Nebraska	3	3	0	0%
Nevada	4	4	0	0%
New Hampshire	2	2	0	0%
New Jersey	12	11	-1	69.8%
New Mexico	3	3	0	0%
New York	26	25	-0	18.9%
North Carolina	14	14	0	0%
North Dakota	1	1	0	0%
Ohio	15	16	1	0%
Oklahoma	5	5	0	0%
Oregon	6	6	0	0%
Pennsylvania	17	17	0	0%
Rhode Island	1	1	0	0%
South Carolina	7	7	0	0%
South Dakota	1	1	0	0%
Tennessee	9	9	0	0%
Texas	39	38	-1	98.3%
Utah	4	4	0	0%
Vermont	1	1	0	0%
Virginia	11	11	0	0%
Washington	10	10	0	0%
West Virginia	2	2	0	0%
Wisconsin	8	8	0	0%
Wyoming	1	1	0	0%

44. My analysis indicates that there is a 98.3% chance that Texas would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. It loses a seat in nearly every single one of my simulations. In addition, my analysis indicates that

there is a 72.1% chance that California would lose a Congressional seat. On average, it loses .83 seats across my simulations (i.e., in most simulations it loses 1 seat, in some it loses 2 seats, and in some it loses zero seats). My analysis also indicates that there is a nearly 70% chance that New Jersey would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. There are smaller chances that several other states could lose seats, including Connecticut, Florida, Illinois, and New York.²⁹

45. It is also possible to use the 1,000 simulations that I ran to analyze the *aggregate* probability that any grouping of one or more states would collectively lose congressional seats if undocumented immigrants are excluded from the apportionment base. My analysis indicates there is a 100% chance that *at least one* state in the United States would lose a seat. In other words, at least one state loses a seat in every single one of the 1,000 simulations that I ran. There is also a 100% chance that at least one of the five states where the individual plaintiffs in this lawsuit reside (California, Florida, New Jersey, New York, or Texas) would lose a seat. Omitting Texas from the grouping, there is a 99.1% chance that at least one of California, Florida, New Jersey, or New York would lose a seat. Finally, there is a 97.4% probability that Texas would lose a seat *and at least one* of California, Florida, New Jersey, or New York would *also* lose a seat.

46. The states that lose seats in Congress would likely see decreases in their share of federal outlays due to their reduction in voting power in Congress. A number of economics and political science studies have found that distributive spending is allocated in part based on the number of seats that a geographic area has in Congress and state legislatures (e.g., Ansolabehere,

²⁹ Note the rounded numbers in Table 7 imply that Florida and New York would lose seats. The unrounded numbers in the Appendix (Table 12), however, show that there is a less than 50% chance that they would lose a seat.

Gerber, and Snyder 2002; Cascio and Washington 2014; Dragu and Rodden 2011; Elis, Malhotra, and Meredith 2009; Gordon and Kang 2015).

47. One of the most important academic studies for considering the representational consequences for states that lose seats due to the exclusion of undocumented immigrants is Elis, Malhotra, and Meredith (2009). They leveraged the natural experiment generated by Census apportionment cycles to estimate the distributional effects of malapportionment in the U.S. House of Representatives. They compared states just before and just after changes in representation, using a difference-in-first-differences technique to control for preexisting trends in those states gaining or losing representation. They leveraged data from changes in representation during four apportionment cycles (1970, 1980, 1990, and 2000) and they included fiscal data over 33 years (1970, 1972, 1974, 1976, 1977, and 1979–2006). They found that changes in representation cause changes in the distribution of federal outlays to the states. They showed that a 10% increase in a state’s share of the U.S. House of Representatives equates to a 0.7% increase in a state’s share of the federal budget. This implies that an extra congressional seat can gain a state as much as \$100 per capita in additional federal funding each year (360).

48. In another important study, Dragu and Rodden (2011) build on these findings to examine the influence between voting power and governmental expenditures over the past several decades in Argentina, Australia, Brazil, Canada, Germany, Mexico, Spain, Switzerland, and the United States. They “find strong evidence that legislative apportionment affects the distribution of long-run governmental expenditures.” Moreover, “the effect of representation on the distribution of governmental expenditures is robust to controlling for several [state] characteristics.” In the conclusion of their study, they note that “the ubiquity and magnitude of the relationship between representation and fiscal transfers ... is quite striking.”

49. Several other important studies have examined the consequences of changes in voting power at the county-level in the United States. They also found that changes in voting power lead to changes in the distribution of spending. Ansolabehere, Gerber, and Snyder (2002) examined the consequences of the Supreme Court's decision in *Baker v. Carr* (1962) and *Reynolds v. Sims* (1964), which mandated one person, one vote for legislative districts. They found that the counties that gained voting power due to the establishment of equipopulous districts received more state funding over the next decade. Cascio and Washington (2014) examined the consequences of the expansion in Black voting power caused by the elimination of literacy tests due to the passage of the Voting Rights Act of 1965 (VRA). They showed that in southern states where literacy tests were abolished, there was a shift in the distribution of state aid toward localities with higher proportions of Black residents. Their findings imply an elasticity of state transfers to counties with respect to turnout in presidential elections – the closest available measure of enfranchisement – of roughly one.

VI. ROBUSTNESS CHECKS

50. It is always helpful to evaluate the robustness of any analysis to alternative modeling assumptions. In this section, I undertake four different robustness checks. First, I evaluate the impact of using alternative sources of information on the number of undocumented immigrants in each state on my analysis. Second, I evaluate the impact of alternative population forecasting methodologies. Third, I evaluate whether my conclusions would differ if the exclusion of undocumented immigrants from the apportionment base leads to an undercount of immigrant populations.³⁰ I used the foreign-born population in the United States to evaluate the impact of an undercount of immigrants. Fourth, I compare my results to the conclusions of

³⁰ See Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020 <https://tinyurl.com/y67ojjqb>.

various organizations' reports on the impact of excluding undocumented immigrants on apportionment.

51. Overall, the analysis in this section shows that my conclusions are robust to a wide variety of alternative data sources and modeling strategies. They are also consistent with the findings of other organizations and analysts. All of these alternative data sources, methodologies, and third-party reports indicate that Texas will lose a congressional seat if undocumented immigrants are excluded from the apportionment base. They nearly all indicate that California will also lose a seat. They also indicate that some mix of Florida, New Jersey, and New York could lose seats.

A. Robustness to Alternative Estimates of the Number of Undocumented Immigrants

52. Due to the substantial uncertainties in Pew's estimates of the number of undocumented people in each state, I conducted a canvass of alternative sources of estimates for the undocumented population. I identified several alternative sources of data:

- Additional Scenario 1: The Migration Policy Institution (MPI) has developed estimates of the number of undocumented people in each state based on the U.S. Census Bureau's 2012-16 ACS data.³¹ As noted earlier, the ACS is constructed based on surveys of a sample of the American public. Therefore MPI estimates rely on statistical sampling and are subject to sampling error. They estimate there are about 11,300,000 undocumented immigrants in the United States. Their national estimate is very similar to Pew's estimate.³² However, their estimates differ more in some states. For instance, MPI estimates that there are about 50% more undocumented immigrants in California than

³¹ See <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles>.

³² MPI's national estimate is about 8% higher than Pew's estimate.

Pew estimates. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state's point estimate.

- Additional Scenario 2: The Center for Migration Studies (CMS) has developed estimates of the number of undocumented people in each state in 2018.³³ Their methodology is described in two articles that were published in the *Journal of Migration and Security* (Warren 2014, 2019). CMS estimates are also based on the ACS. Therefore they rely on statistical sampling and are subject to sampling error. They estimate there are about 10,543,500 undocumented immigrants in the United States, which is nearly identical to Pew's national estimate.³⁴ They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state's point estimate.
- Additional Scenario 3: Third, I examine a scenario where the national estimates of the number of undocumented immigrants are somewhat too high. To do this, I simply decrease all of my main estimates using Pew's data of the number of undocumented immigrants in each state by 20% to examine the effects on apportionment if the Pew, MPI, and CMS estimates of the total number of undocumented immigrants in the United States are all too high.
- Additional Scenario 4: Fourth, I examine a scenario where the national estimates of the number of undocumented immigrants are much too high. To do this, I decrease all of my main estimates using Pew's data on the number of undocumented immigrants in each state by 40%.

³³ Their estimates are available at <http://data.cmsny.org/state.html>.

³⁴ CMS's national estimate is about 0.5% higher than Pew's estimate.

- Additional Scenario 5: Finally, I examine a scenario where the national estimates of the number of undocumented immigrants are much too low. To do this, I increase all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 50%.

Table 8: Comparison of My Findings with Analyses Based on Alternative Estimates of the Number of Undocumented Immigrants. The table shows the probability that various states would lose seats in each scenario.

State	Main Analysis	Scenario #1 MPI	Scenario #2 CMS	Scenario #3 Pew (80%)	Scenario #4 Pew (60%)	Scenario #5 Pew (150%)
California	72%	100%	93%	49%	36%	92%
Florida	38%	0%	26%	39%	48%	60%
New Jersey	70%	80%	23%	57%	36%	91%
New York	19%	52%	19%	17%	28%	24%
Texas	98%	96%	98%	98%	98%	99.5%

53. Table 8 compares my main findings (the “Main Analysis” column) to analyses based on alternative estimates of the number of undocumented immigrants. It shows each of the states that at least one scenario (including my main analysis) has a 33% chance or more of losing a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and the probability it would lose a seat under the various alternative scenarios.

54. Overall, all of these analyses yield substantively similar results as my main analysis. In each scenario, Texas has more than a 95% chance of losing a congressional seat if undocumented immigrants are excluded from the apportionment base. Moreover, in all of the additional scenarios but one, California has about a 50% chance or more of losing a congressional seat. There is also a significant chance that Florida, New Jersey, and New York could lose a seat in most of the scenarios.

55. Aggregating across these five scenarios, there is also a 100% chance that at least one state in the United States would lose a seat. In other words, at least one state loses a seat in

every single one of the simulations that I ran for these five scenarios. There is also a 100% chance that at least one of the five states where the individual plaintiffs in this lawsuit reside (California, Florida, New Jersey, New York, or Texas) would lose a seat. Omitting Texas from the grouping, there is a 98.8% chance that at least one of California, Florida, New Jersey, or New York would lose a seat.

B. Robustness to Alternative Modeling Approaches

56. As I discussed above, there are a number of alternative approaches we could use to project the 2020 populations and estimates of undocumented immigrants in each state. In this section, I discuss alternative forecasting methodologies for each of these:

- Additional Scenario 6: For the population forecasts of each state in 2020, I use a forecasting methodology based on the deltas in the two most recent years. In Table 1, I found that this approach was roughly equivalent to the state space model. The state space model is preferable because it is more flexible and provides a measure of uncertainty.
- Additional Scenario 7: For the forecasts of the number of undocumented immigrants in each state in 2020 based on Pew's data, I use a methodology based on a linear time trends over the four most recent years. In Table 4, I found that this approach performed nearly as well as the state space model. The state space model is preferable because it is more flexible and requires fewer assumptions about future time trends.

57. Both of these alternative-modeling strategies produce similar results as my main results (Table 9). In each scenario, Texas is nearly certain to lose a seat. California and New Jersey are likely to lose seats in each scenario. Florida and New York also have significant chances of losing a seat in each scenario.

58. Aggregating across these two alternative-modeling strategies, there is a 100% chance that at least one state in the United States would lose a seat. In other words, at least one

state loses a seat in every single one of the simulations that I ran for these two scenarios. There is also a 100% chance that at least one of the five states where the individual plaintiffs in this lawsuit reside (California, Florida, New Jersey, New York, or Texas) would lose a seat. After omitting Texas from the grouping, there is still a 100% chance that at least one of California, Florida, New Jersey, or New York would lose a seat.

Table 9: Comparison of My Findings with Alternative Modeling Strategies. The table shows the probability that various states would lose seats in each scenario.

State	Main Analysis	Scenario #6 Alternative Population Forecasts	Scenario #7 Alternative Forecasts of Undoc. Imm.'s
California	72%	84%	75%
Florida	38%	45%	96%
New Jersey	70%	73%	51%
New York	19%	58%	30%
Texas	98%	99.5%	100%

C. Robustness to a Possible Census Undercount

59. The testimony of the former U.S. Census Bureau Director, John H. Thompson, to Congress on July 29, 2020 raises the possibility that the Memorandum could lead to nonresponse to the Census by hard-to-count populations, including noncitizens and immigrants.³⁵ This, in turn, could lead the Census to undercount foreign-born people. It is possible that planned reductions in door-to-door canvassing due to COVID-19 could lead to a further undercount of foreign-born people.³⁶

60. In this section, I examine whether an undercount of foreign-born people would affect my findings about the effects of excluding undocumented immigrants from the apportionment base. I use my estimates from *New York Immigration Coalition et al v. United*

³⁵ See Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020 <https://tinyurl.com/y67ojjqb>.

³⁶ See <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> and <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html>.

States Department of Commerce, No. 18-CV-2921-JMF (S.D.N.Y.) of the number of foreign-born people in each state. I then assess the consequences of a scenario with a 10% undercount of foreign-born people using the same methodology that I use in my main analyses. I am adopting my declaration provided in that matter by reference and include a copy in Appendix B.

Table 10: Comparison of My Findings with Analyses that Assume 10% Undercount of Foreign-born People. The table shows the probability that various states would lose seats in each scenario.

State	Main Analysis	Scenario #8 Undercount
California	72%	67%
Florida	38%	0%
New Jersey	70%	93%
New York	19%	0%
Texas	98%	76%

61. Table 10 compares my main findings to the results of this undercount scenario. It shows each state that my analysis indicates has a significant chance of losing a seat if undocumented immigrants are excluded from the apportionment base. Once again, in this scenario Texas is likely to lose a congressional seat if undocumented immigrants are excluded from the apportionment base. California and New Jersey are also likely to lose congressional seats.

62. My analysis of this undercount scenario indicates there is a 100% chance that *at least one* state in the United States would lose a seat. There is also a 100% chance in this scenario that at least one of the five states where the individual plaintiffs in this lawsuit reside (California, Florida, New Jersey, New York, or Texas) would lose a seat. Omitting Texas from the grouping, there is a 99% chance that either California or New Jersey would lose a seat.

D. Comparison with Other Organizations' Analyses

63. There have been a number of studies and reports by various organizations estimating how excluding undocumented immigrants would affect apportionment. These include:

- The Pew Research Center³⁷
- The Center for Immigration Studies (CIS)³⁸
- The Center for Politics at the University of Virginia (CfP)³⁹
- A peer reviewed academic study published in 2019 (Baumle and Poston Jr 2019).

Table 11: Comparison of My Findings with Other Studies. The table shows whether each study finds various states would lose a seat.

State	Main Analysis (1)	Pew (2)	CIS (3)	CfP (4)	Academic Study (5)
Arizona	0.3%				X
California	72%	X	X	X	X
Florida	38%	X			X
New Jersey	70%			X	
New York	19%		X		
Texas	98%	X	X	X	X

64. Table 11 compares my main findings to the results of these studies. It shows each state that at least one study finds would lose a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and an X for each of the other studies that shows it would lose a seat.

65. Overall, each of these four other studies reaches substantively similar conclusions as the ones in this Declaration. They all conclude that California and Texas would lose congressional seats if undocumented immigrants are excluded from the apportionment base. They also find a mix of other states that might lose seats, including Arizona, Florida, New Jersey, and New York.

³⁷ See <https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/>.

³⁸ See https://cis.org/sites/default/files/2019-12/camarota-apportionment-12-19_1.pdf.

³⁹ See <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment/>.

VII. CONCLUSION

66. Based on the analyses in this Declaration, I conclude that failing to count undocumented immigrants for apportionment is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. In my main analysis, Texas is nearly certain (98% probability) to lose a congressional seat. California and New Jersey are very likely to each lose a congressional seat. Other states, such as Florida and New York could lose seats as well. My main analysis indicates there is a 100% probability that it will lead at least one of the states where the individual plaintiffs in this lawsuit live (Texas, California, New Jersey, New York, and Florida) to lose a seat. Of necessity, there is also a 100% probability that it will lead at least one state in the United States to lose a seat. This would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Executed on August 18, 2020 in Bethesda, Maryland.

A handwritten signature in black ink, appearing to read "Chris Warshaw". The signature is written in a cursive style with a long horizontal flourish at the end.

Christopher Warshaw

References

Ansolabehere, Stephen, Alan Gerber, and Jim Snyder. 2002. "Equal votes, equal money: Court-ordered redistricting and public expenditures in the American states." *American Political Science Review* 96 (4): 767–777.

Baker, Bryan. 2018. "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015." Department of Homeland Security, December.

Baumle, Amanda K, and Dudley L Poston Jr. 2019. "Apportionment of the US House of Representatives in 2020 under Alternative Immigration-Based Scenarios." *Population and Development Review* 45 (2): 379–400.

Brown, David J., Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi. 2018. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census.

Cascio, Elizabeth U, and Ebonya Washington. 2014. "Valuing the vote: The redistribution of voting rights and state funds following the voting rights act of 1965." *The Quarterly Journal of Economics* 129 (1): 379–433.

Caughey, Devin, and Christopher Warshaw. 2018. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936–2014." *The American Political Science Review* 112 (2): 249–266.

Dragu, Tiberiu, and Jonathan Rodden. "Representation and redistribution in federations."

Proceedings of the National Academy of Sciences 108.21 (2011): 8601-8604.

APA

Election Data Services. 2017. Some Change in Apportionment Allocations With New 2017 Census Estimates, But Greater Change Likely by 2020. Available at https://www.electiondataservices.com/wpcontent/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf.

Elis, Roy, Neil Malhotra, and Marc Meredith. 2009. "Apportionment cycles as natural experiments." *Political Analysis* 17 (4): 358–376.

Gordon, Sanford C., and Woo Chang Kang. "Distributive Politics: Federal Outlays." *Emerging Trends in the Social and Behavioral Sciences: An Interdisciplinary, Searchable, and Linkable Resource* (2015): 1-16.

Hyndman, Rob J, and George Athanasopoulos. 2018. *Forecasting: principles and practice*. O-Texts.

Hyndman, Rob, Anne B Koehler, J Keith Ord, and Ralph D Snyder. 2008. *Forecasting with exponential smoothing: the state space approach*. Springer Science & Business Media.

Passel, Jeffrey S. 2016. Overall Number of US Unauthorized Immigrants Holds Steady Since 2009: Decline in Share From Mexico Mostly Offset by Growth From Asia, Central America and Sub-Saharan African. Pew Research Center.

Treier, Shawn, and Simon Jackman. 2008. "Democracy as a latent variable." *American Journal of Political Science* 52 (1): 201–217.

Warren, Robert. 2014. "Democratizing data about unauthorized residents in the United States: estimates and public-use data, 2010 to 2013." *Journal on Migration and Human Security* 2 (4): 305–328.

Warren, Robert. 2019. "US undocumented population continued to fall from 2016 to 2017 and visa overstays significantly exceeded illegal crossings for the seventh consecutive year." *Journal on Migration and Human Security* 7 (1): 19–22.

Warren, Robert, and John Robert Warren. 2013. "Unauthorized immigration to the United States: Annual estimates and components of change, by state, 1990 to 2010." *International Migration Review* 47 (2): 296–329.

Appendix A**1. Estimates of Overseas Federal Personnel**

Table 3: Estimates of Overseas Federal Personnel in each State in 2020.

State	Overseas Personnel
Alabama	7,700
Alaska	7,500
Arizona	11,000
Arkansas	2,900
California	74,900
Colorado	14,200
Connecticut	2,600
Delaware	2,100
Florida	29,500
Georgia	26,800
Hawaii	17,500
Idaho	2,200
Illinois	10,300
Indiana	3,300
Iowa	900
Kansas	8,300
Kentucky	11,200
Louisiana	7,300
Maine	1,100
Maryland	33,600
Massachusetts	2,700
Michigan	2,900
Minnesota	1,600
Mississippi	6,700
Missouri	8,400
Montana	2,000
Nebraska	3,600
Nevada	6,200
New Hampshire	700
New Jersey	5,300
New Mexico	7,000
New York	9,300
North Carolina	44,500
North Dakota	4,000
Ohio	8,600
Oklahoma	10,700
Oregon	1,200
Pennsylvania	6,900
Rhode Island	1,700
South Carolina	16,400
South Dakota	2,000
Tennessee	2,600
Texas	51,500
Utah	4,200
Vermont	300
Virginia	68,800
Washington	23,000
West Virginia	700
Wisconsin	1,600
Wyoming	1,800

2. Estimates of Undocumented Immigrants

Table 5: Estimates of Undocumented Immigrants in each State in 2020. Standard errors, which represent the uncertainty in each estimate, are shown in parentheses.

State	Undocumented Immigrants
Alabama	71,900 (28,800)
Alaska	8,400 (3,500)
Arizona	274,400 (56,400)
Arkansas	65,300 (20,400)
California	2,066,000 (275,700)
Colorado	190,100 (50,200)
Connecticut	148,300 (67,700)
Delaware	29,700 (12,100)
Florida	796,000 (105,300)
Georgia	375,700 (140,000)
Hawaii	43,800 (19,000)
Idaho	38,300 (9,400)
Illinois	409,300 (70,100)
Indiana	103,200 (48,200)
Iowa	51,000 (20,400)
Kansas	81,300 (27,900)
Kentucky	44,700 (20,400)
Louisiana	100,100 (61,500)
Maine	4,000 (1,900)
Maryland	261,600 (76,300)
Massachusetts	231,900 (69,300)
Michigan	103,800 (37,500)
Minnesota	86,800 (34,200)
Mississippi	23,000 (11,600)
Missouri	63,100 (31,300)
Montana	4,400 (1,700)
Nebraska	55,800 (17,900)
Nevada	211,200 (31,600)
New Hampshire	10,400 (4,400)
New Jersey	493,200 (90,000)
New Mexico	59,200 (16,600)
New York	679,800 (102,000)
North Carolina	330,800 (73,400)
North Dakota	5,900 (3,200)
Ohio	94,400 (43,400)
Oklahoma	90,100 (30,200)
Oregon	109,100 (32,200)
Pennsylvania	217,800 (85,500)
Rhode Island	32,900 (12,000)
South Carolina	101,500 (47,500)
South Dakota	5,700 (2,300)
Tennessee	139,200 (56,000)
Texas	1,649,100 (182,200)
Utah	106,100 (19,100)
Vermont	3,500 (1,600)
Virginia	297,600 (104,600)
Washington	274,400 (82,600)
West Virginia	4,300 (2,000)
Wisconsin	72,900 (31,000)
Wyoming	4,800 (1,900)

3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6.46	7.00	0.54	0%
Alaska	1.00	1.00	0.00	0%
Arizona	10.00	10.00	-0.00	0.3%
Arkansas	4.00	4.00	0.00	0%
California	52.15	51.32	-0.83	72.1%
Colorado	8.00	8.00	-0.00	0.3%
Connecticut	5.00	4.97	-0.03	3.4%
Delaware	1.00	1.00	0.00	0%
Florida	28.86	28.47	-0.38	38.4%
Georgia	14.00	14.02	0.02	0%
Hawaii	2.00	2.00	0.00	0%
Idaho	2.00	2.12	0.12	0%
Illinois	17.00	16.90	-0.10	10.1%
Indiana	9.00	9.00	0.00	0%
Iowa	4.00	4.00	0.00	0%
Kansas	4.00	4.00	0.00	0%
Kentucky	6.00	6.00	0.00	0%
Louisiana	6.00	6.02	0.02	0%
Maine	2.00	2.00	0.00	0%
Maryland	8.00	8.00	0.00	0%
Massachusetts	9.00	9.00	0.00	0%
Michigan	13.00	13.28	0.28	0%
Minnesota	7.07	8.00	0.92	0%
Mississippi	4.00	4.00	0.00	0%
Missouri	8.00	8.00	0.00	0%
Montana	1.92	2.00	0.08	0%
Nebraska	3.00	3.00	0.00	0%
Nevada	4.00	4.00	0.00	0%
New Hampshire	2.00	2.00	0.00	0%
New Jersey	12.00	11.30	-0.70	69.8%
New Mexico	3.00	3.00	0.00	0%
New York	25.54	25.35	-0.19	18.9%
North Carolina	14.00	14.00	0.00	0%
North Dakota	1.00	1.00	0.00	0%
Ohio	15.00	16.00	1.00	0%
Oklahoma	5.00	5.00	0.00	0%
Oregon	6.00	6.00	0.00	0%
Pennsylvania	17.00	17.00	0.00	0%
Rhode Island	1.00	1.17	0.17	0%
South Carolina	7.00	7.00	0.00	0%
South Dakota	1.00	1.00	0.00	0%
Tennessee	9.00	9.00	0.00	0%
Texas	38.99	37.93	-1.06	98.3%
Utah	4.00	4.00	0.00	0%
Vermont	1.00	1.00	0.00	0%
Virginia	11.00	11.16	0.16	0%
Washington	10.00	10.00	0.00	0%
West Virginia	2.00	2.00	0.00	0%
Wisconsin	8.00	8.00	0.00	0%
Wyoming	1.00	1.00	0.00	0%

Appendix B

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

NEW YORK IMMIGRATION
COALITION, *et. al.*,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et. al.*,

Defendant.

Civil Action No. 18-CV-2921-JMF

Hon. Jesse M. Furman

DECLARATION OF DR. CHRISTOPHER WARSHAW

I. Qualifications

1. I have been asked by counsel representing the plaintiffs in *New York Immigration Coalition v. U.S. Dept of Commerce* and *State of New York v. U.S. Dept of Commerce* to analyze relevant data and provide my expert opinions. More specifically, I have been asked: to forecast the populations of every state, county, and city in the United States in 2020; given the assumption that various demographic groups are likely to be undercounted due to the inclusion of a citizenship question on the Census, to estimate the proportion of the population that belongs to those groups; to estimate the proportion of the population in every state, county, and city in the United States that belongs to those demographic groups assumed to be likely to be undercounted in 2020 due to the inclusion of a citizenship question on the Census; to analyze the likely effects of an undercount caused by the citizenship question affecting those same demographic groups on the apportionment of representatives across states for the U.S. House of Representatives; and to examine the likely consequences of an undercount caused by the citizenship question affecting those demographic groups on the

distribution of people in urban and rural counties. My expert report is PX-32 and the errata to that report is PX-323.

2. I have been an Assistant Professor of Political Science at George Washington University since August 2017. Prior to that, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.
3. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School.
4. My academic research focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis. My curriculum vitae is PX-323. All publications that I have authored and published appear in my curriculum vitae. My work is published or forthcoming in peer-reviewed journals such as: *American Political Science Review*, the *American Journal of Political Sciences*, the *Journal of Politics*, *Political Analysis*, *Political Science Research and Methods*, the *British Journal of Political Science*, *Political Behavior*, the *Election Law Journal*, *Nature Energy*, *Public Choice* and edited volumes from Cambridge University Press and Oxford University.
5. I am also on the Editorial Board of the *Journal of Politics*. I have previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* and *League of Women Voters of Michigan v. Johnson*. My non-academic writing has been published in the *New York Times Upshot*.

6. The opinions in this declaration are my own, and do not represent the views of George Washington University.
7. I offer these opinions with a strong degree of professional certainty based on the knowledge I have amassed over my education, training and experience, and through a detailed review of the relevant academic literature.

II. Projecting Future Populations

8. The first stage of my analysis is to develop baseline projections of the population of each state, county, and city in the country in 2020. These projections are critical to determining the likely effects of an undercount in the Census due to the inclusion of a citizenship question. In order to develop these estimates, I use the Census's official estimates of the population of each state, county, and city from 2000-2017. The Census does not provide public estimates of each geographic unit's populations in future years.

A. Data

9. The Census Bureau's Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas. These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.¹
10. My population projections are based on these official population estimates for each state, county, and city for the period from 2000-2017.
11. For the state populations from 2010-2017, I used the file 'nst-est2017-01.xlsx' which I obtained from <https://www.census.gov/data/tables/2017/demo/popest/state-total.html>. For the

¹ I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

populations from 2000-2009, I used the file ‘st-est00int-01.xls’ from

<https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html>.

12. For the county populations from 2010-2017, I used the file ‘co-est2017-alldata.csv’ from

<https://www.census.gov/data/tables/2017/demo/popest/counties-total.html>. For the

populations from 2000-2009, I used the file ‘co-est00int-tot.csv’ from

<https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html>.

13. For the county populations from 2010-2017, I used the file ‘co-est2017-alldata.csv’ from

<https://www.census.gov/data/tables/2017/demo/popest/counties-total.html>. For the

populations from 2000-2009, I used the file ‘co-est00int-tot.csv’ from

<https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html>.

14. For the city populations from 2010-2017, I used the data in Factfinder available from

<https://www.census.gov/data/tables/2017/demo/popest/total-cities-and-towns.html>. For the

populations from 2000-2009, I used the file ‘sub-est00int.csv’ from

<https://www.census.gov/data/datasets/time-series/demo/popest/intercensal-2000-2010-cities-and-towns.html>.

B. Statistical Model for Population Projections

15. There are a number of potential options for forecasting the likely population of a geographic unit (e.g., states) in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data. *See* Hyndman and Athanasopoulos 2018, at 48-49. Some related methods in this family of forecasting approaches are:

- a. Linear trend between 2010-2017: One possibility is to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit's population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.
- b. Linear trend between 2014-2017: Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit's population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.
- c. Change between two most recent years (i.e., 2016 to 2017): A third possibility is to focus on the change between each geographic unit's populations in the two most recent years, and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos discuss, “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods . . . will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” *Id.* at 50.
17. I consider one more complex approach against these benchmarks, a state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data. *See* Hyndman and Athanasopoulos. This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.²

C. Validation of Population Projections

18. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model. *Id.* at 62. In order to choose the best model for this analysis, I evaluated each model using two benchmarks that are similar to the challenge of forecasting the 2020 populations. First, I forecasted the Census 2010 population in each state based on 2000-2007 population estimates data. Second, I forecasted the 2017 population estimates in each state based on 2007-2014 population data. For each analysis, I used the following evaluation metrics. *Id.* at 64-65.

² For my state-level population projections, I used the default parameters for the ets function in R, which allowed the function to choose the exponential smoothing state space model that best fit the data in each state. The best model was usually an ‘MAN’ or ‘AAN’ model. For the population projections for cities and counties, I estimated an ‘MAN’ state space model using the ets function. The details of the state space model specification, however, do not affect any of my substantive conclusions. All of the state space models yield very similar results.

- a. The mean error across states: This helps assess whether a given metric has a systematic bias in one direction or another.
- b. The mean absolute error across states: This helps assess the accuracy of the forecasts.
- c. The mean absolute proportional error across states: This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

19. Table 1 shows the results. For the forecast of the 2010 population, the state space model performs the best, with the lowest error, the second lowest mean absolute error, and the lowest absolute proportional errors. The two linear trend models perform the worst on this forecasting exercise. For the forecast of the 2017 population, the state space model and the linear trend model using data from 2010-2017 perform the best. The state space model has slightly lower mean errors, and the two models have similar mean absolute errors and absolute proportional errors.

Table 1: Validation of State Population Projections

Model	2010			2017		
	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error
Linear model (full period)	22,800	62,860	0.013	7,827	32,003	0.007
Linear model (4 years)	27,399	82,106	0.014	33,420	59,396	0.014
Delta in last two years	20,383	50,663	0.010	140,472	142,506	0.020
State space model	5,826	51,033	0.009	-2,599	33,378	0.008

20. Overall, the state space model performs the best across the two validation exercises. It has an average absolute proportional error of only .8% and an average absolute error of only about 40,000 people in each state. As a result, I use the state space model as my main forecasting model to generate population projections. However, the results of all the analyses that follow would be substantively similar using any of these population forecasting approaches.

D. Incorporating Uncertainty

21. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate two sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every geographic unit
- Where available, uncertainty in the undercount estimates for each group

E. Baseline estimates of 2020 populations with no undercount

22. I used the official Census population estimates to project each geographic unit's population in 2020. Table 2 shows the population projections for a selection of cities and counties involved in lawsuits regarding the citizenship question. Table 3 shows the population projections for each state.³ All of the analysis of apportionment that follows fully incorporates the uncertainties in the projections discussed above. But for simplicity, the tables themselves do not show the uncertainties.

Table 2: Population Projections in Select Counties and Cities

County/City	2010 Population	2017 Population	2020 Population Projection
Phoenix, AZ	1,446,909	1,626,078	1,698,187
Los Angeles County, CA	9,818,605	10,163,507	10,256,275
Monterey County, CA	415,052	437,907	444,016
San Francisco, CA	805,193	884,363	909,143
Miami, FL	399,457	463,347	491,295
Chicago, IL	2,695,620	2,716,450	2,704,974
Price Georges County, MD	863,420	912,756	931,412
New York NY	8,174,959	8,622,698	8,645,147
Columbus, OH	788,877	879,170	925,408
Philadelphia, PA	1,526,006	1,580,863	1,598,072
Pittsburgh, PA	305,391	302,407	297,243
Central Falls, RI	19,393	19,359	19,250
Providence, RI	177,997	180,393	181,532
Cameron County, TX	406,219	423,725	429,603
El Paso County, TX	800,647	840,410	851,600
Hidalgo County, TX	774,770	860,661	892,083
Seattle, WA	608,664	724,745	780,550

³ The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 5 do include these groups.

Table 3: State population projections

State	2010 Population	2017 Population	2020 Population Projection
Alabama	4,779,736	4,874,747	4,917,351
Alaska	710,231	739,795	739,473
Arizona	6,392,017	7,016,270	7,339,157
Arkansas	2,915,918	3,004,279	3,051,838
California	37,253,956	39,536,653	40,505,540
Colorado	5,029,196	5,607,154	5,823,386
Connecticut	3,574,097	3,588,184	3,589,649
Delaware	897,934	961,939	989,662
District of Columbia	601,723	693,972	722,881
Florida	18,801,310	20,984,400	21,967,862
Georgia	9,687,653	10,429,379	10,776,655
Hawaii	1,360,301	1,427,538	1,429,641
Idaho	1,567,582	1,716,943	1,827,695
Illinois	12,830,632	12,802,023	12,701,647
Indiana	6,483,802	6,666,818	6,761,903
Iowa	3,046,355	3,145,711	3,182,994
Kansas	2,853,118	2,913,123	2,925,781
Kentucky	4,339,367	4,454,189	4,508,391
Louisiana	4,533,372	4,684,333	4,684,247
Maine	1,328,361	1,335,907	1,349,155
Maryland	5,773,552	6,052,177	6,187,649
Massachusetts	6,547,629	6,859,819	6,966,760
Michigan	9,883,640	9,962,311	9,962,308
Minnesota	5,303,925	5,576,606	5,690,791
Mississippi	2,967,297	2,984,100	2,984,630
Missouri	5,988,927	6,113,532	6,180,600
Montana	989,415	1,050,493	1,079,083
Nebraska	1,826,341	1,920,076	1,957,570
Nevada	2,700,551	2,998,039	3,174,453
New Hampshire	1,316,470	1,342,795	1,366,068
New Jersey	8,791,894	9,005,644	9,106,936
New Mexico	2,059,179	2,088,070	2,095,989
New York	19,378,102	19,849,399	19,885,662
North Carolina	9,535,483	10,273,419	10,623,613
North Dakota	672,591	755,393	752,711
Ohio	11,536,504	11,658,609	11,713,096
Oklahoma	3,751,351	3,930,864	3,974,666
Oregon	3,831,074	4,142,776	4,269,590
Pennsylvania	12,702,379	12,805,537	12,838,064
Rhode Island	1,052,567	1,059,639	1,059,639
South Carolina	4,625,364	5,024,369	5,213,894
South Dakota	814,180	869,666	891,229
Tennessee	6,346,105	6,715,984	6,915,723
Texas	25,145,561	28,304,596	29,593,219
Utah	2,763,885	3,101,833	3,274,374
Vermont	625,741	623,657	622,506
Virginia	8,001,024	8,470,020	8,632,998
Washington	6,724,540	7,405,743	7,785,568
West Virginia	1,852,994	1,815,857	1,777,893
Wisconsin	5,686,986	5,795,483	5,858,478
Wyoming	563,626	579,315	565,592

III. Estimating Proportion of People Likely to be Undercounted Due to Citizenship Question

23. I was not asked to and I did not attempt to calculate the specific undercount that the addition of the citizenship question might cause. However, I evaluated a range of potential undercounts of individuals who live in households with at least one non-citizen, Hispanics or foreign-born member to demonstrate the potential effects that the addition of the citizenship question might have. Theory indicates that the addition of a citizenship question could lead to unit non-response, which occurs when a household does not respond to the Census, thereby depressing response rates among non-citizens and immigrant communities. Indeed, the Census acknowledges that it is “a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households.” (Abowd 2018, Section B2, p. AR 001281)

24. In my analysis, I use this information to look at three potential undercount scenarios:

- a. First, I used a 5.8% undercount estimate based on the results of the Census Bureau’s internal study of the effect of a citizenship question on self-response rates. For these analyses, I assumed that respondents that do not self-respond would not be enumerated.
- b. Second, I was asked by legal counsel to examine a potential 10% undercount for the analysis of state-level apportionment as an outer bound for the potential effects of the citizenship question on population enumerations and apportionment. This higher number reflects the Census’s finding that the differences between citizen and noncitizen

response rates and data quality are likely to be “amplified” compared to historical levels (Abowd 2018, Section B4, p. AR 001282). The Chief Scientist at the Census has acknowledged that the 5.8% estimate of the effect of the citizenship question on self-response rates is “a conservative estimate of the differential impact of the citizenship question on the self-response rates of noncitizens compared to citizens” (Abowd, J. Dep., Aug. 15, 2018, p. 202).

- c. Third, I was asked by legal counsel to examine a potential 2% undercount as a lower bound for the potential effects of the citizenship question on population enumerations. My report shows the results for cities and counties, and the calculations for a 2% undercount in states are PX-324. I was not asked to and I did not do any analysis of the impact of the Census Bureau’s Non-Response Follow-Up (“NRFU”) on non-response rates, but note that the 2% scenario could be viewed as taking into account some NRFU success after an initial larger nonresponse rate.

25. The recent Census Bureau studies discussed above focus largely on the effects of a citizenship question on self-response rates in non-citizen households. As a result, the first set of analyses I conducted for each of these undercount scenarios focuses on *people in households with a non-citizen* in them. Beyond the effects on non-citizen households, there are also strong theoretical reasons to believe that *citizen Hispanics* would also be less likely to respond to the Census if a citizenship question is included. Citizen Hispanics in immigrant communities could fear deportation due to their Census responses.⁴ Moreover, a large

⁴ Title 13, U.S.C. prohibits the use of Census data for enforcement purposes, but respondents may still have this concern (Brown et al. [2018](#)).

fraction of citizen Hispanics are likely to know non-citizens or even people that have been deported. The Census's internal analysis has shown that citizenship-related questions are likely to be more sensitive for Hispanics (Brown et al. 2018, p. 10). Indeed, the Census has found clear evidence there are likely to be differential impacts on self-response rates among Hispanics from the addition of a citizenship question. Hispanics have a greater breakoff rate (i.e., item non-response) on the citizenship question on the American Community Survey (ACS) than other demographic groups.⁵ There is also evidence of growing unit nonresponse rates among Hispanics on the ACS (Brown et al. 2018, p. 12). For these reasons, I analyzed the effect of all three undercount scenarios (2%, 5.8% and 10%) on *both people in non-citizen households and citizen Hispanics*.

A. Undercount Estimate Based on Original Survey Experiment

26. An empirical approach to determine the potential undercount caused by a citizenship question is through a randomized control trial (RCT). The Census Bureau suggests that an appropriate RCT could compare self-response rates between households “randomly chosen to have [] a citizenship question (the treated group), and a randomly chosen set of control households [that] receive a [] Census questionnaire without citizenship” (Brown et al. 2018, p. 39)
27. We were unable to conduct a real-world RCT. A similar approach, however, is to conduct an experiment that mimics an RCT on a nationally representative survey of Americans. As part of this case, the State of New York and other plaintiffs funded a nationally representative survey that included an experiment along these lines to examine whether the inclusion of a

⁵ See Abowd (2018, Section b3) and Brown et al. (2018, 7).

citizenship question would reduce the likelihood that people would complete the Census.⁶

This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.⁷

1. Design of Survey

28. This survey included a probability sample of 6,309 people, including over-samples of Hispanics, Californians, and people in several cities and counties (San Jose, CA, Cameron County, TX, and Hidalgo County, TX).⁸ It was conducted via phone by Pacific Research Group to both landlines and cell phones using live interviews and random digit dialing. The survey asked a number of questions about the Census and assessed reactions to the inclusion of a citizenship question. The survey did not include a question about the citizenship of respondents. But it did include a question about whether respondents were born in the United States or a foreign country.
29. In my analysis, I focus on an experiment embedded in the survey that mimics the RCT approach suggested by Brown et al. (2018). This enables us to estimate the causal effect of the citizenship question on the likelihood that various demographic subgroups will complete the Census.
30. In the experiment on our survey, the control group received a vignette stating that the government had decided not to include a citizenship question on the census, while the treatment group received a vignette stating that the government had decided to include a citizenship question on the census. Then the survey asked whether respondents would ‘participate and fill out the 2020 Census form, or not?’

⁶ As part of my work as an expert in this matter, I reviewed Professor Barreto’s expert report that describes the survey methodology and his analysis of the results. However, I ran all of the analyses of the survey used in this report myself. I did not directly use any of Professor Barreto’s findings for my report.

⁷ Data and statistical code to replicate my analysis of this survey is available in my replication materials.

⁸ The survey includes sampling weights that incorporate these over-samples and make the results representative at the national-level.

Control Group: Now that you've heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to NOT include a question about citizenship status, and instead only asks you to report the race, ethnic background, gender of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

Treatment Group: Now that you've heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to include a question about citizenship status, and asks you to report the race, ethnic background, gender and citizenship status of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

31. This experimental design is a strong one for assessing the causal effect of the citizenship question on the likelihood that people will complete the Census. However, it does have limitations. First, the experiment on the survey imperfectly captures the actual experience of completing the Census. Second, many respondents are probably already aware of the potential inclusion of the citizenship question on the Census, which could lead to Stable Unit Treatment Value Assumption (SUTVA) violations. These SUTVA violations could attenuate the effects we detect in the experiment by artificially reducing the differences between the treatment and control groups. Overall, I think these limitations mean the survey-based

analysis is conservative in its estimates of the citizenship question on self-response rates on the Census.

2. Results of Survey

32. My primary analyses focus on two immigrant communities that theory indicates are particularly likely to be impacted by the citizenship question. First, I analyze the impact on Latinos.⁹ This analysis is helpful because there is little publicly available Census analysis of the potential effects of the citizenship question on this group. Second, I analyze the impact on non-Latino people that are not born in the United States.¹⁰
33. I ran three sets of analyses that are shown in Table 4. My primary analysis of the effect of the citizenship question on each group is a weighted regression that evaluates the treatment effect of the citizenship question. In other words, it evaluates whether people in the treatment group, that were told the Census would include a citizenship question, are less likely to indicate they would respond to the Census than people in the control group that were told it would not include a citizenship question.
34. As robustness checks, I also ran two additional models. The middle column of Table 4 for each group is a weighted regression model that includes control variables for other factors that might affect respondents' willingness to complete the Census, including their age, race, and state of residence. The third column of Table 4 for each group is an unweighted regression model that includes this same set of control variables for other factors that might affect respondents' willingness to complete the Census. All of my main analyses in the results below are based on linear probability models. However, logistic regression models yield similar results.

⁹ Note that I use the terms Hispanic and Latino interchangeably throughout this declaration.

¹⁰ I include in this group both people that explicitly stated they were born in a foreign country and the small number of people that refused to answer the nativity question on the survey.

35. Overall, Table 4 shows that the citizenship question makes both Latinos and Foreign-born non-Latinos less likely to respond to the Census. The weighted regression model in column (1) indicates that Latinos are about 5.9% less likely to complete the Census if it includes a citizenship question. The results are similar in the other two models shown in columns (2) and (3). For foreign-born, non-Latinos, the weighted regression in column (4) indicates that they are about 11.3% less likely to complete the Census if it includes a citizenship question. The results are substantively similar, though more statistically significant, in the other two models shown in columns (5) and (6).

Table 4: Experiment Results on Effects of Citizenship Question on Census Response among Latinos and Foreign-born

	Latinos			Foreign-born (not Latino)		
	(1)	(2)	(3)	(4)	(5)	(6)
Citizenship Question	-0.059** (0.029)	-0.070** (0.028)	-0.062*** (0.016)	-0.113 (0.072)	-0.164** (0.066)	-0.096** (0.039)
Survey Weights	X	X		X	X	
Controls		X	X		X	X
Observations	2,362	2,362	2,362	488	488	488
R ²			0.043			0.117
Adjusted R ²			0.021			0.022
Log Likelihood	-2,851.497	-2,763.581		-782.779	-714.807	

Note:

*p<0.1; **p<0.05; ***p<0.01

IV. Baseline Estimates of Proportion of Population in Immigrant Communities Vulnerable to Undercount

36. In order to analyze the effects of an undercount of individuals that live in households with at least one non-citizen and Hispanic on total population enumerations, I used the American Community Survey (ACS) to generate baseline estimates of the proportion of the 2020 population in each state, county, and large city in the following groups that are vulnerable to an undercount:

- Non-citizen households (based on whether any member of a household in the ACS self-reports that they are a noncitizen)¹¹
- All Hispanics and citizen Hispanics
- Foreign-born, non-Hispanics

37. To forecast the population margins of each group within each state (e.g., percent Hispanic), I used the individual-level data in the American Community Survey (ACS) from 2007-2016 to forecast the 2020 population distributions using the same approach that I used to forecast state populations. Individual-level data in the ACS is not readily available below the state-level (e.g., for counties and cities). As a result, I used population tables published by the Census based on the five-year ACS samples (2012-2016) to estimate the demographic distributions within counties and cities.¹² I did not attempt to estimate how these substate population distributions are likely to change between 2016 and 2020. Thus, my estimates of the percentage of county and city population that are members of immigrant communities are probably low due to the general growth of these populations.

A. State-level Effects of Undercount - Effect of Undercount on State Population Enumerations

38. I analyzed the effects of each undercount scenario on the enumerated population of each state in 2020. The results are shown in Table 5. Column (1) shows the baseline apportionment population projections for each state. Column (2) shows the average change in the enumerated population if 5.8% of people in non-citizen households are not counted due to

¹¹ It is important to note that the Census has found that the ACS might be drastically undercounting the number of households with noncitizens. The ACS implies that about 10% of people live in households with a noncitizen in them. However, Census Bureau found that many people may be misreporting their citizenship status on the ACS. Based on administrative records, they estimate that 28.6 percent of all households could potentially contain at least one noncitizen. So my estimate of the percentage of people that reside in households with a noncitizen based on the ACS is likely conservative.

¹² For the selection of cities and counties in Tables 2, 7, and 8, I converted the number of *non-citizens* to the number of *people in households with a non-citizen* using the ratio of these groups in the individual-level 5-year ACS sample (2012-16) for people in the PUMAs that overlapped each city and county. This analysis is necessarily approximate since PUMAs in the ACS micro-data contain multiple cities and counties.

the citizenship question. Column (3) shows the average change in the enumerated population if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in the enumerated population if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change in the enumerated population if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in the enumerated population in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated population.

39. For the analysis of apportionment, I also incorporated estimates of the overseas military population and federal employees, and their dependents living with them. Specifically, I used the 2010 population figures for the overseas military population and federal employees, and their dependents living with them, for each state, and divided this number by half to approximately reflect the reduction in the nation's military deployments over the past decade. *See* <https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html>, for 2010 population figures. *See also* Pew Foundation study, <http://www.pewresearch.org/fact-tank/2017/08/22/u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/>, for more information on the reduction in the number of overseas military personnel over the past decade.

Table 5: Effect of Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens (2)	Noncitizens+ Hispanic (3)	Noncitizens (4)	Noncitizens + Hispanic (5)	
Alabama	4,928,974	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Alaska	745,119	-0.5%	-0.8%	-0.8%	-1.4%	-1.4%
Arizona	7,349,498	-0.9%	-2.1%	-1.5%	-3.6%	-2.6%
Arkansas	3,056,993	-0.4%	-0.6%	-0.7%	-1%	-0.8%
California	40,549,557	-1.7%	-2.9%	-2.9%	-5%	-4.1%
Colorado	5,831,253	-0.7%	-1.5%	-1.2%	-2.7%	-2%
Connecticut	3,593,415	-0.8%	-1.5%	-1.3%	-2.6%	-2.4%
Delaware	991,133	-0.6%	-1%	-1%	-1.7%	-1.5%
Florida	22,017,594	-1%	-2%	-1.7%	-3.4%	-2.7%
Georgia	10,796,611	-0.7%	-0.9%	-1.2%	-1.6%	-1.5%
Hawaii	1,432,921	-1%	-1.6%	-1.7%	-2.8%	-3%
Idaho	1,830,654	-0.4%	-0.9%	-0.8%	-1.6%	-1.2%
Illinois	12,718,521	-0.8%	-1.4%	-1.4%	-2.4%	-2.1%
Indiana	6,770,793	-0.4%	-0.6%	-0.7%	-1.1%	-0.9%
Iowa	3,186,710	-0.4%	-0.6%	-0.7%	-1%	-0.9%
Kansas	2,931,128	-0.6%	-1%	-1%	-1.7%	-1.3%
Kentucky	4,514,011	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Louisiana	4,694,542	-0.3%	-0.5%	-0.5%	-0.8%	-0.6%
Maine	1,351,512	-0.2%	-0.3%	-0.3%	-0.5%	-0.6%
Maryland	6,195,838	-0.9%	-1.2%	-1.6%	-2%	-2.1%
Massachusetts	6,972,768	-0.9%	-1.4%	-1.5%	-2.4%	-2.4%
Michigan	9,976,301	-0.4%	-0.6%	-0.6%	-1%	-1.1%
Minnesota	5,696,268	-0.5%	-0.6%	-0.8%	-1.1%	-1.2%
Mississippi	2,990,101	-0.2%	-0.3%	-0.3%	-0.5%	-0.4%
Missouri	6,191,875	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Montana	1,081,584	-0.1%	-0.3%	-0.2%	-0.6%	-0.5%
Nebraska	1,960,312	-0.5%	-0.9%	-0.9%	-1.5%	-1.2%
Nevada	3,178,894	-1.3%	-2.1%	-2.2%	-3.6%	-3%
New Hampshire	1,368,556	-0.3%	-0.5%	-0.5%	-0.8%	-0.9%
New Jersey	9,114,740	-1.2%	-1.9%	-2%	-3.3%	-3%
New Mexico	2,100,036	-0.8%	-3.1%	-1.3%	-5.3%	-3.3%
New York	19,907,138	-1.2%	-1.9%	-2.1%	-3.2%	-3.1%
North Carolina	10,638,762	-0.6%	-0.8%	-1%	-1.4%	-1.2%
North Dakota	754,368	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Ohio	11,729,092	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Oklahoma	3,981,432	-0.5%	-0.8%	-0.8%	-1.4%	-1.1%
Oregon	4,278,356	-0.7%	-1.1%	-1.1%	-1.9%	-1.6%
Pennsylvania	12,854,327	-0.4%	-0.7%	-0.6%	-1.3%	-1.2%
Rhode Island	1,060,979	-0.7%	-1.3%	-1.2%	-2.3%	-2%
South Carolina	5,224,199	-0.3%	-0.5%	-0.6%	-0.9%	-0.8%
South Dakota	894,019	-0.3%	-0.4%	-0.5%	-0.8%	-0.7%
Tennessee	6,930,386	-0.4%	-0.5%	-0.6%	-0.9%	-0.8%
Texas	29,654,648	-1.3%	-2.7%	-2.2%	-4.6%	-3.2%
Utah	3,277,814	-0.6%	-1.1%	-1.1%	-1.9%	-1.4%
Vermont	624,804	-0.2%	-0.3%	-0.3%	-0.5%	-0.7%
Virginia	8,651,354	-0.7%	-1%	-1.2%	-1.7%	-1.8%
Washington	7,799,983	-0.9%	-1.3%	-1.5%	-2.2%	-2.2%
West Virginia	1,781,304	-0.1%	-0.2%	-0.2%	-0.3%	-0.3%
Wisconsin	5,864,100	-0.3%	-0.6%	-0.6%	-1.1%	-0.9%
Wyoming	567,929	-0.3%	-0.8%	-0.5%	-1.3%	-1%

40. Overall, Table 5 indicates that each state would be affected by an undercount on the Census.

The largest impacts would be in states with large numbers of Hispanics, non-Citizens, and foreign-born residents. For example, California would be undercounted by 1.7-5.0% in these scenarios; Florida would be undercounted by 1-3.4%; New Jersey would be undercounted by

1.2-3.3%, New York would be undercounted by 1.2-3.2%; and Texas would be undercounted by 1.3-4.6%.

41. Figure 1 shows a map of the results from the survey experiment (column 6 in Table 5). This map graphically shows that heavily Latino states on the southern border have the largest impacts from an undercount. States in the northeast, such as New York, New Jersey, and Massachusetts, with significant foreign-born populations also have significant impacts.

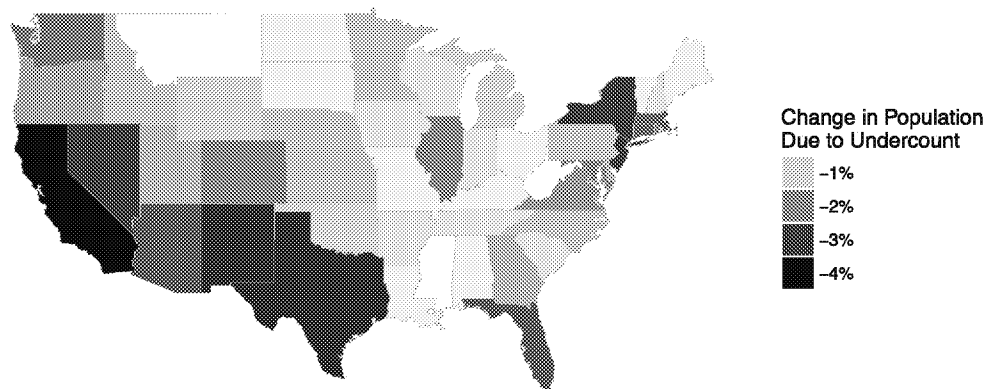


Figure 1: Effects on State Populations

42. I used the population projections and estimated effects of the various undercount scenarios on the enumerated population of each state to examine the likely effect of the citizenship question on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”
43. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was

adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are signed to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.¹³

44. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.
45. I conducted these steps for 500 simulations of the population projections and undercount scenarios in each state. Table 6 shows the results. Column (1) shows the baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the average change in the number of congressional seats if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in seats if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average

¹³ See <https://www.census.gov/population/apportionment/about/computing.html>.

change in seats if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in seats in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated populations. Also, each column includes 95% confidence intervals for the seat projections in parentheses. This means that there is a 95% chance that the true number of seats gained or lost in each scenario will be in this range.

46. First, we can examine Columns (2) and (3) of Table 6, which show the effects of a 5.8% undercount of people in non-citizens households and Hispanics. In these scenarios, California is extremely likely to lose a seat. Additionally, if there is an undercount of 5.8% of both people in non-citizen households and Hispanics, there is more than a 51% chance that Texas will lose a seat. There is also a risk that Arizona, Florida, Illinois, and New York could lose seats in some simulations.
47. Columns (4) and (5) of Table 6 show the effects of a 10% undercount of non-citizen households and Hispanics. If only people in non-citizen households are undercounted, California and Texas would be more likely than not to lose a seat. Arizona, Florida, Illinois, and New York would also be at risk of losing seats. If both non-citizens and Hispanics are undercounted, Arizona, California, Florida, and Texas would be likely to lose seats. Illinois and New York would also be at risk of losing a seat.

Table 6: Effect of Undercount on Congressional Apportionment

State	Baseline Seats	5.8% Undercount		10% Undercount		Survey Experiment
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	Foreign-born + Hispanics
Alabama	6	0 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Alaska	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Arizona	10	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	0 (-1,0)
Arkansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
California	53	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-2,-1)	-1 (-2,0)
Colorado	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Connecticut	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Delaware	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Florida	29	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	-1 (-1,0)
Georgia	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Hawaii	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Idaho	2	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,1)	0 (0,1)
Illinois	17	0 (-1,0)	0 (0,1)	0 (-1,1)	0 (-1,0)	0 (-1,0)
Indiana	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Iowa	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kentucky	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Louisiana	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Maine	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Maryland	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Massachusetts	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Michigan	13	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Minnesota	7	0 (0,1)	0 (0,1)	0 (0,1)	1 (0,1)	1 (0,1)
Mississippi	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Missouri	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Montana	1	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Nebraska	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Nevada	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Hampshire	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Jersey	12	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Mexico	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New York	26	0 (-1,0)	0 (0,0)	0 (-1,0)	0 (-1,0)	0 (-1,0)
North Carolina	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
North Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Ohio	15	0 (0,0)	0 (0,1)	0 (0,1)	1 (0,1)	0 (0,1)
Oklahoma	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Oregon	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Pennsylvania	17	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Rhode Island	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Carolina	7	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Tennessee	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Texas	39	0 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)
Utah	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Vermont	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Virginia	11	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Washington	10	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
West Virginia	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wisconsin	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wyoming	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)

48. Column (6) shows the effects of the undercount of Hispanics and foreign-born residents found in the survey experiment. In this scenario, California, Florida, and Texas would most likely all lose seats. Arizona, Illinois, and New York could lose a seat as well.

49. The states that lose seats in Congress would likely see decreases in their share of outlays of federal funding due to their reduction in voting power in Congress. *See* Elis, Malhotra, and Meredith 2009 (PX-325). The Elis article attached here is just an example. It is a well-established finding in political science and political economy that the loss of political power as a result of the loss of representation leads to the loss of funding. This finding is based on a body of research showing that counties in areas of states that were underrepresented in state legislatures or Congress due to malapportionment received substantially lower shares of distributive spending. In the wake of the *Baker v. Carr* family of Supreme Court cases that required one-person, one-vote, counties that were underrepresented due to malapportionment saw both their representation in legislatures and their share of spending increase substantially when the equal populace district requirement was implemented. *See* Ansolabehere, Gerber, and Snyder 2002 (PX-326). Additionally, it is also based on another body of research comparing states that barely gain or lose Representatives in Congress. *See* PX-325. The census thresholds sometimes are quite close where a state could gain or lose seats. So this research compares those states that are just above and below the population thresholds to gain or lose a seat, and it has found that the states that just barely gain a seat receive more money than the states that barely lose a seat.

B. City and County Effects of Undercount

50. I also examined the effects of the various undercount scenarios for cities and counties.

Irrespective of state-level impacts on apportionment, the enumeration of subnational areas is crucially important for a number of purposes. It affects the distribution of federal and state funds that are tied to population formulas. In addition, it affects the allocation of legislative seats within states since legislative districts are required to be equipopulous.

51. This allocation of voting power within states, in turn, affects distributive spending programs influenced by the legislature. *See* PX-326. Areas with greater population enumerations, and thus more voting power, are likely to receive more funding. This article is just another example of this well-established finding in political science. There is a large body of political science research concluding that vote dilution due to malapportionment leads to a reduction in voting power and less distributive spending.
52. It is reasonable to assume that undercounts like those addressed in my report will more likely than not impact intrastate redistricting because there is no reason to think that a state legislature would correct an undercount on the Census. I think it's a reasonable assumption that state governments would not consciously try to remedy an undercount.
53. Table 7 shows the impact on the counties and cities that are involved in the lawsuits regarding the citizenship question. The left column shows the baseline 2020 population projection. It also shows the absolute change in population and percentage change in the geographic unit's population due to three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount scenario. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey experiment.
54. Table 7 shows the effects on a selection of cities and counties involved in the lawsuits regarding the citizenship question. All of these local governments would most likely face smaller population enumerations due to an undercount from the addition of a citizenship question. Some of the largest effects would be in Miami, FL, New York, NY, Central Falls,

RI, and Providence RI. In the survey experiment scenario (right-hand column), each of these cities could see a reduction of around 4% or more in their enumerated populations.

Table 7: Effect on Population Counts in Select Counties and Cities

County	2020 Population	2% Undercount				5.8% Undercount				Survey Experiment	
		Noncitizens		Noncitizens+ Hispanics		Noncitizens		Noncitizens+ Hispanics		Foreign-born+ Hispanics	
		Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change
Phoenix, AZ	1,698,187	9,532	-0.6%	15,939	-0.9%	27,644	-1.6%	46,223	-2.7%	53,388	-3.1%
Los Angeles County, CA	10,256,275	74,027	-0.7%	118,962	-1.2%	214,679	-2.1%	344,988	-3.4%	469,163	-4.6%
Monterey County, CA	444,016	3,841	-0.9%	5,525	-1.2%	11,139	-2.5%	16,022	-3.6%	18,215	-4.1%
San Francisco, CA	909,143	4,640	-0.5%	6,141	-0.7%	13,457	-1.5%	17,808	-2%	37,509	-4.1%
San Jose, CA	1,045,953	6,843	-0.7%	10,743	-1%	19,845	-1.9%	31,153	-3%	52,766	-5%
Washington, DC	722,881	1,997	-0.3%	2,690	-0.4%	5,792	-0.8%	7,800	-1.1%	11,859	-1.6%
Miami, FL	491,295	4,868	-1%	7,734	-1.6%	14,118	-2.9%	22,428	-4.6%	24,713	-5%
Chicago, IL	2,704,974	12,334	-0.5%	20,052	-0.7%	35,769	-1.3%	58,162	-2.1%	76,859	-2.8%
Prince Georges County, MD	931,412	4,368	-0.5%	5,054	-0.5%	12,724	-1.4%	14,658	-1.6%	21,592	-2.3%
New York, NY	8,645,147	55,293	-0.6%	83,728	-1%	160,350	-1.9%	242,811	-2.8%	396,647	-4.6%
Columbus, OH	925,408	2,375	-0.3%	2,768	-0.3%	6,886	-0.7%	8,027	-0.9%	12,889	-1.4%
Philadelphia, PA	1,598,072	3,944	-0.2%	7,305	-0.5%	11,438	-0.7%	21,185	-1.3%	32,116	-2%
Pittsburgh, PA	297,243	480	-0.2%	614	-0.2%	1,392	-0.5%	1,780	-0.6%	3,124	-1.1%
Central Falls, RI	19,250	190	-1%	313	-1.6%	550	-2.9%	908	-4.7%	920	-4.8%
Providence, RI	181,532	1,249	-0.7%	1,934	-1.1%	3,622	-2%	5,608	-3.1%	6,833	-3.8%
Cameron County, TX	429,603	3,535	-0.8%	7,759	-1.8%	10,253	-2.4%	22,501	-5.2%	23,272	-5.4%
El Paso County, TX	851,600	5,844	-0.7%	14,227	-1.7%	16,947	-2%	41,259	-4.8%	43,069	-5.1%
Hidalgo County, TX	892,083	8,455	-0.9%	16,540	-1.9%	24,520	-2.7%	47,965	-5.4%	49,626	-5.6%
Seattle, WA	780,550	2,483	-0.3%	2,987	-0.4%	7,200	-0.9%	8,661	-1.1%	17,083	-2.2%

55. The three Texas counties would also face particularly negative impacts. Each of these heavily Latino counties could have a reduction in their enumerated populations of over 5%.

56. Figure 2 shows the reduction in the enumerated population for every county in the country based on the survey experiment (last column of Table 7). It shows that the largest effects are in counties on the southern border, the California coast, and in the region around New York City. The counties and cities that are plaintiffs in this suit are labeled on the graph. All of these geographic units are in the most heavily impacted areas of the country.

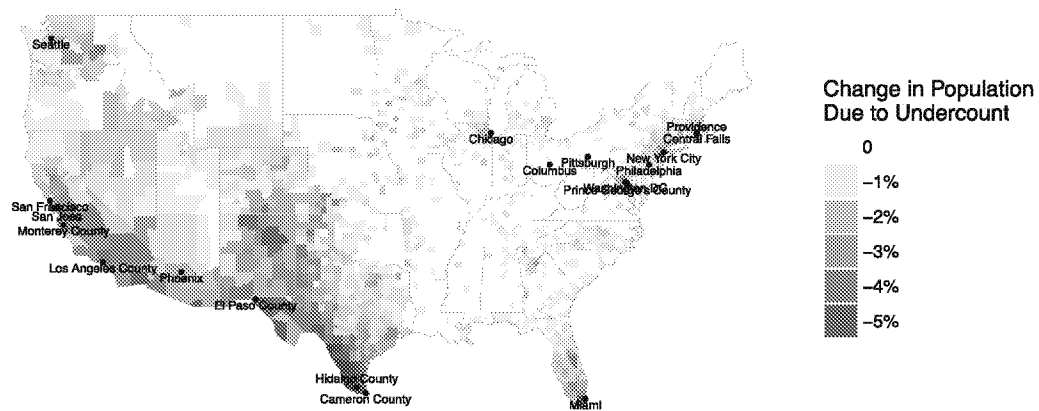


Figure 2: Effects on County Populations

57. Table 8 shows the change in each area's share of its state population due to the undercount. This statistic is important for estimating the potential effects of the undercount on state-level formula grants, as well as on the relative voting power of each geographic area in congressional and state legislative elections. Geographic areas that see a reduction in their share of the state population are likely to get less representation in Congress and their state legislature. This reduction in voting power is likely to lead to less distributive spending. *See* PX-326. As stated before, this article is just an example. There is a large body of political science research that finds localities have their vote diluted because they are malapportioned. This implies that if the enumerated populations used for redistricting are smaller than their actual populations, then this reduction in voting power is very likely to lead to less distributive spending.

Table 8: Effect on Relative Representation in Select Counties and Cities

	2% Undercount		5.8% Undercount		Survey Experiment
	Noncitizens	Noncitizens+ Hispanics	Noncitizens	Noncitizens+ Hispanics	Foreign-born+ Hispanics
Phoenix, AZ	-0.4%	-0.4%	-0.9%	-0.8%	-0.7%
Los Angeles County, CA	-0.3%	-0.3%	-0.5%	-0.6%	-0.6%
Monterey County, CA	-0.4%	-0.4%	-1%	-0.9%	-0.1%
San Francisco, CA	0%	0.2%	0.1%	0.8%	-0.2%
San Jose, CA	-0.2%	-0.1%	-0.3%	-0.2%	-1.1%
Miami, FL	-0.9%	-1.1%	-2.1%	-2.9%	-2.6%
Chicago, IL	-0.3%	-0.4%	-0.6%	-0.9%	-0.9%
Prince Georges County, MD	-0.3%	-0.3%	-0.6%	-0.5%	-0.4%
New York, NY	-0.3%	-0.4%	-0.8%	-1.1%	-1.6%
Columbus, OH	-0.3%	-0.3%	-0.6%	-0.6%	-0.8%
Philadelphia, PA	-0.2%	-0.3%	-0.5%	-0.7%	-1%
Pittsburgh, PA	-0.2%	-0.1%	-0.2%	0%	0%
Central Falls, RI	-0.9%	-1.3%	-2.3%	-3.5%	-2.9%
Providence, RI	-0.6%	-0.7%	-1.4%	-1.9%	-1.9%
Cameron County, TX	-0.6%	-1.1%	-1.3%	-2.8%	-2.5%
El Paso County, TX	-0.5%	-1%	-0.9%	-2.4%	-2.1%
Hidalgo County, TX	-0.7%	-1.2%	-1.7%	-3%	-2.7%
Seattle, WA	-0.2%	-0.1%	-0.2%	0%	-0.2%

58. Table 8 shows the relative change in each area's population using three undercount scenarios.

First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount assumption. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey I discussed in depth above.

59. Under nearly every scenario, each of the cities and counties would face declines in their share of their respective state populations due to an undercount from the citizenship question. Once again, some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, Providence RI, and the three Texas counties. Each of these areas would have a reduction in their 'relative populations' (i.e., share of the state population) of several percentage points based on the survey experiment.

V. Aggregate Effects on Share of Population in Different Types of Counties

60. I examined the macro effects of an undercount due to the addition of a citizenship question on the distribution of the enumerated population across urban and rural areas. For simplicity, I use the survey estimates on foreign-born people and Hispanics. But the results are broadly similar for other undercount scenarios.¹⁴ The best available definition of urban and rural areas is based on a classification system developed by the National Center for Health Statistics (NCHS).¹⁵ This classification system is often used to study the associations between the urbanization level of residence and health and to monitor the health of urban and rural residents. NCHS has developed a six-level urban-rural classification scheme for U.S. counties and county-equivalent entities. The most urban category consists of “central” counties of large metropolitan areas and the most rural category consists of nonmetropolitan “noncore” counties. Figure 3 shows a map of the NCHS classification scheme.

¹⁴ For confidentiality reasons, it is not possible to match the ACS micro-data to smaller cities and counties. So, for this analysis, I calculated the ratio of people in non-citizen households to individual non-citizens for each state in the 2016 ACS. I then multiplied these ratios by the estimates of the number of non-citizens in each city and county to estimate the number of people in households with a non-citizen.

¹⁵ See https://www.cdc.gov/nchs/data_access/urban_rural.htm.

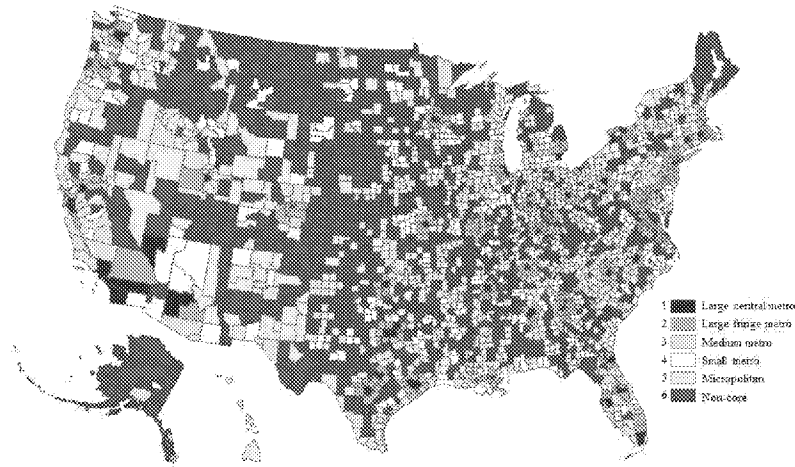


Figure 3: 2013 Urban-Rural Classification Scheme for Counties

61. Figure 3 shows that an undercount due to a citizenship question would have the most substantial impact in large metropolitan counties with major cities. Based on the survey experiment, these counties would have a reduction in their enumerated population of 2.9%.¹⁶ This group of counties would also have a reduction in their share of the national population of 1.1%. This reduction in urban areas' relative population would likely lead to dilution in their voting power and a reduction in their representation in Congress and state legislatures. At the other end of the continuum, noncore rural counties would only have a reduction in their enumerated population of .5%. Moreover, they would actually see a sizable 1.4% increase in their share of the national population. This would lead to an increase in their representation in the legislature. Thus, the undercount caused by a citizenship question on the

¹⁶ The patterns are broadly similar in the other scenarios.

Census would lead to a redistribution of political power in America. It would reduce the representation of urban counties, and increase the voting power of rural counties.

Table 9: Effect on Distribution of Enumerated Population Across Urban and Rural Counties

County	2020 Population Projection	Percentage Change Due to Undercount	Percentage Change in Relative Population
Large central metro	103,025,259	-2.9%	-1.1%
Large fringe metro	83,761,694	-1.8%	.1%
Median metro	69,737,033	-1.5%	.3%
Small metro	30,116,705	-1%	.9%
Micropolitan	27,375,961.605	-.8%	1.1%
Noncore	18,760,860	-.5%	1.4%

VI. Conclusion

62. I have reached the following conclusions:

- a. The undercount caused by the inclusion of a citizenship question on the Census is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S House. There is a very high probability that California will lose a congressional seat, and it is more likely than not that Texas will lose a congressional seat. There is also a substantial risk that Arizona, Florida, Illinois, and New York could lose a seat.
- b. The citizenship question is also likely to have effects on the population counts of large counties and cities within each state. This will affect the distribution of voting power within states, and lead to the dilution of the voting power of New York, NY, Miami, FL, Providence, RI, and other large cities with substantial immigrant populations.

- c. Overall, the citizenship question will lead to a large-scale shift in the distribution of political power in the United States. It would dilute the voting power of urban counties, and increase the voting power of rural counties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 26, 2018

Washington, DC


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Christopher Warshaw

Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	Noncitizens	Noncitizens+ Hispanic
Alabama	4,928,974	-0.1%	-0.1%
Alaska	745,119	-0.2%	-0.3%
Arizona	7,349,498	-0.3%	-0.7%
Arkansas	3,056,993	-0.1%	-0.2%
California	40,549,557	-0.6%	-1%
Colorado	5,831,253	-0.2%	-0.5%
Connecticut	3,593,415	-0.3%	-0.5%
Delaware	991,133	-0.2%	-0.3%
Florida	22,017,594	-0.3%	-0.7%
Georgia	10,796,611	-0.2%	-0.3%
Hawaii	1,432,921	-0.3%	-0.6%
Idaho	1,830,654	-0.2%	-0.3%
Illinois	12,718,521	-0.3%	-0.5%
Indiana	6,770,793	-0.1%	-0.2%
Iowa	3,186,710	-0.1%	-0.2%
Kansas	2,931,128	-0.2%	-0.3%
Kentucky	4,514,011	-0.1%	-0.1%
Louisiana	4,694,542	-0.1%	-0.2%
Maine	1,351,512	-0.1%	-0.1%
Maryland	6,195,838	-0.3%	-0.4%
Massachusetts	6,972,768	-0.3%	-0.5%
Michigan	9,976,301	-0.1%	-0.2%
Minnesota	5,696,268	-0.2%	-0.2%
Mississippi	2,990,101	-0.1%	-0.1%
Missouri	6,191,875	-0.1%	-0.1%
Montana	1,081,584	0%	-0.1%
Nebraska	1,960,312	-0.2%	-0.3%
Nevada	3,178,894	-0.4%	-0.7%
New Hampshire	1,368,556	-0.1%	-0.2%
New Jersey	9,114,740	-0.4%	-0.7%
New Mexico	2,100,036	-0.3%	-1.1%
New York	19,907,138	-0.4%	-0.6%
North Carolina	10,638,762	-0.2%	-0.3%
North Dakota	754,368	-0.1%	-0.1%
Ohio	11,729,092	-0.1%	-0.1%
Oklahoma	3,981,432	-0.2%	-0.3%
Oregon	4,278,356	-0.2%	-0.4%
Pennsylvania	12,854,327	-0.1%	-0.3%
Rhode Island	1,060,979	-0.2%	-0.5%
South Carolina	5,224,199	-0.1%	-0.2%
South Dakota	894,019	-0.1%	-0.2%
Tennessee	6,930,386	-0.1%	-0.2%
Texas	29,654,648	-0.4%	-0.9%
Utah	3,277,814	-0.2%	-0.4%
Vermont	624,804	-0.1%	-0.1%
Virginia	8,651,354	-0.2%	-0.3%
Washington	7,799,983	-0.3%	-0.4%
West Virginia	1,781,304	0%	-0.1%
Wisconsin	5,864,100	-0.1%	-0.2%
Wyoming	567,929	-0.1%	-0.3%

Appendix C

Christopher S. Warshaw

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Academic Employment

George Washington University, Washington, DC

Associate Professor (starting September 1, 2020)

Assistant Professor, 2017 - 2020

Massachusetts Institute of Technology, Cambridge, MA

Associate Professor of Political Science (without tenure), 2016 - 2017

Assistant Professor of Political Science, 2012 - 2016

Education

Stanford University, Ph.D., Political Science, 2012

Fields: American Politics, Comparative Politics, and Political Methodology (Statistics)

Stanford Law School, Juris Doctorate, 2011

Williams College, B.A., *magna cum laude*, 2002

Research Interests

American Politics, Representation, Elections, Public Opinion, State & Local Politics, Environmental Politics and Policy, Statistical Methodology

Research

Publications

Peer Reviewed Articles

22. "The Impact of Partisan Gerrymandering on Political Parties." Forthcoming. *Legislative Studies Quarterly*. (with Nicholas Stephanopoulos)
21. "Using Screeners to Measure Respondent Attention on Self-Administered Surveys: Which Items and How Many?" Forthcoming. *Political Science Research and Methods*. (with Adam Berinsky, Michele Margolis, and Mike Sances)

20. "Accountability for the Local Economy at All Levels of Government in United States Elections." Forthcoming, 2020. *American Political Science Review* .114(3): 660-676. (with Justin de Benedictis-Kessner)
19. "Politics in Forgotten Governments: The Partisan Composition of County Legislatures and County Fiscal Policies." 2020. *Journal of Politics*. 82(2): 460-475. (with Justin de Benedictis-Kessner)
18. "On the Representativeness of Primary Electorates." 2020. *British Journal of Political Science*. 50(2): 677-685. (with John Sides, Chris Tausanovitch, and Lynn Vavreck)
17. "Geography, Uncertainty, and Polarization." 2019. *Political Science Research and Methods*. 7(4): 775-794. (with Nolan McCarty, Jonathan Rodden, Boris Shor, and Chris Tausanovitch)
16. "Policy Ideology in European Mass Publics, 1981–2016." 2019. *American Political Science Review*. 113(3): 674-693. (with Devin Caughey and Tom O’Grady).
15. "Does Global Warming Increase Public Concern About Climate Change?" 2019. *Journal of Politics*. 81(2): 686-691. (with Parrish Bergquist)
14. "Local Elections and Representation in the United States." 2019. *Annual Review of Political Science*. 22(1): 461-479.
13. "The Ideological Nationalization of Party Constituencies in the American States". 2018. *Public Choice*. Keith Poole Symposium. 176(1-2): 133-151. (with James Dunham and Devin Caughey)
12. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936-2014." 2018. *American Political Science Review*. 112(2): 249-266. (with Devin Caughey)
11. "Does the Ideological Proximity Between Candidates and Voters Affect Voting in U.S. House Elections?" 2018. *Political Behavior*. 40(1): 223-245. (with Chris Tausanovitch)
10. "Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies." *Election Law Journal*. December, 2017. 16(4): 453-469. Symposium on Partisan Gerrymandering and the Efficiency Gap. (with Devin Caughey and Chris Tausanovitch)
9. "Incremental Democracy: The Policy Effects of Partisan Control of State Government." 2017. *Journal of Politics*. 79(4): 1342-1358. (with Devin Caughey and Yiqing Xu)
8. "Renewable energy policy design and framing influences public support in the United States." 2017. *Nature Energy*. 2(17107). (with Leah Stokes)
7. "Estimating Candidates’ Political Orientation in a Polarized Congress." 2017. *Political Analysis*. 25(2): 167-187. (with Chris Tausanovitch)
6. "The Dynamics of State Policy Liberalism, 1936-2014." 2016. *American Journal of Political Science*. 60(4): 899-913. (with Devin Caughey)
5. "Mayoral Partisanship and Municipal Fiscal Policy." 2016. *Journal of Politics*. 78(4): 1124-1138. (with Justin de Benedictis-Kessner)
4. "Dynamic Estimation of Latent Opinion Using a Hierarchical Group-Level IRT Model." 2015. *Political Analysis*. 23(2): 197-211. (with Devin Caughey)
3. "Representation in Municipal Government." 2014. *American Political Science Review*. 108(3): 605-641. (with Chris Tausanovitch)
2. "Measuring Constituent Policy Preferences in Congress, State Legislatures and Cities." 2013. *Journal of Politics*. 75(2): 330-342. (with Chris Tausanovitch)

1. "How Should We Measure District-Level Public Opinion on Individual Issues?" 2012. *Journal of Politics*. 74(1): 203-219. (with Jonathan Rodden)

Editor Reviewed Articles in Journals and Law Reviews

3. "Public Opinion in Subnational Politics." 2019. *Journal of Politics*. 81(1): 352-363. Editor reviewed for Symposium on Subnational Policymaking. (with Devin Caughey)
2. "Spatial variation in messaging effects." 2018. *Nature Climate Change*. News & Views. April, 2018.
1. "Business as Usual? Analyzing the Doctrinal Development of Environmental Standing Doctrine since 1976." 2011. *Harvard Law and Policy Review*. Volume 5.2. (with Gregory Wannier).

Book Chapters

5. "Elections and Parties in Environmental Politics." 2020. *Handbook on U.S. Environmental Policy*. David Konisky, ed. (with Parrish Bergquist)
4. "Latent Constructs in Public Opinion." 2018. *Oxford Handbook on Polling and Polling Methods*. R. Michael Alvarez and Lonna Atkeson, ed. Oxford: Oxford University Press.
3. "The Application of Big Data in Surveys to the Study of Elections, Public Opinion, and Representation." 2016. *Data Analytics in Social Science, Government, and Industry*. R. Michael Alvarez, ed. Cambridge: Cambridge University Press.
2. "The Political Economy of Expropriation and Privatization in the Oil Sector." 2012. *Oil and Governance: State-Owned Enterprises and the World Energy Supply*. David G. Victor, David Hulst, and Mark Thurber, eds. Cambridge: Cambridge University Press.
1. "Democratization and Countermajoritarian Institutions: The Role of Power and Constitutional Design In Self-Enforcing Democracy." 2012. *Comparative Constitutional Design*. Cambridge: Cambridge University Press. (with Susan Alberts and Barry R. Weingast).

Policy Reports

1. Reforming Baltimore's Mayoral Elections. 2020. Abell Foundation Report.
<https://www.abell.org/publications/reforming-baltimores-mayoral-elections>

Unpublished Work

Book Project

"Dynamic Democracy: Citizens, Politicians, and Policymaking in the American States." Advance contract with University of Chicago Press. (with Devin Caughey)

Articles Under Review

"The Effect of Local COVID-19 Fatalities on Americans' Political Preferences." (with Lynn Vavreck and Ryan Baxter-King)

Works in Progress

"Electoral Accountability for Ideological Extremism in American Elections" (with Devin Caughey)

- "Gerrymandering in Local Governments" (with Laura Royden)
- "Moderates" (with Anthony Fowler, Seth Hill, Jeff Lewis, Chris Tausanovitch, Lynn Vavreck)
- "Partisan Selection in California City Councils" (with Justin de Benedictis-Kessner and Dan Jones)
- "The Effect of Television Advertising in United States Elections" (with John Sides and Lynn Vavreck)
- "When Mass Opinion Goes to the Ballot Box: A National Assessment of State Level Issue Opinion and Ballot Initiative Results" (with Jonathan Robinson and John Sides)
- "Inequalities in Participation, Voting, and Representation in Local Governments" (with Justin de Benedictis-Kessner and John Sides)
- "Sexism and the Election of Female Candidates in American Elections" (with Alex Kurtz and Brian Schaffner)
- "The Ideology of State Party Platforms " (with Justin Phillips and Gerald Gamm)

Non-Academic Writing

- "How Local Covid Deaths Are Affecting Vote Choice." *New York Times*. July 28, 2020. (with Lynn Vavreck)
- "A coronavirus recession would hurt all kinds of Republican candidates – not just Trump." *Washington Post*, Monkey Cage. March 18, 2020. (with Justin de Benedictis-Kessner).
- "The Supreme Court is deciding a gerrymandering case. Here's the social science that the Justices need to know." *Washington Post*, Monkey Cage. June 1, 2019.
- "New research shows just how badly a citizenship question would hurt the 2020 Census." *Washington Post*, Monkey Cage. April 22, 2019. (with Matt Barreto, Matthew A. Baum, Bryce J. Dietrich, Rebecca Goldstein, and Maya Sen)
- "G.O.P. Senators Might Not Realize It, but Not One State Supports the Health Bill." *New York Times*. June 14, 2017. (with David Broockman)

Invited Talks

- 2019-2020: Princeton, UC Berkeley, University of Maryland
- 2018-2019: Stanford; Northeast Political Methodology Meeting at NYU; University of Maryland
- 2017-2018: USC PIPE Symposium on Studying Subnational Policy Making; BYU; University of Chicago Conference on Political Polarization
- 2016-2017: University of Virginia; UCLA
- 2015-2016: Washington University in St. Louis; Texas A&M; Arizona State University Conference on Campaigns, Elections and Representation
- 2014-2015: Yale; Columbia; Duke
- 2013-2014: Princeton; Boston University; Rochester University
- 2012-2013: MIT American Politics Conference; Columbia Representation Conference; Princeton Media & Politics Conference; Annual Meeting of the Society for Political Methodology

Grants

Russell Sage Foundation, 2019-2021 (\$119,475)

GW UFF, 2019-2020 (\$14,433)

MIT Elections Lab, 2019-2020 (\$14,000)

Jeptha H. and Emily V. Wade Award, 2014-2016 (\$59,686)

MIT Energy Institute (MITEI) Seed Grant, 2014-2016 (\$137,147)

MIT SHASS Research Fund, 2012-2014 (\$8,734)

Software

dgo: Dynamic Estimation of Group-Level Opinion. 2017. R package. <https://CRAN.R-project.org/package=dgo>. (with James Dunham and Devin Caughey)

Awards and Honors

OVPR Early Career Scholar at George Washington University, 2019.

APSA award for best journal article on State Politics & Policy in 2016.

Award for best paper on State Politics & Policy at the 2014 American Political Science Conference.

Graduate Fellowship, Dept. of Political Science, Stanford University, 2006-2012

David A. Wells Prize in Political Economy for Best Undergraduate Economics Thesis, Williams College, 2002

Phi Beta Kappa, Williams College, 2002

Teaching Experience

Instructor:

Measurement Models (Graduate-level) (GW), 2020

Political Representation (Graduate-level) (GW), 2019

Elections (GW), 2018, 2019

Multi-level and Panel Models (Graduate-level) (GW), 2017, 2018, 2019

Public Opinion (GW), 2017

American Political Institutions (Graduate-level) (MIT), 2014, 2016

Public Opinion and Elections (MIT), 2016

Energy Policy (MIT), 2013

Democracy in America (MIT), 2013, 2014

Christopher S. Warshaw

6

Constitutional Law & Judicial Politics (MIT), 2013, 2015

Making Public Policy (MIT), 2012, 2014

Teaching Assistant:

Introduction to American Law (Stanford University), 2010

Judicial Politics and Constitutional Law (Stanford University), 2009

Political Economy of Energy Policy (Stanford University), 2008

Introduction to International Relations (Stanford University), 2008

Introduction to Public Policy (Stanford University), 2007

Introduction to Econometrics (Williams College), 2002

Graduate Advising

George Washington University:

Alex Beck (Dissertation committee chair)

Colin Emrich (Dissertation committee member)

Jared Heern (Dissertation committee member)

Massachusetts Institute of Technology:

Leah Stokes (Graduated in 2015, Dissertation committee member)

Krista Loose (2016, Dissertation committee member)

Tom O'Grady (2017, Dissertation committee member)

Justin de Benedictis-Kessner (2017, Dissertation committee member)

Alex Copulsky (2017, Masters thesis committee member)

James Dunham (2018, Dissertation committee member)

Parrish Bergquist (2018, Dissertation committee member)

Meg Goldberg (2019, Dissertation committee member)

University Service

George Washington University:

Coordinator, Graduate Political Science Admissions Committee, 2019-2020

Coordinator, American Politics Workshop, 2018-2020

Member, Methods Exam Committee, 2017-2020

Member, Graduate Political Science Admissions Committee, 2018-2019

Massachusetts Institute of Technology:

Member, Energy Education Task Force, 2012-2017

Parking and Transit Committee, 2013-2017

Member, Graduate Political Science Admissions Committee, 2013-2015

Faculty Fellow, Burchard Scholars, 2013-2015

Stanford University (as graduate student):

President, Stanford Environmental Law Society, 2009-2010

Executive Board Member, Stanford Environmental Law Society 2008-2010

Member, University Committee on Graduate Studies, 2007-2009

Member, University Library Committee, 2007-2008

President, Political Science Graduate Students Association, 2007-2008

Professional Service

Reviewer: American Political Science Review, American Journal of Political Science, Journal of Politics, Political Analysis, Political Behavior, Econometrica, Quarterly Journal of Political Science, Legislative Studies Quarterly, Political Research Quarterly, American Politics Research, British Journal of Political Science, Journal of Law and Courts, Public Opinion Quarterly, Political Science Research and Methods, State Politics and Policy Quarterly, Journal of Experimental Political Science, Nature Climate Change, Urban Affairs Review, Journal of Health Politics, Policy and Law, Perspectives on Politics, Cambridge University Press

Member, Program Committee, Midwest Political Science Association Conference, 2020

Lead Organizer, Local Political Economy APSA Pre-Conference at George Washington University, 2019

Member, Planning Committee, Cooperative Congressional Election Study (CCES), 2018

Member, Best Paper Committee, State Politics Section of the American Political Science Assoc., 2018

Editorial Board, Journal of Politics, 2017-18

Executive Committee, Urban Politics Section of the American Political Science Association, 2015-2017

Organizing Committee, Conference on Ideal Point Models at MIT, <http://idealpoint.tahk.us>, 2015

Member, Best Paper Committee, Urban Politics Section of the American Political Science Assoc., 2015

Consulting

Expert, *Common Cause et al. v. v. Trump*, Effect of Excluding Undocumented Immigrants from Census on Apportionment (2020)

Expert, *New York Immigration Coalition v. Trump and State of New York v. Trump*, Effect of Excluding Undocumented Immigrants from Census on Apportionment (2020)

Consultant, *Abell Foundation*, Report on Potential Institutional Reforms for Baltimore's City Elections

Christopher S. Warshaw

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Expert, *APRI et al. v. v. Smith et al.*, Partisan Gerrymandering Case (2018-2019)

Expert, *League of Women Voters of Michigan v. Johnson*, Partisan Gerrymandering Case (2018-2019)

Expert, *New York Immigration Coalition v. US Dept of Commerce & State of NY v. US Dept of Commerce*, Effects of Undercount on Census due to Citizenship Question (2018)

Expert, *League of Women Voters of Pennsylvania v. the Commonwealth of Pennsylvania*, Partisan Gerrymandering Case (2017-18)

Community Service

Sierra Club: National Board of Directors (2009-2015)

Last updated: August 17, 2020

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

EXPERT DECLARATION OF DR. D. SUNSHINE HILLYGUS

I. QUALIFICATIONS

1. I am a Professor of Political Science and Public Policy at Duke University. I earned a Ph.D. in political science from Stanford University in 2003. From 2003-2009, I was a faculty member at Harvard University in the Department of Government. In 2009, I joined the faculty at Duke University as an associate professor and was promoted to full professor in 2015.

2. I have more than 20 years of experience in survey design, implementation, and analysis. Of relevance to this report, I have published research on the topics of census participation, survey methodology, survey non-response, and data quality. This work has been funded by the National Science Foundation and published in respected academic journals including *Public Opinion Quarterly*, *Journal of Survey Statistics and Methodology*, *Statistical Science*, *Political Analysis*, and *Annals of Applied Statistics*. I am co-author of *The Hard Count: The Political and Social Challenges of Census Mobilization*.¹

3. My other experience of relevance includes serving as associate principal investigator of the American National Election Study, on the editorial boards of several academic journals, and as director of the Initiative on Survey Methodology at Duke University. I was also founding director of the Program on Survey Research at Harvard University. From 2012-2018, I served as a member of the Census Scientific Advisory Committee (CSAC), a committee that advises the director of the U.S. Census Bureau (Census Bureau) on the uses of scientific developments in statistical data collection, survey methodology, geospatial and statistical analysis, econometrics, cognitive psychology, business operations, and computer science as they pertain to the full range of Census Bureau programs and activities, including census tests, policies, and operations.

¹ Hillygus, D.S., Nie, N.H., Prewitt, K. & Pals, H. (2006). *The hard count: The political and social challenges of census mobilization*, Russell Sage Foundation, New York.

4. I have previously served as an expert witness in *League of Women Voters of North Carolina, et al. v. North Carolina, et al.*, No. 1:13-CV-00660-TDS-JEP (M.D.N.C.); *State of New York, et al., v. United States Department of Commerce, et al.*, No. 18-CV-2921-JMF (S.D.N.Y.); *NAACP, et al. v. Bureau of the Census*, No. 18-CV-891-PWG (D. Md.); and *State of Alabama, et al., v. United States Department of Commerce, et al.*, No. 2:18-cv-00772-RDP (N.D. Ala.). A copy of my curriculum vitae is attached.

II. RETAINER INFORMATION AND SUMMARY OF OPINIONS

5. I have been retained to evaluate the feasibility of excluding from the 2020 apportionment count residents who are “not in a lawful immigration status under the Immigration and Nationality Act.”² My compensation in this case is \$350 per hour. My compensation is not contingent upon my findings or on the result of this proceeding. My work in this matter is ongoing, and I reserve the right to revise or augment the opinions set forth in this declaration should additional relevant information become available to me, or as I perform further analysis.

6. To formulate an expert opinion in this case, I reviewed a variety of materials from academic, governmental, legal, and media sources. *See References.*³ I have also relied on my own experiences and familiarity with survey practices and standards and Census Bureau programs and activities. Based on the knowledge I have amassed over my education, training, and experience, as well as a detailed review of government and academic research, data, and reports, I have reached the opinion that there is no feasible way to produce an accurate and

² Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, July 21, 2020 (the “Memorandum”).

³ Among the documents I have reviewed is the expert declaration of Dr. Chris Warshaw. I find his analysis to be a compelling prediction of the likely impact of the excluding undocumented immigrants from apportionment counts. *See infra.*

reliable 2020 apportionment count that excludes undocumented immigrants by the apportionment deadline.⁴ More specifically, it is my opinion that:

- 1) The 2020 Census will not provide an actual enumeration of undocumented immigrants that can be excluded from the apportionment count.
- 2) Existing estimates of undocumented immigrants are inadequate for use in adjusting the apportionment count because they are not actual enumerations, they rely on sampling, and they are inaccurate.
- 3) Without an actual enumeration, there is no known method of excluding undocumented immigrants from the 2020 census count for purposes of apportionment, including the use of administrative records, that does not rely on statistical sampling.
- 4) The use of administrative records to estimate numbers of undocumented immigrants would differ in kind and degree from count imputation methods or the current use of administrative records in household enumeration.
- 5) The use of administrative records to exclude undocumented immigrants from the 2020 apportionment count would result in a less accurate and more biased decennial census count and apportionment.

III. RELEVANT BACKGROUND

A. The Census Bureau Production of Decennial Apportionment Numbers

7. The Constitutional basis for conducting the decennial census is to reapportion the U.S. House of Representatives. Article 1, Section 2 of the U.S. Constitution requires that an “actual enumeration” of the population be taken every 10 years for the purpose of apportioning seats in the House among the states, with the provision that each state must have at least one Representative. The 14th Amendment states that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.”

⁴ For the purposes of this report, I use the term “undocumented immigrant” to include foreign-born non-citizens that reside in the U.S., but do not have formal legal status. The Memorandum refers to this group as “illegal aliens,” while others use the term “unauthorized immigrants.” I use the term “legal status” to encompass determinations of whether individuals are immigrants with formal legal status, or immigrants without formal legal status.

8. The U.S. Census Bureau counts all people (citizens and foreign-born immigrants) who are living in the state at the time of the decennial census.⁵ This total resident population, along with the overseas federal employees and their dependents, makes up the apportionment population count for each state. The apportionment population is used to allocate the number of Representatives among the states using the Equal Proportions Method—after each state is assigned the one seat it is entitled to receive, the remaining 385 seats are assigned sequentially, on the basis of a list of descending “priority values” that are calculated based on each state’s share of the total U.S. population.⁶ The Census Bureau must submit the apportionment count to the President within nine months of the census date (April 1)—December 31, 2020 for the current count. Given delays in census operations related to the COVID-19 pandemic, the Census Bureau requested that Congress extend the deadline for turning in apportionment numbers until April 30, 2021; as of this writing, however, Congress has not granted the requested extension and the Census Bureau now plans to reduce planned time on census operations and data processing to meet the statutory deadline of December 31, 2020.

9. The decennial count is a massive and complex undertaking—the largest peacetime mobilization in the country—and it requires years of preparation, research, and testing. Planning for the next census starts well before the last count even gets underway. The enumeration process itself proceeds with the following general steps:

- 1) Creation of the Master Address File (MAF)—a database containing every known housing unit in the country.
- 2) A request to every household in the MAF to self-respond with information about their household.

⁵ Immigrants, called “foreign-born” by the Census Bureau, include naturalized U.S. citizens, lawful permanent residents, temporary migrants (such as foreign students), refugees and asylees, and undocumented immigrants.

⁶ This method ensures that no additional transfer of a seat (from one state to another) will reduce the ratio between the numbers of persons per representative in any two states. See <https://www.census.gov/population/apportionment/about/faq.html>.

- 3) Non-Response Follow-Up (NRFU) operation, which attempts to enumerate all non-responding households with an in-person visit.⁷
- 4) Production of the Census Unedited File (CUF), which uses count imputation of any remaining uncounted households to estimate the number of household members using information from neighboring households that responded. The CUF is the basis for apportionment numbers due to the president by the end of the year.
- 5) Production of the Census Edited File (CEF), which applies characteristic imputation—statistically imputing missing or conflicting information about the people in the household (i.e., race, ethnicity, age, date of birth, sex, tenure, and relationship).⁸ The microdata are further altered to meet the confidentiality requirements of Title 13 of the United States Code.⁹ The CEF is the basis for the redistricting data files due to States within one year of the census date. Importantly, this information is not used in the process of apportioning representatives among states.
- 6) An independent coverage assessment to evaluate the accuracy of the census count, including estimates of the differential undercount of subgroups of the population.¹⁰

B. The Census Bureau's Quality Standards

10. The Census Bureau's Statistical Quality Standards govern all census products and processes—including planning and design, implementation, data processing and dissemination.¹¹

⁷ If a household is not enumerated after one visit, administrative records will be used to directly enumerate the household in those cases in which multiple, high-quality records are available. If administrative records cannot be used, at least two more in-person visits are attempted before the household becomes eligible to be directly enumerated through a proxy, such as a neighbor, landlord, or postal worker.

⁸ The total resident population count in the CUF and CEF has applied count imputation—an estimate of the number of household members—for the limited number of households not enumerated in the decennial count. In 2010, count imputation accounted for only 0.39% of the total population. 2020 Census Operational Plan: A New Design for the 21st Census, v. 4. (December 2018), available at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>.

⁹ The data are processed through the disclosure avoidance system that injects noise into the estimates, creating uncertainty in the numbers to protect confidentiality. See https://www.census.gov/newsroom/blogs/research-matters/2018/08/protecting_the_conf0.html.

¹⁰ The coverage assessment relies on two different approaches to determine omissions (i.e., people who should have been counted, but were not) and erroneous enumerations (people who should not have been counted, but were, including duplications): (1) an independent Post-Enumeration Survey (PES) of a sample of census blocks; and (2) a Demographic Analysis (DA) that compares census results to independent estimates of the population using administrative records, including birth, death, and immigration records, estimates of undocumented immigration, and Medicare data.

¹¹ See U.S. Census Bureau Statistical Quality Standards (July 2013), https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf.

These guidelines require that all information collected and disseminated by the Census Bureau be designed to ensure and maximize the utility, objectivity, and integrity of the information. *Utility* or “fitness of use” refers to the “usefulness of the information for its intended users”; *objectivity* means the information is “accurate, reliable, and unbiased, and is presented in an accurate, clear, complete, and unbiased manner”; and *integrity* refers to the security of the information, including protection of such information from unauthorized access or revision.¹² The Standards further require that any information products released “must comply with the Census Bureau’s statistical quality standards and must be free of serious data quality issues in order to be released outside the Census Bureau without restrictions.”¹³

11. The Census Bureau is also subject to the Office of Management and Budget (OMB) policies and procedures. Under the OMB’s Policy Directive No. 1, federal statistical agencies must “apply sound statistical methods to ensure statistical products are accurate” and “provide objective, accurate, and timely information.”¹⁴ Furthermore, federal statistical agencies “must seek input regularly from the broadest range of private- and public-sector data users” and they must “be independent from political and other undue external influence in developing, producing, and disseminating statistics.”¹⁵

12. In the remainder of this declaration, I explain how the exclusion of undocumented immigrants would violate these statistical standards and result in a lower quality census count.

¹² U.S. Census Bureau Statistical Quality Standards (July 2013), i-ii. As discussed later, these standards include specific requirements for planning, testing, and reporting that have not been met. See Statistical Quality Standard B-2.

¹³ U.S. Census Bureau Statistical Quality Standards (July 2013), Requirement F1-6.

¹⁴ Office of Management and Budget (OMB), Policy Directive No. 1. <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

¹⁵ Office of Management and Budget (OMB), Policy Directive No. 1. <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

IV. OPTIONS FOR OBTAINING POPULATION COUNTS OF UNDOCUMENTED IMMIGRANTS

13. In an attempt to count undocumented immigrants for producing an apportionment count, the Census Bureau would be left with only a few options: (a) using the 2020 Census, (b) using existing estimates outside the Census Bureau, and (c) using administrative records. As I will discuss in more detail, each of these options would fail to result in an actual enumeration as required by the Constitution. Moreover, using existing estimates outside the Census Bureau or administrative records would each depend on statistical sampling which is prohibited by statute. In my opinion, there is no feasible way to produce an accurate and reliable 2020 apportionment count that excludes undocumented immigrants that does not violate the mandates of the Constitution and the governing statutory framework.

A. The Decennial Census Does Not Ask About Citizenship Status and Legal Status

14. I start by noting the obvious difficulty in producing an apportionment count that excludes undocumented immigrants because the decennial census questionnaire does not ask, nor has it ever asked, about the legal status of foreign-born residents. It is simply too late to ask such a question on the 2020 questionnaire, so producing an apportionment count that excludes undocumented immigrants will necessarily require a methodology that departs from the 2020 Operational Plan.

15. The Trump administration attempted a late addition of a citizenship question to the decennial questionnaire.¹⁶ In March 2018, against the recommendation of Census Bureau professional staff, Commerce Secretary Wilbur Ross approved a late request from the Department of Justice (DOJ) for a citizenship question to be added to the 2020 Census. In June

¹⁶ Citizenship was not included among those Census questionnaire topics included in the required reporting to Congress in March 2017.

2019, the U.S. Supreme Court blocked the citizenship question from being added to the 2020 Census, citing the “contrived” justification for doing so.¹⁷ Nonetheless, the proposed citizenship question would not have enabled the production of apportionment numbers excluding undocumented residents because it did not distinguish foreign-born residents with formal legal status from those without formal legal status (i.e., undocumented immigrants).

B. Existing Estimates of Undocumented Persons from Other Sources are Inadequate

16. Although the Census Bureau does not currently have a data product that would allow for the exclusion of undocumented persons from the apportionment count, estimates of the undocumented population have been produced outside the Census Bureau. Indeed, the Memorandum references one such estimate: “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.”¹⁸ However, while these estimates may be useful for research and analysis, they are not adequate or permissible for use in apportionment.

17. First, although several organizations have produced estimates of the undocumented population, including Pew Research Center, The Center for Migration Studies (CMS), The Migration Policy Institution (MPI), and The Office of Immigration Statistics (OIS), these estimates were not produced to estimate the undocumented population *as of Census Day* (April 1, 2020), as the law requires.¹⁹ For example, the most recent estimate from OIS was

¹⁷ The Commerce Department had claimed that the DOJ requested the citizenship question be added to the 2020 Census to better enforce Voting Rights Act protections concerning discrimination against racial and language minorities, but it was revealed that the question was actually added to create policies “advantageous to Republicans and non-Hispanic Whites.” <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html?action=click&module=Top%20Stories&pgtype=Homepage>.

¹⁸ See Memorandum, sec. 2.

¹⁹ See 13 U.S.C. § 131(a) (“The Secretary shall . . . take a decennial census of population as of the first day of April of [each census] year”).

released in December 2018 and reports estimates of the undocumented population from 2015. The other sources all similarly rely on data that are not current. Accordingly, these estimates are not timely enough to be lawfully used for purposes of apportionment.²⁰

18. Second, these estimates are not reliable enough to be used for purposes of apportionment. Broadly, the available estimates rely on a methodology called the “residual technique,” which estimates the number of undocumented immigrants by subtracting the number of lawful immigrants (typically estimated from government records) from the total number of immigrants in the country, as estimated from self-report responses to sample surveys (most often, the Census Bureau’s American Community Survey (ACS)).²¹ The accuracy and reliability of the residual technique estimates critically depend on individual data inputs and the assumptions underlying those inputs given the considerable uncertainty in the individual data components. As a result, each of these organizations produces different population counts.²²

19. The residual method involves subtracting the number of immigrants with formal legal status from the total number of immigrants in the country, as estimated from self-report responses to the ACS.²³ The ACS is a survey designed and conducted by the Census Bureau that collects social, economic, housing, and demographic characteristics from a sample of approximately 1.6% of households annually.²⁴ That is, the ACS data product is a result of

²⁰ There is evidence, for instance, that immigration numbers have declined since 2015. For example, Pew estimates that the total undocumented immigrant population declined from 11,200,000 in 2013 to 10,500,000 in 2017.

²¹ *E.g.*, Baker, B. (2018). Population Estimates: Illegal Alien Population Residing in the United States: January 2015. Washington, DC: Department of Homeland Security. https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

²² For example, estimates for Pew, OIS, and CMS range from 10.7 to 11.0 million to 11.97 million in 2016. Variation is even more pronounced at the state level, although OIS publishes specific estimates only for the largest ten states.

²³ Passel et al. (2018), 37.

²⁴ The ACS replaced the Census long form after 2000. The ACS is implemented as a continuous sample survey, with about 3.5 million household addresses contacted each year. The Census Bureau releases yearly estimates that

sampling. As such, existing estimates of undocumented populations that rely on the ACS would necessarily use sampling, are subject to significant uncertainty from sampling error and are prohibited from use for purposes of apportionment.

20. It is well-recognized that these estimates are not precise enumerations. For example, when the Census Bureau released 2001 residual estimates of the undocumented population, it provided the following disclaimer:

Although the residual technique . . . is based on the simple idea of subtracting the expected legal population from the counted foreign-born population at the census date, *the approach suffers from a number of limitations*. These limitations stem from anomalies and shortcomings in the data sets used, assumptions made to correct for data deficiencies or to derive intermediate estimates, and the exclusion of components that may prove to be relevant in the changing migration environment.²⁵

Similarly, a March 2019 Department of Homeland Security (DHS) report explains: “DHS’s ability to describe the illegal alien population depends on its ability to describe the different population groups included in the residual methodology: the total foreign-born population and the subgroups that comprise the legally resident foreign-born population. *Data limitations mean that neither of these populations can be described with precision.*”²⁶ The OIS likewise provides a disclaimer with their estimate, acknowledging their estimates are “subject to sampling error in the ACS and considerable non-sampling error because of uncertainty in some of the assumptions

allow for characteristic estimates for populations of 65,000 or more. The ACS accumulates sample into 5-year estimates for smaller geographic areas, including census tracts and block groups.

²⁵ Costanzo et al. Evaluating Components of International Migration: The Residual Foreign Born. June 2002, page 20. <https://www.census.gov/content/dam/Census/library/working-papers/2001/demo/POP-twps0061.pdf> (emphasis added).

²⁶ Department of Homeland Security, “Potential Improvements to DHS Illegal Alien Population Estimates: Collection and Use of Data,” Fiscal Year 2018 Report to Congress, March 5, 2019, page 1.

required for estimation Caution is recommended.”²⁷ Population counts that warrant a warning label clearly lack the “fitness of use” required for the critical process of apportionment.

21. One source of variation across the estimates is the way the organizations statistically adjust estimates of the total foreign-born population to account for undercounting in the ACS. Because it is known that immigrants (especially undocumented immigrants) are harder to locate, harder to contact, harder to persuade, and harder to interview,²⁸ these organizations “augment and adjust” their estimates in an attempt to correct for missed immigrants.²⁹ Unfortunately, “the exact degree of the undercount is unknown,”³⁰ so organizations have to make a guess as to how, and how much, to adjust their statistical estimates. For example, the OIS estimates assume that the undercount of undocumented immigrants is 10%—an assumption based on a study about Los Angeles County in California in the 2000 decennial census. It is problematic for purposes of apportionment to rely on statistical adjustments based on 20-year old data on a narrow geographic area that could differ substantially from the rest of the country.³¹

22. These estimates are useful for making predictions about what a census might find and for research and analysis, but they are no substitute for a census. For example, I have reviewed the expert declaration of Dr. Chris Warshaw, who relies in part on the Pew estimates and other data to support his conclusions about the likely impact of excluding undocumented

²⁷ Office of Immigration Statistics, Homeland Security. (December 2018). Population Estimates: Illegal Aliens Population Residing in the United States: January 2015, 11.

²⁸ Tourangeau, R., Edwards, B., Johnson, T. P., Wolter, K. M., & Bates, N. (Eds.). (2014). Hard-to-survey populations. Cambridge University Press.

²⁹ See <https://www.pewresearch.org/hispanic/2018/11/27/u-s-unauthorized-immigrant-total-dips-to-lowest-level-in-a-decade/>.

³⁰ Department of Homeland Security, “Potential Improvements to DHS Illegal Alien Population Estimates: Collection and Use of Data,” Fiscal Year 2018 Report to Congress, March 5, 2019, 3.

³¹ Marcelli, E. “2000 Census Coverage of Foreign-born Mexicans in Los Angeles County: Implications for Demographic Analysis,” presented at 2000 Annual Meeting of the Population Association of American, Atlanta GA. As just one example of the flawed nature of the assumption, the estimated share of undocumented immigrants from Mexico in 2014 was 5% nationwide, but 70% in California.

immigrants from apportionment counts. Dr. Warshaw's analysis is carefully done, and I agree with his conclusions. While there is always uncertainty in making projections about population numbers, Dr. Warshaw's analysis incorporates possible uncertainty and imprecision in reasonable ways. Across a range of plausible assumptions and modeling decisions, his analysis consistently finds that at least one state (Texas), and more likely multiple states, stand to lose seats in Congress as a result. I am aware of no better way to determine the likely effects of the Memorandum on apportionment. But as the uncertainty estimates, confidence intervals, and robustness checks in Dr. Warshaw's analysis make clear, this is simply no substitute for the actual census that the Constitution requires.

23. In contrast to the estimates from these organizations, the Census Bureau does not statistically adjust population numbers for purposes of apportionment. Statistical adjustment requires technical decisions that can have large consequences on the resulting estimates, as the example above illustrates. As some statisticians have concluded: "statistical adjustment is unlikely to improve on the census because adjustment can easily put in more error than it takes out."³² Following the 2000 Census, for example, the Census Bureau spent enormous resources to research whether statistical methods could be used to adjust for the undercount for use in redistricting and other purposes not related to reapportionment (given the statutory prohibition of the use of statistical methods in reapportionment, found at 13 U.S.C. § 195).³³ In the end, the Census Bureau determined that the research could not support the conclusion, with a high level

³² Freedman, D., & Wachter, K. (2003). On the Likelihood of Improving the Accuracy of the Census through Statistical Adjustment. Lecture Notes-Monograph Series, 40, 197-230.

³³ Whitford, D. C. (2002) Chronologic Overview of the Census 2000 Adjustment Decision. Joint Statistical Meetings - Section on Survey Research. Methods. New York City.

of certainty, that the adjusted census results would be more accurate than the unadjusted results.³⁴ Any requests for the already-produced adjusted data acknowledged:

[T]he adjusted estimates were determined to be so severely flawed that all potential uses of these data would be inappropriate. Accordingly, the Department of Commerce deems that these estimates should not be used for any purpose that legally require use of data from the decennial census and assumes no responsibility for the accuracy of the data for any purpose whatsoever.³⁵

24. Ultimately, then, these estimates cannot be used for purposes of apportionment because they rely on statistical sampling and adjustment.³⁶ As a legal matter, any method that relies on statistical sampling and/or adjustment is not an actual enumeration, as the Constitution requires. Moreover, in *Department of Commerce v. U.S. House of Representatives* (1999), the Supreme Court ruled that the Census Act precluded the use of sampling to produce the apportionment count “[w]hether used as a ‘supplement’ or as a ‘substitute.’”³⁷ And as a matter of accuracy, a sample of the population, in contrast to a census, is subject to uncertainty from random sampling error. That sampling error is often reported as a margin-of-error with survey statistics. The greater the margin of error, the less confidence one should have in the resulting statistical estimate.³⁸

³⁴ See U.S. Bureau of the Census (2001) Report: Recommendation Concerning the Methodology to be Used in Producing Tabulations of Population Reported to States and Localities Pursuant to 13 U.S.C. 141(c) (March 1) Washington, DC Department of Commerce, <https://www.census.gov/dmd/www/pdf/Escape2.pdf>.

³⁵ See <https://www.icpsr.umich.edu/icpsrweb/ICPSR/themes/census2000/disclaimer.jsp>.

³⁶ *Department of Commerce v. U.S. House of Representatives* (1999).

³⁷ *Department of Commerce v. U.S. House of Representatives* (1999), 24.

³⁸ Groves, R. M., Fowler Jr, F. J., Couper, M. P., Lepkowski, J. M., Singer, E., & Tourangeau, R. (2011). Survey methodology (Vol. 561). John Wiley & Sons.

C. Using Administrative Records to Produce Counts of Undocumented Immigrants

25. Following the Supreme Court’s ruling that the Trump administration could not add a citizenship question to the 2020 Census, President Trump issued Executive Order 13880 on July 11, 2019 directing the Census Bureau to use administrative records to produce block-level Citizen Voting-Age Population (CVAP) data by race and ethnicity for states to use “for districting purposes.”³⁹ Administrative records refer to data held by agencies and offices of the government collected for other than statistical purposes to carry out basic administration of a program (U.S. Office of Management and Budget 2014), although it can also include data sources from states or commercial entities.

26. The Memorandum references the following guidance regarding the estimation of undocumented immigrant population numbers: “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.”

27. It thus appears that President Trump wants the Census Bureau to produce state-by-state population estimates of undocumented immigrants from the same administrative records used to construct CVAP. To be clear, the planned CVAP datafile itself would not allow for the exclusion of undocumented immigrants from the apportionment count because it identifies only

³⁹ See https://www2.census.gov/programs-surveys/decennial/rdo/technical-documentation/special-tabulation/CVAP_Post2020_Census_documentation_v5.pdf? The Census Bureau previously provided CVAP tables annually from each year’s most recent 5-year American Community Survey (ACS) data. The Post-2020 Census CVAP Special Tabulation will replace CVAP tables based on the ACS that would have been released in February 2021. A census block is the smallest geographic unit used by the Census Bureau. Census blocks are defined by geographic features, such as roads, so they vary in the exact number of households they contain—many contain no population. More than 11 million census blocks were enumerated in 2010. See https://transition.fcc.gov/form477/Geo/more_about_census_blocks.pdf.

the total population of *citizens of voting age*, not the number of undocumented immigrants.

Subtracting the CVAP numbers from the total population numbers generated by the census count does not provide the numbers necessary to apportion excluding undocumented immigrants because CVAP does not distinguish undocumented immigrants from legal non-citizen residents, and it does not provide the citizenship or legal status of those younger than 18 years of age.

28. In the next section, I explain why these administrative records are not “fit for use” to exclude undocumented immigrants from apportionment counts.

V. ADMINISTRATIVE RECORDS SHARED UNDER EXECUTIVE ORDER 13880 ARE NOT “FIT FOR USE” FOR PRODUCING APPORTIONMENT COUNTS

29. Without an actual enumeration, there is no known method of excluding undocumented immigrants from the 2020 census count for purposes of apportionment, including the use of administrative records, that does not rely on statistical sampling. Administrative records concerning citizenship and immigration status are often incomplete, outdated, and inaccurate—they are a flawed and biased sample from which to attempt extrapolation. Specifically, very few administrative records directly identify those individuals with undocumented status, and the few that do so are fundamentally flawed, so it would not be possible to perform a direct enumeration of the number of undocumented immigrants from the available administrative records. The administrative records identifying citizens and legal non-citizens are also a nonrandom sample with known inaccuracies, and includes data sources that explicitly rely on statistical sampling. Any method to extrapolate from this sample to the population necessarily requires extensive statistical modeling in ways that are fundamentally different than the kind of imputation that the Supreme Court has permitted for apportionment purposes. Among other reasons, the scale of the population that would be enumerated using statistical modeling is orders of magnitude larger than what has been permitted by the Supreme

Court and cannot be considered a “sparing” use. Finally, the census deadlines do not leave sufficient time to follow requirements for testing and stakeholder engagement before apportionment numbers are due to the President by the end of the year. It is thus my opinion that it is not currently feasible for the Census Bureau to produce estimates of undocumented immigrants from administrative records that would be lawful or of sufficient quality to use for the 2020 apportionment count.

A. Direct Enumeration of Undocumented Immigrants from Administrative Records is Impossible

30. I first note that the Census Bureau is not able to conduct an actual enumeration of undocumented immigrants based on administrative records. That is not surprising, as there are very few administrative records that directly document those with *undocumented* status. Among the limited sources available are administrative records of individuals who entered the country undetected but were subsequently apprehended.⁴⁰ The Census Bureau has received such administrative data from the Department of Justice, Department of Prisons, and the Bureau of Justice Statistics National Corrections Reporting Program (NCRP).⁴¹ However, apprehended undocumented immigrants represent a tiny fraction of those in the country without formal legal immigration status.

31. Scrutiny of these records also highlights that—even for those in federal custody—the administrative records do not provide accurate, reliable, and timely information. The most recently available *Alien Incarceration Report* (April 16, 2019) identified only 43,519 “known or

⁴⁰ Some research has attempted to roughly estimate this number by using annual number of apprehensions and estimating the probability that an undocumented migrant is apprehended along the U.S. Mexico border to produce an estimate of the number undocumented migrants from Mexico (e.g., Massey and Singer 1995). These estimates, however, only speak to migration across the Mexico border, and they fundamentally rely on statistical sampling.

⁴¹ Karen D. Deaver, Decennial Census Programs Directorate. Intended Administrative Data Use in the 2020 Census, May 1, 2020. <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/administrative-data-use-2020-census.pdf>.

suspected aliens” in federal custody.⁴² Strikingly, the report notes that 16,426 were still under investigation by Immigration and Customs Enforcement to determine alienage, and many others are difficult to classify: 1,281 were legally present and undergoing removal proceedings, 1,100 were granted relief or protection from removal, and 4,903 were deemed undocumented but under adjudication.⁴³ If determination of undocumented status is this difficult for Immigration and Customs Enforcement, the Census Bureau cannot be expected to make such determinations with incomplete and deficient administrative records.

32. This example also highlights the staleness in administrative records: there is a time lag of about a year from the date of the incarceration data to the report’s release. The lag in reporting—plus the large number of unresolved statuses—demonstrates the impossibility of the Census Bureau using these records to produce apportionment numbers, accurate as of the Census Date (April 1, 2020), that exclude undocumented immigrants by the end of the year.

33. Another source of administrative records that directly document individuals without “lawful immigration status under the Immigration and Nationality Act,” are the records of those with Deferred Action for Childhood Arrivals (DACA) status.⁴⁴ DACA recipients do not have formal legal status, but they are currently protected from deportation, and retain lawful presence in the country. Administrative records similarly exist for undocumented immigrants with pending asylum cases. It does not appear, however, that DACA records or pending asylum cases are among the administrative records that have been acquired by the Census Bureau.⁴⁵

⁴² Alien Incarceration Report, Fiscal Year 2018 Q2 (April 16, 2019). <https://www.justice.gov/opa/page/file/1154711/download>.

⁴³ Alien Incarceration Report, 2.

⁴⁴ To be eligible, individuals needed to have arrived in the U.S. before turning 16 and must meet education and other related requirements.

⁴⁵ Karen D. Deaver, Decennial Census Programs Directorate. Intended Administrative Data Use in the 2020 Census, May 1, 2020. <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/administrative-data-use-2020-census.pdf>.

Regardless, these quasi-legal groups of undocumented immigrants represent only a tiny portion of the undocumented population, again highlighting the impossibility of directly enumerating undocumented immigrants using administrative records.

34. Given the grossly incomplete coverage of administrative records identifying undocumented immigrants, any attempt to produce a count of the undocumented population for purposes of exclusion from the 2020 apportionment count would require extensive statistical modeling. In the next section, I explain what such methods might look like and how such modeling would differ in fundamental ways from the current use of administrative records in enumerating households and the type of statistical modeling required. I then explain how such sampling would result in a less accurate and less reliable enumeration and would violate the prohibition on statistical sampling and adjustment in the context of apportionment.

B. Statistical Modeling of Undocumented Immigrants

35. Before turning to the problems associated with statistical modeling of population counts of undocumented immigrants from available administrative records, I start by first outlining what we know about the Census Bureau's plans to estimate citizenship and legal status from administrative records, based on documentation related to their planning to comply with EO 13880.

1. Likely Method for Using Administrative Records

36. According to the Census Bureau neither the CUF nor CEF will contain information on citizenship status or legal status.⁴⁶ Rather, for compliance with EO 13880, the Census Bureau plans to create a separate citizenship micro-data file, which I will call CMDF,

⁴⁶ <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf?#>.

that will include “citizenship and immigration status probabilities” for each person in the census based on statistical modeling of administrative records and responding census households.⁴⁷

37. As described in the Privacy Impact Assessment For The Department of Homeland Security Immigration-Related Information Sharing With U.S. Census Bureau (Dec 20, 2019, updated June 2020):

The Census Bureau plans to use several administrative data sources of citizenship and immigration status in a statistical model that will produce a probability of being a U.S. citizen, a lawfully present non-citizen, or an unauthorized immigrant on April 1, 2020, for each person in the 2020 Census. The citizenship and immigration status probabilities will be used together with age, race, ethnicity, and location information from the 2020 Census to produce CVAP statistics. The objective of the project as described in the E.O. is to determine the number of citizens, lawfully present non-citizens, and unauthorized immigrants in the country.⁴⁸

In other words, statistical modeling will be used to produce a *predicted probability* of citizenship and documented/undocumented status on April 1, 2020, for each person in the 2020 Census—which will require linking administrative records with 2020 Census responses. As explained, “A model will be estimated for each person...using the most current citizenship status from each available citizenship source for the person, as well as the person’s other demographic, household, and location information as explanatory variables. The model will produce a citizenship and immigration status probabilities for each person.”⁴⁹

38. To be clear, the planned methodology is not included in the 2020 Operational Plans and, as of the date of this report, the exact methodology for responding to EO 13880 has

⁴⁷ Department of Homeland Security. (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau.

⁴⁸ Department of Homeland Security. (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau, 9.

⁴⁹ Department of Homeland Security. (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau, 9-10.

not yet been disclosed.⁵⁰ The methodology was initially set to be released by March 2020, but the Census Bureau now reports it will “publish a technical paper describing how the CVAP product will be produced, and the data sources for the product, prior to October 31, 2020.”⁵¹ Moreover, while the Memorandum references the administrative records used to comply with Executive Order 13880, there are different timelines and legal restrictions on methodology associated with apportionment numbers compared to production of the CMDF.⁵² Most importantly, much of the data and many of the methodologies that might be allowable for the production of CMDF are not legally permissible for the production of apportionment counts.

2. Administrative Records Shared under Executive Order 13880 Rely on Statistical Sampling

39. While the Census Act allows the use of statistical sampling and adjustment methods for *non*-apportionment purposes (such as producing data for general research and informational use), it prohibits the use of statistical sampling and adjustment in connection with the preparation of the apportionment count. The Census Act states that “*except for the determination of the population for purposes of apportionment of Representatives in Congress among the several States*, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as ‘sampling’ in carrying out the provisions of this title.”⁵³ In *Department of Commerce v. U.S. House of Representatives* (1999), the Supreme Court ruled that

⁵⁰ See <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap/Post-2020-CVAP.html>. “The final specifications and analysis of CVAP data sources are still under development and will not be released March 31, 2020, as previously anticipated. We are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation. In light of overall 2020 Census schedule adaptations due to the COVID-19 outbreak, this dataset will be published prior to July 31, 2021.”

⁵¹ <https://www.documentcloud.org/documents/6825272-2020-Census-Supporting-Statement-A-for-OMB.html#document/p51/a559329>.

⁵² The CUF will be produced by November 30, 2020 and is used to produce the apportionment numbers by December 31, 2020. The CMDF was not scheduled to be completed until four months later.

⁵³ 13 U.S.C. § 195 (emphasis added).

the Census Act precluded the use of sampling to produce the apportionment count “[w]hether used as a ‘supplement’ or as a ‘substitute.’”⁵⁴

40. Even in the limited Census Bureau documentation available about how administrative records will be used to estimate citizenship and immigration status, there is explicit mention of reliance on data collected by sampling. In a May 2020 Memorandum, titled “Intended Administrative Data Use in the 2020,” the Census Bureau lists a number of sources “expected to be used only to research how to subsequently produce citizenship information in conjunction with the census. These sources include but are not limited to...American Housing Survey data, Current Population Survey data, [and] Survey of Income and Program Participation data.” However, descriptions of each of these sources on the Census Bureau’s website demonstrate that each source obtains its data using sampling techniques:

- American Housing Survey (AHS): “Housing units participating in the AHS have been scientifically selected to represent all housing units in the United States. The same National *sample* of housing units is interviewed every two years until a new sample is selected (this includes the 15 largest metropolitan areas)... Each housing unit in the AHS national *sample* is weighted and represents between 450 and 4000 other housing units in the United States.”⁵⁵
- Current Population Survey (CPS): “The CPS is administered by the Census Bureau using a probability selected *sample* of about 60,000 occupied households.”⁵⁶
- Survey of Income and Program Participation (SIPP): SIPP “is a household-based survey designed as a continuous series of national panels. Each panel features a nationally representative *sample* interviewed over a multi-year period lasting approximately four years.”⁵⁷

41. Because these and other potential data sources that the Census Bureau is likely to use to estimate citizenship and immigration status through statistical modeling (which will be

⁵⁴ *Department of Commerce v. U.S. House of Representatives* (1999), 24.

⁵⁵ <https://www.census.gov/programs-surveys/ahs/about/methodology.html> (emphasis added).

⁵⁶ <https://www.census.gov/programs-surveys/cps/technical-documentation/methodology.html> (emphasis added).

⁵⁷ <https://www.census.gov/programs-surveys/sipp/about.html>.

described in the next section) rely on statistical sampling techniques, any population estimates of citizenship and immigration status that depends on these data sources would necessarily incorporate sampling at some level in the analysis and would not be an enumeration or imputation. This would contravene the Census Act's prohibition of using sampling to produce the apportionment count.

3. Fundamental Differences in Statistical Modeling Required

42. More broadly, the statistical modeling and adjustment required to produce population estimates of undocumented immigrants differ in fundamental ways from the current use of statistical modeling and administrative records used in counting the household size of U.S. addresses. Importantly, these differences parallel the differences between sampling and imputation discussed in the Supreme Court's decision to prohibit sampling (but not imputation) for producing apportion counts: the nature, scope, immediate objective of the statistical methods, and impact on accuracy of the resulting counts.⁵⁸

a. Nature of the Method

43. The Census Bureau relies on a variety of statistical methods in the production of federal statistics, including sampling and imputation. Generally, sampling refers to a statistical method that selects a subset (a sample) to extrapolate about the whole, whereas statistical imputation is the process of filling in individual missing or conflicting values with a substitute. The nature of the method required to produce population estimates of undocumented immigrants from available administrative records is fundamentally different from the imputation currently used to enumerate households.

⁵⁸ *Utah v. Evans*, 365 U.S. 452 (2002).

44. First, the Census Bureau distinguishes between methodologies used for *collecting* data (e.g., sampling) versus those used for *processing* data (e.g., imputation).⁵⁹ In the 2020 Operational Plan, administrative record usage for purposes of enumerating households is limited to those nonresponding addresses where the Census Bureau has multiple “high-quality” administrative records available.⁶⁰ More importantly, the Census Bureau does not use administrative records *on their own* to enumerate a household—administrative records are used only after giving the entire population an opportunity to self-respond and after an attempt to enumerate the household by field staff. In other words, they are used solely for *processing* data. In contrast, the use of administrative records for producing counts of undocumented immigrants is clearly data *collection*. No one is asked to self-respond about their legal status or citizenship status in the decennial census, so administrative records are collected separately from the decennial census, for purposes of gathering information about citizenship and legal status from the sample of administrative records available to extrapolate about the characteristics of the population.

45. Second, the specific statistical methodologies used also differ. Count imputation is the procedure that fills in household status and size for addresses where it is unknown—addresses that fail to self-complete the census questionnaire and cannot be enumerated through the NRFU (non-response follow-up) process. Count imputation relies on a hot-deck procedure—that is one that uses contemporaneous data from neighboring housing units to fill in deterministic values for the missing information. In contrast, the use of administrative records would be considered a “cold-deck” procedure because it does not rely on information collected at the same time as the census questionnaire.

⁵⁹ <https://www.census.gov/srd/papers/pdf/rrs2005-01.pdf>.

⁶⁰ 2020 Census Operational Plan.

46. In contrast to the deterministic method used for count imputation, existing documentation and public statements by the Census Bureau suggest that the Bureau intends to use probabilistic data modeling in complying with the Memorandum. A probabilistic model of citizenship will produce a single value for each person that ranges from 0 to 1, where 0 would indicate a 0% chance of being a citizen and 1 would indicate a 100% chance of being a citizen, but where most values will fall somewhere in between. The result of the model, then, is not an actual enumeration of the “whole number of persons in each State” who are not undocumented immigrants, but a range of probabilities. As such, an arbitrary statistical threshold must be set to count someone as an undocumented immigrant (e.g., an 80% probability). It is entirely unclear what probability threshold the Census Bureau plans to use or what is a reasonable threshold for receiving representation. A probabilistic model also inherently acknowledges uncertainty in the underlying data. Similar to models that rely on sampling, a probabilistic model will produce an *estimate* with uncertainty. It is unclear how this uncertainty in the prediction can be accounted for in an enumeration for purposes of apportionment. What is clear is that the resulting population count from the use of such probabilities will be less reliable than the existing method of counting the population, given that these modeling decisions will introduce uncertainty and bias into the resulting population numbers.

47. A final difference between the statistical technique used to impute household size and the technique necessary to produce a count of undocumented immigrants is the ordering of the process. Modeling administrative records to produce a count of undocumented immigrants conflates imputation of household counts with that of household characteristics. Characteristic imputation uses hot-deck imputation to fill in the characteristics of the household, such as the

age, race, and ethnicity of all persons enumerated.⁶¹ Characteristic imputation, as currently practiced by the Census Bureau, is a “downstream” procedure—that is, it occurs *after* and *entirely separate from* the determination of the apportionment count required by the Constitution. Rather, it is used only for generating auxiliary population statistics that are not part of the census’s constitutional role. The Census Bureau currently produces apportionment numbers from the CUF, which relies only on *count* imputation (*i.e.*, imputation of the *number* of people present at a given address). *Characteristic* imputation (*i.e.*, imputation of the specific *characteristics* of a given person) occurs in the CEF as a separate process, after the final population count is established and for the purposes of redistricting and other data tabulations—not for the purpose of apportionment. The current sequential nature of count and characteristic imputation provides transparency about the process producing apportionment counts, minimizing the risk of manipulation of the method. In contrast, determining eligibility for representation based on the characteristics of the household opens a Pandora’s box about the informational basis of the apportionment count. For example, such a process could result in a household being excluded from the apportionment count based on entirely imputed household characteristics.

b. Scope of the Method

48. A second difference between the method proposed to exclude undocumented immigrants from the 2020 Census and traditional, lawful uses of imputation is in the scope of statistical modeling needed. The scope of any statistical modeling required to estimate the number of undocumented immigrants would be unprecedented for use in enumerating the apportionment population. In 2010, just 0.39% (less than one half of one percent) of the total population was added via count imputation, as opposed to direct enumeration; in 2000, just

⁶¹ See Andrew Keller. “Imputation Research for the 2020 Census,” U.S. Census Bureau. <https://www.census.gov/content/dam/Census/library/working-papers/2015/dec/DSSD-WP2015-03.pdf>

0.43% of total population was added using count imputation.⁶² In other words, count imputation is used sparingly, and only after giving the entire population an opportunity to self-respond, and attempting to follow up with anyone who does not respond (*i.e.*, NRFU).⁶³

49. In contrast, estimation of the apportionment population excluding undocumented immigrants requires modeling of every person in the census file, to determine the probability that they are an undocumented immigrant. Given the scarcity of administrative records that directly document unauthorized immigrants, *almost all* individuals identified as undocumented, and thus excluded from apportionment numbers, will have been estimated based on extrapolated data from a sample of administrative records. The scale of the population that would be enumerated through statistical methods rather than traditional methods is orders of magnitude larger than anything the Census Bureau has ever attempted before, and certainly cannot be considered “sparing” use. For individuals in the census who are unable to be linked to administrative records, the extent of the exercise is even more striking: they could be excluded from the apportionment count based only on their demographic characteristics (*e.g.*, their race or ethnicity) and local area information (the only information available in the decennial questionnaire), if the Census Bureau’s modeling formula identifies them as a probable undocumented immigrant based on this information.⁶⁴ The Census Bureau also acknowledges the potential inaccuracy of the models for those in the 2020 Census who are unable to be linked

⁶² See <https://www.pewsocialtrends.org/2011/05/04/imputation-adding-people-to-the-census/>.

⁶³ Relatedly, the Census Bureau acknowledges in the 2020 Operational Plan that “[t]he accuracy and usefulness of the data collected for the 2020 Census are dependent upon the ability to obtain information from the public, which is influenced partly by the public’s perception of how well their privacy and confidentiality concerns are being addressed If a substantial segment of the public is not convinced that the Census Bureau can safeguard their response data against data breaches and unauthorized use, then response rates may be lower than projected, leading to an increase in cases for follow-up and cost increases.” For review of research on this topic, *see* U.S. Census Bureau, Privacy Research in Census 2000, Census 2000 Topic Report No. 1 (2003).

⁶⁴ Given the known disparities in the availability of administrative records by race and ethnicity, this will almost certainly result in more Blacks and Hispanics being erroneously excluded from the apportionment base.

to administrative records, noting that citizenship probability will be “estimated based on local area information and the person’s demographic characteristics, but not the person’s citizenship, which makes the estimate much less accurate.”⁶⁵

c. Immediate Objective

50. The immediate objective might be considered another difference between the statistical modeling necessary to exclude undocumented immigrants and that used for imputing nonresponding households (or for the use of administrative records in enumerating households). In the latter cases the objective is “the filling in of missing data as part of an effort to count individuals one by one.”⁶⁶ In contrast, by design, any methodology developed for the goal of excluding undocumented immigrants has the explicit objective of adjusting the entire population estimates, not filling in missing data after an attempt to conduct an actual enumeration.

d. Impact on Accuracy

51. The final way in which the use of a methodology to produce counts of the undocumented population from administrative records differs from the current statistical methods and approaches used in census enumeration is the impact on accuracy. Whereas the current use of count imputation makes the census more accurate,⁶⁷ the exclusion of undocumented immigrants through statistical modeling of administrative records will make the census less accurate. Fundamental shortcomings in the availability, accuracy, reliability, and timeliness of administrative records concerning citizenship and legal status will impact the predictive accuracy of the model results. Census research acknowledges that the modeling of missing information on citizenship will be challenging, with the accuracy of the models “not

⁶⁵ Template for Memorandum of Agreement Between the U.S. Department of Commerce and State Program Agencies, 11. <https://big.assets.huffingtonpost.com/athena/files/2019/10/16/5da72b8de4b02253a2f8e8da.pdf>.

⁶⁶ Finkelstein, *Basic Concepts of Probability and Statistics in the Law* (2009).

⁶⁷ *Utah v. Evans*, 365 U.S. 452 (2002).

known” because the missing information is not random.⁶⁸ I have already outlined the incomplete and problematic nature of administrative records about unauthorized immigrants. It is also the case, as described below, that the more prevalent administrative records about citizens and *documented* non-citizens are also incomplete, outdated, and inaccurate.

i. Incomplete, Outdated, and Inaccurate Administrative Records about Citizens and Documented Non-Citizens

52. Although there are few administrative records that document those residing in the U.S. *without* formal legal status, more sources have information identifying U.S. citizens and *documented* non-citizens (*i.e.*, those in compliance with immigration laws). However, as I show, the Census Bureau will be unable to produce an accurate and reliable enumeration of the undocumented population by indirectly estimating the undocumented immigrant population through a process of elimination based on information in these administrative records. Doing so requires correct identification of citizens and the documented non-citizen immigrant population—those persons granted lawful permanent residence, persons granted asylum, persons admitted as refugees, and persons admitted as nonimmigrants under classes of admission associated with residence (*e.g.*, students and temporary workers, as opposed to tourists) and with authorized periods of admission in the future of any estimated date.⁶⁹ Here, again, administrative

⁶⁸ Brown et al, 44. It is worth noting that the legal debates surrounding the use of sampling by the Census Bureau assumed the used of probability sampling, which has a scientific basis for drawing inferences from a randomly selected sample. In contrast, the sample of administrative records to be used in producing counts of undocumented immigrants is non-random—for example, all of the states that have shared DMV records with the Census Bureau have Republican governors and voted for Trump in the 2016 presidential election.

⁶⁹ There is a question as to how to handle so-called quasi-legal cases, such as foreign nationals granted Temporary Protected Status (TPS) because they are from countries in which they cannot return home safely or those with DACA status, who have work authorization and protection against deportation. Pew includes in the authorized immigrant estimates those with temporary protection from deportation under DACA, TPS, and pending asylum cases. This would mean that a resident with 18-month temporary protected status (that could be extended) would be excluded from political representation but a student or temporary worker on a 12-month visa would be included.

records lack the necessary coverage, accuracy, and reliability to produce the high-quality estimates necessary for an apportionment count.

4. The Numident

53. The Census Bureau's most complete source of citizenship data is the Census Numident file, a record of individual applications for Social Security cards and any changes subsequently made (such as change of name).⁷⁰ This is the cornerstone of any effort to identify citizenship status based on administrative records. In an effort to evaluate the potential use of administrative records to estimate the citizenship status for the 2020 Census, the Census Bureau undertook research evaluating the strengths and weaknesses of Numident for identifying citizenship status (though not legal status, *i.e.*, compliance with immigration laws).

54. These results were reported in a 2018 white paper titled, "Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census" (hereinafter, "The Brown Memo"). As the Census Bureau found, there are many sources of error in these records. First, there will be individuals enumerated in the 2020 Census who will not have information in the Numident. While this is more likely among undocumented immigrants, citizens and non-citizens with formal legal status can also be missing because of linkage errors, or incomplete identifying information provided by the household.⁷¹ Of those enumerated in the 2010 Census, the Brown Memo found that only 89.4% could be matched to the Numident file.⁷²

55. A second issue is that some individuals in Numident have missing information about citizenship status. In 2017, 6.6 million persons born outside the U.S. have no indication of

⁷⁰ See Layne, Wagner, and Rothaas (2014) and NORC (2011). See also Rastogi and Ohara (2012), Bond et al. 2014.

⁷¹ The internal unique person identifier is called the protected identification key or PIK.

⁷² Brown et al, 14 (as reported, 91% can be assigned a PIK; once assigned, 98.2% could be matched to Numident).

citizenship (among those born in 1920 or later with no year of death).⁷³ While some of those persons may be undocumented immigrants, a much higher share appear to be U.S. citizens whose information simply happens to be missing from the file.⁷⁴ The Brown Memo outlines the different groups of people who could have missing citizenship status in Numident:

- U.S. citizens from birth with no Social Security number or U.S. passport;
- U.S. citizens from birth born outside the U.S., who do not have a U.S. passport, and either applied for a Social Security number prior to 1974 and were 18 or older or applied before the age of 18 prior to 1978;
- U.S. citizens who were automatically naturalized if they were under the age of 18 when their parents became naturalized in 2000 or later, and they did not inform USCIS or receive a U.S. passport;
- U.S. citizens who were naturalized prior to 2001 and did not inform the Social Security Administration of their naturalization and had never applied for a Social Security number; and
- Lawful permanent residents (LPR) who received that status prior to 2001 and had never applied for a Social Security number.⁷⁵

56. These gaps in citizenship status information are related to the history of the Social Security number, which was not created to track citizenship status, but rather created for tracking earnings for use in determining benefit levels. Evidence of citizenship was not added to the Social Security application until 1974. Moreover, there was geographic variation in the rollout of the enumeration-at-birth (EAB) program, which is now used by 90% of parents. Some states adopted EAB as early as 1987, but California, Rhode Island, and Connecticut did not participate

⁷³ See https://www.supremecourt.gov/DocketPDF/18/18-966/91016/20190306200155135_18-966%20Commerce%20J.A.pdf, 153. In total, 20.0% of 2010 Numident records have missing citizenship status, but some of those will not be in the 2020 Census—either because they no longer reside in the U.S. (e.g., those who had temporary work status), or because they fail to respond.

⁷⁴ Memorandum from John M. Abowd, Chief Scientist & Assoc. Dir. for Research & Methodology, U.S. Census Bureau, to Wilbur L. Ross, Sec’y, U.S. Dep’t of Commerce (Mar. 1, 2018).

⁷⁵ Brown et al., 19.

in EAB until 1995.⁷⁶ This means that late-adopting states could be more likely to have citizens with missing citizenship status in Numident, potentially leading to their disproportionate exclusion from apportionment numbers.

57. In addition to missing information, there are also inaccuracies in the Numident. Numident will erroneously list someone as a non-citizen if they were naturalized prior to 2001 and did not inform the Social Security Administration of their naturalization. Similarly, lawful permanent residents who received that status prior to 2001 and had applied for a Social Security number prior 1974 would also have inaccurate data.

58. The Census Bureau is receiving other administrative records from federal agencies and state governments to supplement Numident, but those records are also plagued by gaps and errors that can introduce inaccuracies and conflicts across records. In the case of administrative records that contain information about legal non-citizen status—lawful naturalized citizens, legal permanent residents, temporary migrants (such as foreign students), and refugees and asylees—the Census Bureau will rely on data from DHS’s Office of Immigration Statistics and Office of Refugee Resettlement.⁷⁷

59. DHS offers the most complete information about documented non-citizens, but these records are incomplete and often outdated, and can only partially address Numident’s weaknesses.⁷⁸ As the Census Bureau has recognized, DHS has “incomplete records prior to 2001. These data do not cover naturalizations occurring before 1988, and they miss some

⁷⁶ See <https://www.ssa.gov/policy/docs/ssb/v69n2/v69n2p55.html>. Today, over 90% of parents use the EAB process, which is offered in all 50 states plus Puerto Rico and the District of Columbia. The Social Security Administration receives nearly three-quarters of original Social Security number applications through the EAB process and issues over 4 million Social Security numbers via EAB each year (Social Security Administration 2006).

⁷⁷ See <https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/>.

⁷⁸ Memorandum from John M. Abowd, Chief Scientist & Assoc. Dir. for Research & Methodology, U.S. Census Bureau, to Wilbur L. Ross, Sec’y, U.S. Dep’t of Commerce (Mar. 1, 2018).

between 1988 and 2000.”⁷⁹ Moreover, available records “do not always cover children under 18 at the time a parent became a naturalized U.S. citizen. These children automatically become U.S. citizens under the Child Citizenship Act of 2000.”⁸⁰ Regarding the estimation of citizenship status, John Abowd, Chief Scientist of the Census Bureau, acknowledges that the Census Bureau “will most likely never possess a fully adequate truth deck to benchmark to.”⁸¹ Determining the specific legal status (undocumented or otherwise) among immigrants is even more difficult. DHS admits that “immigration status information is challenging, complicated, and dynamic... No one source of citizenship information is complete and up-to-date.”⁸² In another report, DHS acknowledges, “while Census and DHS data provide a wealth of information on the total foreign-born population broken down by citizenship and on annual migration flows and status changes, national population data on the major subcategories of non-citizens, including lawful permanent residents, students, temporary workers, and unauthorized immigrants, are not readily available from any source and must be estimated.”⁸³

60. Another clear example of the unreliability of the data comes from calculations of visa overstays—individuals lawfully admitted to the United States for an authorized period, but who remained in the United States beyond their authorized period of admission. The 2019 DHS exit/entry analysis (March 2020) reported 55,928,990 admissions to the United States through air or sea ports with expected departures occurring in FY 2019, with a total overstay rate of 1.21%, or 676,422 overstays. Although the report gives an “illusion of precision,” the DHS

⁷⁹ Brown et al., 18.

⁸⁰ Brown et al., 18.

⁸¹ Memorandum from John M. Abowd, Chief Scientist & Assoc. Dir. for Research & Methodology, U.S. Census Bureau, to Wilbur L. Ross, Sec’y, U.S. Dep’t of Commerce (Mar. 1, 2018).

⁸² See Department of Homeland Security. (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau.

⁸³ See https://www.dhs.gov/sites/default/files/publications/lpr_population_estimates_january_2015.pdf, 2.

administrative records are woefully inadequate for determining undocumented status. Record-keeping challenges make it difficult to match arrival and departure records for the same person, which could result in erroneously counting as an overstayer someone who actually left the country.⁸⁴

61. Consider the enormous scale of the task—more than 55 million people visited the United States from abroad for tourism and business.⁸⁵ When departure records are incompletely collected by the airlines and transmitted to DHS, errors result. The land borders are even harder to track, since the ports of entry are primarily focused on screening incoming traffic rather than checking who is departing. More than 254 million people annually pass through the border checkpoints (nearly 700,000 travelers on a given day)—mostly individuals who are legally able to “travel back and forth across the border for commercial trade, tourism, work, school, family visits or a simple trip to the store.”⁸⁶

62. As admitted in the DHS Privacy Impact Assessment for the Immigration-Related Information Sharing with the U.S. Census Bureau: “Determining an individual’s citizenship based on various DHS data is a challenging task Due to the decentralized nature of admission and immigration information, as well as the lack of a nationwide departure control system, [U.S. Customs and Border Protection] collects different data points from different data sets.”⁸⁷ As a result, the classification of an individual as an overstayer is often inaccurate.

⁸⁴ See <https://thehill.com/opinion/immigration/447607-illegal-immigration-by-the-numbers-visa-violators-and-border-crossers>.

⁸⁵ Morral, Anrew, Henry Willis, Peter Brownell. (2011). Measuring Illegal Border Crossing Between Ports of Entry: An Assessment of Four Promising Methods. Rand, Homeland Security and Defense Center. https://www.rand.org/content/dam/rand/pubs/occasional_papers/2011/RAND_OP328.pdf.

⁸⁶ Davis, Kristina. (April 7, 2019). “The impossible challenge of tracking visa overstays,” The San Diego Union-Tribune. <https://www.sandiegouniontribune.com/news/immigration/story/2019-04-06/the-impossible-challenge-of-tracking-visa-overstays>.

⁸⁷ Department of Homeland Security. (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau, 6.

Indeed, research by the Center for Migration Studies found nearly half the visa overstayers identified by DHS had left the U.S. unnoticed.⁸⁸ Others have emphasized that the data are quickly out of date because “many overstayers leave or adjust their status within a few months of their visa expiration date.”⁸⁹ As DHS acknowledges regarding the information they are sharing with the Census Bureau: the shared information “is assumed to be accurate at the time it was collected. However, because DHS is providing information at a point in time, it is reasonable to believe that eventually data accuracy issues may arise.”⁹⁰ In calculating its own estimates of the undocumented population, DHS admits that the agency “does not know how many lawfully admitted aliens have deceased or departed the United States.”⁹¹

5. Problems with Other Model Inputs

63. What matters to the accuracy of the resulting estimates is not just the information about citizenship and legal status in administrative records, but also the other information from the administrative records that might be used in building the predictive model—such as race, ethnicity, sex, age, or country of origin. If there are errors in the other explanatory variables, the model results can be biased and unreliable.

64. Specifically, one key input of concern is the quality of the measures of race and ethnicity in administrative records. It is recognized that the quality of the race and ethnicity data in Numident is poor.⁹² The race data included in the Numident file is collected at the time an

⁸⁸ Warren, Robert (February 27, 2019). Sharp Multiyear Decline in Undocumented Immigration Suggests Progress at US-Mexico Border, Not a National Emergency. <https://cmsny.org/publications/essay-warren-022719/>.

⁸⁹ Fazel-Zarandi, Feinstein, Kaplan 2018.

⁹⁰ Department of Homeland Security. (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau.

⁹¹ Department of Homeland Security, “Potential Improvements to DHS Illegal Alien Population Estimates: Collection and Use of Data,” Fiscal Year 2018 Report to Congress, March 5, 2019, 3.

⁹² The Census Bureau has built an internal Best Race and Hispanic Origin file, a composite from various government and commercial sources that uses a rules-based approach to resolve unique race and Hispanic origin codes for person records where those values vary across different files. Unfortunately, the content and quality of this file “is

application is made to obtain a Social Security number. Prior to 1980, the application form only permitted the racial categories of white, black, and other.⁹³ Individuals added to Numident through state vital records (the EAB program)—roughly one-fourth of the population—are typically missing race entirely because states do not transfer that information.⁹⁴ Also problematic is that Hispanic origin data are indirectly estimated through country of birth—a flawed assumption given that Hispanics often select more than one race or “some other race.”⁹⁵ Given the problems with Hispanic ethnicity in Numident, census research has warned that statistical imputation could result in “bias in the resulting proportion of persons who are Hispanic,” which could, in turn, bias estimates of citizenship and legal status.⁹⁶

6. Discrepancies across records

65. Another source of error in the available administrative records is the inevitable discrepancies across records given the problems with each set of records. The Census Bureau will have to determine how to reconcile these differences. The only documentation that the Census Bureau has provided thus far references the fact that survey responses will be privileged over administrative records, an acknowledgement of the inaccuracies of administrative records. A May 2020 memo notes, in a discussion of characteristic imputation, that “[w]hen possible, we will use the 2010 Census and ACS response before using information from other sources.”⁹⁷

mysterious to observers.” Czajka, J. L. (2013). Can administrative records be used to reduce nonresponse bias?. *The ANNALS of the American Academy of Political and Social Science*, 645(1), 171-184.

⁹³ The current OMB race and ethnicity categories were not used until 1997.

⁹⁴ Czajka, J. L. (2013). Can administrative records be used to reduce nonresponse bias?. *The ANNALS of the American Academy of Political and Social Science*, 645(1), 171-184.

⁹⁵ Czajka, J. L. (2013). Can administrative records be used to reduce nonresponse bias?. *The ANNALS of the American Academy of Political and Social Science*, 645(1), 171-184.

⁹⁶ Richard A. Griffin. (2014). “Issues Concerning Imputation of Hispanic Origin due to Administrative Record Enumeration for the 2020 Census,” *Proceedings of the Survey Research Methods Section, American Statistical Association*, available at http://ww2.amstat.org/sections/srms/proceedings/y2014/Files/311893_88330.pdf.

⁹⁷ Karen D. Deaver, Decennial Census Programs Directorate. *Intended Administrative Data Use in the 2020 Census*, May 1, 2020, P. 11.

Here again, there are well-documented inaccuracies in measures of citizenship status. In a recent comparison of administrative records from the Social Security Administration with individual responses to the ACS, census researchers found that 37.6% of those individuals who were recorded as *non-citizens* in administrative records had self-reported being *U.S. citizens* in the ACS.⁹⁸ As explained by the researchers, undocumented immigrants “have a strong incentive to provide an incorrect survey answer, if they answer at all, due to concerns about the data being used for enforcement.”⁹⁹

VI. CONSEQUENCES OF EXCLUDING UNDOCUMENTED IMMIGRANTS FROM APPORTIONMENT COUNTS

A. Excluding Undocumented Immigrants from the 2020 Apportionment Count will Result in a Less Accurate and Fair Census Count

66. Given the issues outlined above, any attempt to exclude undocumented immigrants will result in a lower quality and less accurate census. The issues outlined above mean that any attempt to exclude undocumented immigrants will result in erroneous omissions of citizens and documented non-citizens and erroneous inclusion of undocumented non-citizens. The issue is not just accuracy of the overall population count, but also the completeness and fairness of the count.¹⁰⁰ An overall population count can be accurate, even while the counts for subpopulations are highly inaccurate. This can happen, as it did in 2010, when some segments of the population are undercounted at the same time other segments of the population are

⁹⁸ Moreover, this is likely an underestimate because the noncitizens able to be matched to administrative records are more likely to be legal noncitizens. Brown et al. (2018).

⁹⁹ J. Brown et. al., Working Paper: Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census, Center for Economic Studies, U.S. Census Bureau, 18–38 (2018), <https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf>.

¹⁰⁰ Prewitt, K. (2010). The US decennial census: Politics and political science. *Annual Review of Political Science*, 13, 237-254.

overcounted. The Census Bureau’s post-enumeration coverage found a net overcount of Non-Hispanic Whites, and a net undercount of Blacks and Hispanics.¹⁰¹

67. The fundamental concern is with *distributional accuracy*—the proportional distribution of the population by geography or population groups. Apportionment, the first and most enduring purpose of U.S. census taking, is based on statistical proportionality. If the Census Bureau misses more people living in one state than another, the census count is not only inaccurate, it will also be unfair—and thus, not fit for use for purposes of apportionment, failing both “objectivity” and “utility” in the words of the Census Bureau Quality Standards.

68. The impact of producing an apportionment count that excludes undocumented immigrants will not be felt equally across the country given geographic variation in those likely to be erroneously identified as undocumented. This is more likely to affect states with a larger number of foreign-born residents, given that such individuals are less likely to self-respond to the census and less likely to be found in administrative records.

69. Another source of potential geographic variation in the accuracy of the count is the variation in the availability, accuracy, and content of administrative records. As another example, the above noted state-by-state variation in the year of adoption of “enumeration at birth” is likely to create variation in the accuracy of Numident across states. For example, the Census Bureau plans to rely on Medicaid/Children’s Health Insurance Program data from the Department of Health and Human Services (HHS) for producing citizenship estimates.¹⁰² Census Bureau research documents that the content and availability of HHS administrative

¹⁰¹ The difference between population groups is called the differential undercount. Although differential undercounts have been documented since the 1940 census, they have typically improved from one census to the next.

¹⁰² Karen D. Deaver, Decennial Census Programs Directorate. Intended Administrative Data Use in the 2020 Census, May 1, 2020. <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/administrative-data-use-2020-census.pdf>.

records vary widely across states.¹⁰³ More striking is varying access to state Department of Motor Vehicle (DMV) records. The Census Bureau has requested DMV data from the states, including citizenship status and eye color among other characteristics, but only a handful of states have agreed. As of July 2020, just four states appear to have entered into agreements to provide the requested DMV data to the Census Bureau.¹⁰⁴ Asymmetries in information about state populations could make it easier or harder to identify and exclude undocumented immigrants from apportionment populations. Consider, for instance, that South Carolina, Nebraska, and South Dakota are sharing citizenship status from the DMV with the Census Bureau, whereas Iowa is sharing DMV data that does not include citizenship status, and many other states have refused to provide any DMV information at all. Such variation in data availability and accuracy across states raises concerns about the fairness or distributional accuracy of the resulting population counts.

70. DMV records are also notoriously unreliable.¹⁰⁵ Typically, driver-license records reflect a person's citizenship status only as of the date the person applied for a license and was asked to provide proof of either U.S. citizenship or legal presence in the United States. If a non-citizen gets a driver license and then later naturalizes, the DMV record will be incorrect (and unlikely to be updated until they need to interact with the agency again). Florida and Texas attempted to purge from their voter rolls registered voters who were identified as having been

¹⁰³ Brown et al. 2018, 14.

¹⁰⁴ <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen>.

¹⁰⁵ Wang, Hansi Lo. (November 20, 2019). Nebraska Is 1st State To Share Driver's License Records With Census Bureau. <https://www.npr.org/2019/11/20/781373128/nebraska-1st-to-say-it-will-share-drivers-license-records-with-census-bureau>.

noncitizens when they applied for driver licenses, but it was discovered that virtually all of them were actually naturalized citizens who had outdated information in DMV records.¹⁰⁶

71. In sum, efforts to exclude undocumented immigrants will lower the accuracy of the count and those effects are likely to vary across states in a manner rendering the resulting apportionment inequitable.

B. Any Method for Excluding Undocumented Immigrants from the 2020 Apportionment Count would Violate Census Processes and Procedures

72. The 2020 operational plan does not provide for a method for excluding undocumented immigrants in the decennial count. In the years of planning, preparation, and testing for the 2020 Census, the Census Bureau did not evaluate possible methods for producing an apportionment count that excludes undocumented immigrants. It is infeasible for the Census Bureau to suddenly shift their operational plan in the midst of census operations, especially in light of the challenges with COVID-19 and without evaluating the implications for the accuracy of the results. In testimony before Congress, former Census Director Bob Groves warned, “Rarely in the conduct of censuses throughout the world is the responsible agency asked to produce official estimates critical to the economy or the society without prior testing. The attempt to assemble from administrative record systems and other sources counts of citizens at small geographical areas as official statistics is a task unprecedented in the history of the Bureau. With unprecedented efforts within a statistical agency serving the country comes the obligation to inform the country of the strengths and weaknesses of the product of those efforts.”¹⁰⁷

¹⁰⁶ Lopez, Ashley. (February 14, 2019). There’s No Easy Way For Texas To Vet Its List Of Alleged Noncitizen Voters. Just Ask Florida. National Public Radio Kut 90.5. <https://www.kut.org/post/theres-no-easy-way-texas-vet-its-list-alleged-noncitizen-voters-just-ask-florida>.

¹⁰⁷ <https://docs.house.gov/meetings/GO/GO00/20200729/110948/HHRG-116-GO00-Bio-GrovesR-20200729.pdf>.

73. Planning and testing for producing an accurate and reliable census count is codified in formal policies and procedures of the Census Bureau. The OMB and Census Bureau Quality Standards recognize such pretesting as a necessary step in an accurate and reliable population count.¹⁰⁸ The U.S. Government Accountability Office, in designating the decennial census as a high risk activity, emphasized that it must “rigorously test individual census-taking activities to provide information on their feasibility and performance, their potential for achieving desired results, and the extent to which they are able to function together under full operational conditions.”¹⁰⁹ Such testing has not occurred for the creation of apportionment numbers that exclude undocumented immigrants.

74. According to Census Bureau Statistical Quality Standards, the Census Bureau is required to develop a preliminary study design that describes the methods to be used and “addresses verification and evaluation of the quality of the acquired data.”¹¹⁰ Those standards also require “[v]erification and testing of the editing and imputation systems; and monitoring and evaluation of the quality of the editing and imputation operations.”¹¹¹ To date, there is no indication that sufficient planning and evaluation of the statistical modeling required to estimate an apportionment population that excludes undocumented immigrants has occurred. With just a few months left before the final data product must be released, the Census Bureau is still in the process of acquiring data sources—so it has not yet evaluated coverage nor conducted the required quality control checks.

¹⁰⁸ For example, the Census Bureau explicitly requires pretesting of survey items. The Handbook for Administrative Data Projects requires a scientific merit review of explicit “models to be estimated, [and] how model variables will be measured” (25).

¹⁰⁹ U.S. Government Accountability Office. (2017). Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others, U.S. Government Accountability Office, (GAO-17-317), Retrieved from <https://www.gao.gov/products/GAO-17-317>.

¹¹⁰ Census Bureau Quality Standards, 32.

¹¹¹ <https://www.census.gov/about/policies/quality/standards/standardc2.html>.

75. As a point of comparison, consider that the Census Bureau began investigating methods for utilizing administrative records in NRFU operations in the 2020 Census shortly after *the 2010 census*. By the time the 2018 Operational Plan was drafted, the use of administrative records had undergone years of research led by a team of census researchers (Administrative Records Modeling Team), extensive testing in large-scale tests, engagement with stakeholders (e.g., I served on an administrative records working group for the Census Scientific Advisory Committee), publication and presentation in professional outlets, and significant revisions in light of the results of that research.¹¹² Again, none of that has occurred with respect to the plan to exclude undocumented immigrants from the apportionment base.

76. OMB Policy Directive 1 requires transparency and engagement with stakeholders. Here again, the Census Bureau has failed to follow its own rules. The Census Bureau has failed to respond to requests for more information about their plans for estimating citizenship status.¹¹³ For example, the Census Bureau has still failed to respond to an October 2019 Campaign Legal Center (CLC) request for information about the use of state DMV records in modeling citizenship status.¹¹⁴ The Census Bureau also canceled the March 2020 meeting of the Census Scientific Advisory Committee (CSAC).¹¹⁵

77. There is simply not sufficient time for the Census Bureau to follow required policies and procedures before the apportionment deadline. During his recent testimony to Congress, Dr. Steven Dillingham, the current Director of the Census Bureau, seemed to

¹¹² The final 2020 Census Operational Plan scaled back the plans to use administrative records compared to initial plans in the 2015 version 1.1. Operational Plan.

¹¹³ <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/>.

¹¹⁴ <https://campaignlegal.org/cases-actions/clc-v-bureau-census-foia-delay-suit>.

¹¹⁵ <https://www.federalregister.gov/documents/2020/03/17/2020-05465/census-scientific-advisory-committee>.

recognize the impossibility of the task. When Representative Comer (R-KY) asked if he could be confident the Census Bureau would “produce an accurate estimate of the accurate count of legal citizens, for purposes of apportionment,” Director Dillingham demurred: “I am confident that we can analyze the data we have and look at the methodologies that might be employed for that purpose.”¹¹⁶

78. In sum, the production of 2020 apportionment numbers that exclude undocumented immigrants requires reliance on untested modeling approaches and unverified modeling assumptions that will inherently result in a population count that is less reliable and less accurate than the planned methods for counting the population.

C. Additional Impacts

79. Beyond the impact of the less accurate census, the administration’s effort to exclude the undocumented immigrant population from the apportionment count could further threaten the accuracy and reliability of the apportionment population by reducing cooperation with the decennial census. The very exercise of asking the Census Bureau to use administrative records beyond their originally intended purpose to identify the legal status of the population will stoke fears about confidentiality and will undermine trust in the Census Bureau. As the former director of the Census John Keane explained: “If the Census Bureau were directed to enumerate undocumented aliens separately in order to remove them from the apportionment count, we would run the risk of being perceived as an enforcement agency.... The Census Bureau goes to great lengths to avoid misperception that could adversely affect cooperation. We must convince the population that it is safe to be included in the census.”¹¹⁷

¹¹⁶ <https://www.sciencemag.org/news/2020/07/census-director-dodges-legislators-questions-about-trump-memo-undocumented-residents>.

¹¹⁷ John G. Keane. Statement of the Director of the Bureau of the Census Before the Subcommittee on Energy, 5.

80. Research shows that attitudes about privacy and confidentiality are strong predictors of census self-response—those individuals reporting higher levels of concern about the confidentiality of census data are less likely to return their census forms or cooperate with enumerators, more likely to skip individual questions, and more likely to provide inaccurate responses.¹¹⁸ Lower levels of self-response, in turn, further reduce the quality of the census count.¹¹⁹ In testimony before Congress, Former U.S. Census Director John Thompson warned:

[T]he directive to exclude undocumented persons from the Apportionment base has a high potential to reduce the likelihood of response for the hard-to-count populations including non-citizens and immigrants. A significant component of the Census Bureau plan to get a complete count of these populations is getting out a message that the 2020 Census is important to local communities and that respondent information is kept completely private and not shared with any outside entity including law and immigration enforcement. The Census Bureau has also documented that it will be more challenging to get this message out relative to previous censuses given higher levels of fear of government.¹²⁰

According to OMB Policy Directive 1:

Federal statistical agencies and recognized statistical units must function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policy-making activities within their respective Departments. Specifically, Federal statistical agencies and recognized statistical units must be able to conduct statistical activities autonomously when determining what information to collect and process, the physical security and information systems security employed to protect confidential data, which methods to apply in their estimation procedures and data analysis, when and how to store and disseminate their statistical products, and which staff to select to join their agencies. In order to maintain credibility with data providers and users as well as the public, Federal statistical

¹¹⁸ *E.g.*, Singer, E., Mathiowetz, N. A., & Couper, M. P. (1993). The impact of privacy and confidentiality concerns on survey participation: The case of the 1990 U.S. census. *Public Opinion Quarterly*, 57, 465–482.

¹¹⁹ Brown, J. D., Heggeness, M. L., Dorinski, S. M., Warren, L., & Yi, M. (2019). Predicting the Effect of Adding a Citizenship Question to the 2020 Census. *Demography*, 56(4), 1173-1194.

¹²⁰ Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020. <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Testimony%20Thompson.pdf>.

agencies and recognized statistical units must seek to avoid even the appearance that agency design, collection, processing, editing, compilation, storage, analysis, release, and dissemination processes may be manipulated.¹²¹

81. Any effort to exclude undocumented immigrants would violate this Directive.

The Memorandum, coming on the heels of the Supreme Court case concerning the citizenship question, the recent additional political appointments to the agency, and fundraising efforts linked to excluding noncitizens from the Census, has served to politicize the decennial count and jeopardize trust in the federal statistical system. In testimony before Congress, Former U.S. Census Director John Thompson expressed concern that the Trump administration had politicized the Census: “Perceptions that the results of the 2020 Census have been manipulated for political purposes will greatly erode public and stakeholder confidence, not only in the 2020 Census but in our democracy.”¹²²

VII. CONCLUSION

82. In summary, it is my opinion that there is no feasible way to produce an accurate and reliable 2020 apportionment count that excludes undocumented immigrants by the apportionment deadline. The 2020 Census will not provide an actual enumeration of the undocumented immigrant population in each state that could be used to exclude undocumented immigrants from the apportionment count. In addition, existing estimates of undocumented immigrants are inadequate for use in adjusting the apportionment count because they are not actual enumerations, they rely on sampling, and they are inaccurate. Without an actual enumeration, there is no known method of excluding undocumented immigrants from the 2020

¹²¹ Office of Management and Budget (OMB), Policy Directive No. 1, p. 71615.
<https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

¹²² Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020.
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Testimony%20Thompson.pdf>.

census count for purposes of apportionment, including the use of administrative records, that does not rely on statistical sampling. The use of administrative records to estimate numbers of undocumented immigrants would differ in kind and degree from count imputation methods that have been approved by the Supreme Court, or from the current use of administrative records in household enumeration. Finally, the use of administrative records to exclude undocumented immigrants from the 2020 apportionment count would result in a less accurate and more biased decennial census count and apportionment.

83. I reserve the right to amend or supplement my opinions if additional information or materials become available.

84. I declare under penalty of perjury that the foregoing is true and correct.

DATE: August 18, 2020



D. Sunshine Hillygus, Ph.D

Appendix A

Works Cited

Abowd, John. September 4, 2018. Protecting the Confidentiality of America's Statistics: Ensuring Confidentiality and Fitness-for-Use. Blog Post at U.S. Census Bureau. <https://www.census.gov/newsroom/blogs/research-matters/2018/08/protecting-the-confi0.html>.

Baker, B. (2018). *Population Estimates: Illegal Alien Population Residing in the United States: January 2015*. Washington, DC: Department of Homeland Security. https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

Bond, B., Brown, J. D., Luque, A. & O'Hara, A. (2014). The nature of the bias when studying only linkable person records: Evidence from the American Community Survey. CARRA Working Paper #2014-08. Washington, D.C.: U.S. Census Bureau. <https://www.census.gov/content/dam/Census/library/working-papers/2014/adrm/carra-wp-2014-08.pdf>.

Brown, J, Heggeness, M, Dorinski, S, Warren, L & Yi, M (2018). *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, Center for Economic Studies, U.S. Census Bureau Working Paper 18-38. Available at <https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf>.

Brown, J. D., Heggeness, M. L., Dorinski, S. M., Warren, L., & Yi, M. (2019). Predicting the Effect of Adding a Citizenship Question to the 2020 Census. *Demography*, 56(4), 1173-1194.

Costanzo et al. (June 2002). Evaluating Components of International Migration: The Residual Foreign Born. <https://www.census.gov/content/dam/Census/library/working-papers/2001/demo/POP-twps0061.pdf>.

Czajka, J. L. (2013). Can administrative records be used to reduce nonresponse bias? *The ANNALS of the American Academy of Political and Social Science*, 645(1), 171-184.

Davis, Kristina. (April 7, 2019). "The impossible challenge of tracking visa overstays," *The San Diego Union-Tribune*. <https://www.sandiegouniontribune.com/news/immigration/story/2019-04-06/the-impossible-challenge-of-tracking-visa-overstays>.

Deaver, Karen, Decennial Census Programs Directorate. Intended Administrative Data Use in the 2020 Census, May 1, 2020. <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/administrative-data-use-2020-census.pdf>

Department of Homeland Security (March 5, 2019). "Potential Improvements to DHS Illegal Alien Population Estimates: Collection and Use of Data," Fiscal Year 2018 Report to Congress.

Department of Homeland Security (Dec. 20, 2019). Privacy Impact Assessment for the Department of Homeland Security Immigration-Related Information Sharing with the U.S. Census Bureau.

Fazel-Zarandi, M. M., Feinstein, J. S., & Kaplan, E. H. (2018). The number of undocumented immigrants in the United States: Estimates based on demographic modeling with data from 1990 to 2016. *PloS one*, 13(9).

Freedman, D., & Wachter, K. (2003). On the Likelihood of Improving the Accuracy of the Census through Statistical Adjustment. *Lecture Notes-Monograph Series*, 40, 197-230.

Griffin, Richard (2014), "Issues Concerning Imputation of Hispanic Origin due to Administrative Record Enumeration for the 2020 Census," Proceedings of the Survey Research Methods Section, American Statistical Association. Available at http://ww2.amstat.org/sections/srms/proceedings/y2014/Files/311893_88330.pdf.

Groves, R. M., Fowler Jr, F. J., Couper, M. P., Lepkowski, J. M., Singer, E., & Tourangeau, R. (2011). *Survey methodology* (Vol. 561). John Wiley & Sons.

Hillygus, DS, Nie, NH, Prewitt, K & Pals, H (2006). *The hard count: The political and social challenges of census mobilization*, Russell Sage Foundation, New York.

Layne, M., Wagner, D., & Rothhaas, C. (2014). Estimating record linkage false match rate for the Person Identification Validation System. Center for Administrative Records Research and Applications Working Paper.

Lopez, Ashley. (February 14, 2019). There's No Easy Way For Texas To Vet Its List Of Alleged Noncitizen Voters. Just Ask Florida. National Public Radio Kut 90.5. <https://www.kut.org/post/theres-no-easy-way-texas-vet-its-list-alleged-noncitizen-voters-just-ask-florida>.

Marcelli, Enrico. (2000). "2000 Census Coverage of Foreign-born Mexicans in Los Angeles County: Implications for Demographic Analysis," presented at the 2000 Annual Meeting of the Population Association of American, Atlanta GA.

Massey, D. S., & Singer, A. (1995). New estimates of undocumented Mexican migration and the probability of apprehension. *Demography*, 32(2), 203-213.

Morrall, Anrew, Henry Willis, Peter Brownell. (2011). *Measuring Illegal Border Crossing Between Ports of Entry: An Assessment of Four Promising Methods*. Rand, Homeland Security and Defense Center.

Office of Immigration Statistics, Homeland Security (December 2018). *Population Estimates: Illegal Alien Population Residing in the United States: January 2015*, 11.

Office of the Inspector General. <https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-07-04-24094.pdf>.

Office of Management and Budget (OMB), Policy Directive No. 1. <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

Passel JS, Clark RL. (March 1997). How Many Naturalized Citizens Are There? An Assessment of Data Quality in the Decennial Census and CPS. Paper presented at the Annual Meeting of the Population Association of America; Washington, DC.

Passel, J. S., & Cohn, D. (2018). US Unauthorized immigrant total dips to lowest level in a decade. Pew Research Center. https://observatoriocolef.org/wp-content/uploads/2018/11/Pew-Research-Center_U.S.-Unauthorized-Immigrants-Total-Dips_2018-11-27.pdf.

Prewitt, K. (2010). The US decennial census: Politics and political science. *Annual Review of Political Science*, 13, 237-254.

Puckett, Carolyn. (2009). "The Story of the Social Security Number," *Social Security Bulletin*, Vol. 69, No. 2.

Rastogi, S., & O'Hara, A. (2012). Census match study. 2010 census program for evaluations and experiments. Center for Administrative Records Research and Applications.

Singer, E., Mathiowetz, N. A., & Couper, M. P. (1993). The impact of privacy and confidentiality concerns on survey participation: The case of the 1990 U.S. census. *Public Opinion Quarterly*, 57, 465-482.

Tourangeau, R., Edwards, B., Johnson, T. P., Wolter, K. M., & Bates, N. (2014). *Hard-to-survey populations*. Cambridge University Press.

Trump President Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, July 21, 2020.

U.S. Census Bureau. Template for Memorandum of Agreement Between the U.S. Department of Commerce and State Program Agencies, 11. <https://big.assets.huffingtonpost.com/athena/files/2019/10/16/5da72b8de4b02253a2f8e8da.pdf>

U.S. Census Bureau. (July 2013). Statistical Quality Standards https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf.

U.S. Census Bureau. (December 2018). 2020 Census Operational Plan: A New Design for the 21st Census, v. 4. <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>.

U.S. Census Bureau (Feb. 2020). Post-2020 Census Citizen Voting Age Population by Race and Ethnicity (CVAP) Special Tabulation. https://www2.census.gov/programs-surveys/decennial/rdo/technical-documentation/special-tabulation/CVAP_Post2020_Census_documentation_v5.pdf

U.S. Bureau of the Census (2001) Report: Recommendation Concerning the Methodology to be Used in Producing Tabulations of Population Reported to States and Localities Pursuant to 13 U.S.C. 141(c) (March 1) Washington, DC Department of Commerce
<https://www.census.gov/dmd/www/pdf/Escap2.pdf>

Wang, Hansi Lo. (November 20, 2019). Nebraska Is 1st State To Share Driver's License Records With Census Bureau. <https://www.npr.org/2019/11/20/781373128/nebraska-1st-to-say-it-will-share-drivers-license-records-with-census-bureau>.

Warren, Robert. (February 27, 2019). Sharp Multiyear Decline in Undocumented Immigration Suggests Progress at US-Mexico Border, Not a National Emergency.
<https://cmsny.org/publications/essay-warren-022719/>.

Warren, R., & Warren, J. R. (2013). Unauthorized Immigration to the United States: Annual Estimates and Components of Change, by State, 1990 to 2010. *International Migration Review*, 47(2), 296–329.

Expert Report of Dr. Christopher Warshaw dated August 17, 2020 and associated exhibits.

Whitford, D. C. (2002). Chronologic Overview of the Census 2000 Adjustment Decision. Joint Statistical Meetings - Section on Survey Research. Methods. New York City.
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.380.7478&rep=rep1&type=pdf>.

Appendix B

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BOOKS

Holbein, J. and D.S. Hillygus. *Making Young Voters: Converting Civic Attitudes into Civic Action*. Cambridge University Press, 2020.

Hillygus, D.S. and T. Shields. *The Persuadable Voter: Wedge Issues in Presidential Campaigns*. Princeton University Press, 2008. Paperback, 2009.

Winner of the 2009 Robert E. Lane Award.

Excerpt reprinted in *Controversies in Voting Behavior*, 5th edition(2011).

Hillygus, D.S., N. Nie, K. Prewitt, and H. Pals. *The Hard Count: The Political and Social Challenges of Census Mobilization*. Russell Sage Foundation, 2006.

JOURNAL PUBLICATIONS

Valentino, N., K. Zhirkov, and D.S. Hillygus, B. Guay. forthcoming "Personality Differences between Face-to-Face and Online Samples," *Public Opinion Quarterly*.

Hillygus, D. S., and Lopez, J. 2020. Easy as 1, 2, 3? Challenges of the 2020 Census and Implications for Political Science. *Journal of Political Institutions and Political Economy*, 1(2), 289-317.

Bail, C.A., Guay, B., Maloney, E., Combs, A., Hillygus, D.S., Merhout, F., Freelon, D. and Volfovsky, A., 2020. Assessing the Russian Internet Research Agency's impact on the political attitudes and behaviors of American Twitter users in late 2017. *Proceedings of the National Academy of Sciences*, 117(1).

Madson, G. and D.S. Hillygus. 2019. "Who Trusts the Polls? Motivated Reasoning in Evaluations of Polling Results," *Political Behavior*.

Carlson, C., V. Dounoucos, and D.S. Hillygus. 2019. "The Message and the Medium: The Communication Effects of Twitter Commentary," *Journal of Information Technology & Politics*.

Holbein, J., D.S. Hillygus, C. Gibson-Davis, M. Lenard, and D. Hill. 2018. "The Development of Students' Engagement in School, Community, and Democracy," *British Journal of Political Science*.

Hillygus, D.S. 2018. "Navigating Scholarly Exchange in Today's Media Environment," *Journal of Politics* 80(3), 1064-1068(editor-reviewed).

Xing, Z. D.S. Hillygus and L. Carin. 2017. "Evaluating U.S. Electoral Representation with a Joint Statistical Model of Congressional Roll-Calls, Legislative Text, and Voter Registration Data," *Proceedings of the 23rd ACM SIGKDD Conference on Knowledge Discovery and Data Mining (KDD)*, 1205-1214.

Knutson, K, J. Phelan, M. Paskow, A. Roach, K. Whiton, G. Langer; D.S. Hillygus, M. Mokrzycki, W.A. Broughton, S. Chokroverty, K.L. Lichstein, M. Hirschowitz. 2017. "The National Sleep Foundation's Sleep Health Index," *Sleep Health* 3 (4): 234-40.

DeYoreo, M., Reiter, J. and D.S. Hillygus. 2017. "Nonparametric Bayesian Models With Focused Clustering for Mixed Ordinal and Nominal Data," *Bayesian Analysis*.

Hillygus, D.S., McKee, S., and M. Young. 2017. "Reversal of Fortune: The Political Behavior of White Migrants to the South," *Presidential Studies Quarterly*.

Henderson, M. and D.S. Hillygus. 2016. "Contextual Factors in Time of Decision in the 2008 Presidential Election," *Public Opinion Quarterly*.

Holbein, J. and D.S. Hillygus. 2016. "Making Young Voters: The Impact of Preregistration on Youth Turnout," *American Journal of Political Science*.

Ballard, A., D.S. Hillygus, and T. Konitzer. 2016. "Campaigning Online: Web Display Ads in the 2012 Presidential Campaign," *PS: Political Science & Politics*.

Si, Y., J. Reiter, and D.S. Hillygus. 2016. "Bayesian Latent Pattern Mixture Models For Handling Attrition In Panel Studies With Refreshment Samples," *Annals of Applied Statistics*.

Schifeling, T. C. Cheng, J. Reiter and D.S. Hillygus. 2015. "Accounting for Nonignorable Unit Nonresponse and Attrition in Panel Studies with Refreshment Samples," *Journal of Survey Statistics and Methodology*.

Gerber, A., K. Arceneaux, C. Boudreau, C. Dowling, and D.S. Hillygus. 2015. "Reporting Balance Tables, Response Rates and Manipulation Checks in Experimental Research: A Reply from the Committee that Prepared the Reporting Guidelines." *Journal of Experimental Political Science*.

Johnston, C., D.S. Hillygus, and B. Bartels. 2014. "Ideology, The Affordable Care Act Ruling, and Supreme Court Legitimacy," *Public Opinion Quarterly*, 78 (4): 963-973.

Gerber, A., K. Arceneaux, C. Boudreau, C. Dowling, D.S. Hillygus, T. Palfrey, D. Biggers, D. Hendry. 2014. "Reporting Guidelines for Experimental Research: A Report from the Experimental Research Section Standards Committee," *Journal of Experimental Political Science*, 1(1): 81-98.

Si, Y., J. Reiter and D.S. Hillygus. 2014. "Semi-parametric Selection Models for Potentially Non-ignorable Attrition in Panel Studies with Refreshment Samples," *Political Analysis*, 23(1): 92-112.

Frankel, L. and D.S. Hillygus. 2014. "Panel Attrition and the Survey Experience," *Political Analysis*, 22(3): 336-353.

Hillygus, D.S. and S. Treul. 2014. "Assessing Strategic Voting in the 2008 Presidential Primaries," *Public Choice*, 161(3): 517-536.

Aldrich, J., B. Bishop, R. Hatch, D.S. Hillygus, and D. Rohde. 2013. "Blame, Responsibility, and the Tea Party in the 2010 Midterm Elections," *Political Behavior*, 36(3), 471-491.

Deng, Y., D.S. Hillygus, J. Reiter, and Y. Si. 2013. "Handling Attrition in Longitudinal Studies: The Case for Refreshment Samples," *Statistical Science*, 28(2): 238-256.

Hillygus, D.S. 2011. "The Evolution of Election Polling in the United States," *Public Opinion Quarterly*, 75(5): 962-981.

Henderson, M. and D.S. Hillygus. 2011. "The Dynamics of Health Care Opinion, 2008-2010: Partisanship, Self-Interest, and Racial Resentment," *Journal of Health Politics, Policy, and Law*, 36(6): 945-960.

Henderson, M., D.S. Hillygus, and T. Tompson. 2010. "'Sour Grapes' or Rational Voting? Voter Decision Making Among Thwarted Primary Voters in 2008," *Public Opinion Quarterly*, 74(3): 499-529.

Ellis, R., D.S. Hillygus and N. Nie. 2010. "Retrospective and Prospective Candidate Evaluations and the Dynamics of Vote Choice in 2008," *Electoral Studies* 29(4): 582-593.

Hillygus, D.S. and M. Henderson. 2010. "Policy Issues and the Dynamics of Vote Choice in the 2008 Presidential Election," *Journal of Elections, Public Opinion, and Parties*, 20(2): 241-269.

Treier, S. and D.S. Hillygus. 2009. "The Nature of Political Ideology in the Contemporary Electorate," *Public Opinion Quarterly*, 73(4):679-703.

Burden, B. and D.S. Hillygus. 2009. "Opinion Formation, Polarization, and Presidential Reelection." *Presidential Studies Quarterly*, 39: 619-35.

Hillygus, D.S. and T. Shields. 2008. "Southern Discomfort? Regional Differences in Voter Decision Making in the 2000 Presidential Election," *Presidential Studies Quarterly*, 38(3): 506-520.

Hillygus, D.S. 2007. "The Dynamics of Voter Decision Making Among Minor Party Supporters: The 2000 U.S. Presidential Election," *British Journal of Political Science*, 37(2): 225-244.

Hillygus, D.S. 2005. "Campaign Effects and the Dynamics of Turnout Intention in Election 2000," *Journal of Politics*, 66(1): 50-68.

Hillygus, D.S. 2005. "The Missing Link: Exploring the Relationship between Higher Education and Political Behavior," *Political Behavior*, 27(1): 25-47.

Hillygus, D.S. and T. Shields. 2005. "Moral Issues and Voter Decision Making in the 2004 Presidential Election," *PS: Political Science and Politics*, 38(2): 201-10.
Reprinted in *Quantitative Methods in Practice*, D. Rochefort (ed) CQ Press, 2006.

Hillygus, D.S. and S. Jackman. 2003. "Voter Decision Making in Election 2000: Campaign Effects, Partisan Activation, and the Clinton Legacy," *American Journal of Political Science*, 47(4): 583-596.

Nie, N. and D.S. Hillygus. 2002. "Where Does Internet Time Come From?: A Reconnaissance," *IT & Society*, 1(2): 1-20.

Nie, N. and D.S. Hillygus. 2002. "The Impact of Internet Use on Sociability: Time-Diary Findings," *IT & Society*, 1(1): 1-29.

OTHER PUBLICATIONS

Zhou, J., D.S. Hillygus, and J. Aldrich. 2019. "Understanding the Trump Win: Populism, Partisanship, and Polarization in the 2016 Election," *Publications of the Bavarian American Academy*, Heidelberg University Press.

Guay, B. and D.S. Hillygus. 2018. "Online Public Opinion Polling," *Oxford Bibliographies*

Hillygus, D.S. and S. Snell. 2018. "Longitudinal Surveys: Issues and Opportunities," *Oxford Handbook on Polling and Polling Methods*. L. Atkeson and M. Alvarez, eds. New York: Oxford University Press.

Hillygus, D.S. and B. Guay. 2016. "The Virtues and Limitations of Election Polling in the United States," *Seminar Magazine*.

Hillygus, D.S. 2016. "The Practice of Survey Research: Changes and Challenges," *New Directions in Public Opinion*, second edition. Adam Berinsky, ed. Routledge Press.

Hillygus, D.S., N. Jackson, and M. Young. 2014. "Professional Respondents in Online Survey Panels," *Online Panel Research: A Data Quality Perspective*. M. Callegaro, R. Baker, P. Lavrakas, J. Krosnick, J. Bethlehem, and A. Göritz, eds.

Frankel, L. and D.S. Hillygus. 2014. "Niche Communication in Political Campaigns," *Oxford Handbook on Political Communication*. Kathleen Hall Jamieson and Kate Kenski, eds. New York: Oxford University Press.

Hillygus, D.S. and B. Burden. 2013. "Mass Polarization in the Bush Presidency," *The Presidency of George W. Bush: Perspectives on the Forty-Third President of the United States*, D. Kelly and T. Shields, eds. Texas A&M Press.

Hillygus, D.S. 2011. "The Practice of Survey Research: Changes and Challenges" *New Directions in Public Opinion*. Adam Berinsky, ed. Routledge Press.

Bishop, B. and D.S. Hillygus. 2011. "Campaigning, Debating, Advertising," *Oxford Handbook on Public Opinion and Media*. Larry Jacobs and Robert. Shapiro, eds. New York: Oxford University Press.

Hillygus, D.S. 2010. "Campaign Effects on Vote Choice," *Oxford Handbook on Elections and Political Behavior*. Jan Leighly and George C. Edwards III, eds. Oxford University Press.

Bishop, B., A. Cooper, and D.S. Hillygus. 2009. "Innovative Survey Methodologies for the Study of Attitudes Toward Terrorism and Counterterrorism Strategies," Institute for Homeland Security Solutions, Duke University.

Hillygus, D.S. 2009. "Guest Editor Introduction: Understanding the 2008 Presidential Election," *Public Opinion Quarterly* 73: 841-844.

Hillygus, D.S. 2009. "The Need for Survey Reporting Standards in Political Science," *The Future of Political Science: 100 Perspectives*, G. King, N. Nie, and K. Schlozman (eds).

Hillygus, D.S. 2008. "Internet and Politics 2008: Microtargeting," *The Publius Project*, The Berkman Center.

Hillygus, D.S. and T. Shields. 2008. "Moderation or Polarization in Candidates' Campaign Agendas?" *The Polling Report*, 24(15).

Hillygus, D.S. 2007. "Moral Values: Media, Voters, and Candidate Strategy," in *A Matter of Faith? Religion in the 2004 Presidential Election*, Brookings Institution Press.

Hillygus, D.S. 2004. Review of Models of Voting in Presidential Elections: The 2000 Election, H. Weisberg and C. Wilcox (eds), in *Presidential Studies Quarterly*, 34(3).

Brady, D. and D.S. Hillygus. 2004. "Assessing the Clinton Presidency: The Political Constraints of Legislative Policy" in *The Clinton Riddle: Perspectives on the 42nd President*, Shields, Wayne, and Kelley (eds). U of Arkansas Press.

Nie, N., D.S. Hillygus, and L. Erbring. 2003. "Internet Use, Interpersonal Relations and Sociability: A Time Diary Study" in *The Internet in Everyday Life*, Wellman and Haythornthwaite (eds). Oxford: Blackwell Publishers.

Nie, N. and D.S. Hillygus. 2001. "Education and Democratic Citizenship," in *Making Good Citizens: Education and Civil Society*, Ravitch and Viteritti (eds). Yale University Press.

CURRENT PROJECTS

Olanrewaju A., G. Madson, D.S. Hillygus and J. Reiter. "Leveraging Auxiliary Information on Marginal Distributions in Nonignorable Models for Item and Unit Nonresponse in Surveys," under review.

Lopez, J. and D.S. Hillygus. "Why So Serious?: Survey Trolls and Political Misinformation" available at SSRN.

Endres, K. D.S. Hillygus, and S. Snell, "Big Data, Big Problems: Overcoming Barriers to Consent for Data Linking."

HONORS/AWARDS

Duke University Howard D. Johnson Distinguished Teaching Award, 2019.

National Science Foundation, Political Science Program (\$3.9m) "ANES Web: American National Election Study," (PI S. Iyengar), 2018-2021.

Provost "Together Duke" Initiative (\$454,000), "Duke Polarization Lab" (Co-PI with K. Heller, J. Moody, G. Sapiro, A. Volfovsky and PI C. Bail), 2018-2019

National Science Foundation, Political Science Program, Grant SES-1657821 (\$335,690), "Making Young Voters: Policy Reforms to Increase Youth Turnout" (PI with Co-PI J. Holbein) 2017-2019

National Science Foundation, MMS Program, Grant SES-1733835 (\$300,000), "Leveraging Auxiliary Information on Marginal Distributions in Multiple Imputation for Survey Nonresponse" (Co-PI with PI J. Reiter) 2017-2019

Bass Connections, Education and Human Development grant (\$23,000), 2017-2019

Facebook Academic Program gift (\$25,000), 2016

National Science Foundation, Political Science Program, Grant SES-1416816 (\$249,999), "Education, Engagement, and Well-being among Adolescents" (PI with Co-PI C. Gibson-Davis) 2014-2016

National Science Foundation, MMS Program, Grant SES-1131897 supplement (\$199,000), "Conducting Research Using the Survey of Income and Program Participation (SIPP) Panel Study," 2013-2015

Information Initiative at Duke, Research Incubator Award (\$75,000) "Using Big Data to Understand the American Electorate," (with L. Carin), 2013-2015

National Science Foundation, MMS Program, Grant SES-1131897 (\$2,997,591), “Triangle Census Research Network” (Senior Co-Investigator with L. Cox, D. Dunson, J. Hotz, F. Li, and PI J. Reiter and Co-PI A. Karr), 2011-2016

National Science Foundation, MMS Program, Grant SES-1061241 (\$160,000), “Multiple Imputation Methods for Handling Missing Data in Longitudinal Studies with Refreshment Samples.” (with PI J. Reiter), 2011-2012

National Science Foundation, Political Science Program, SES-1110341 “Balancing Innovation and Continuity in Longitudinal Surveys” (\$38,235), 2011

IHSS Award, Innovative Survey Methodologies (\$25,081), 2009

Robert E. Lane Award for best book published in political psychology in 2008

CAPS Junior Faculty Seed Grant (\$5000), 2008

Shorenstein Center for Press and Politics Fellow, Fall 2005

Program on the Global Demography of Aging Grant (\$17,130), 2005-06

Institute for Quantitative Social Science Research Grant (\$10,000), 2005-06

Institutional Development Initiative (\$10,000), 2005-06

Blair Center for Southern Politics, 2004 Election Survey Funding (\$85,000)

CAPS Junior Faculty Seed Grant (\$5000), 2004-2005

Milton Fund Grant, Harvard University (\$3500), 2004-2005

Harvard University Cooke-Clark Grant (\$6000)

Westview Paper Prize, 2003 Midwest Political Science Meeting

Heinz Eulau Political Behavior Fellowship, 2002-2003

Best Graduate Student Poster Award, 2002 Political Methodology Meeting

National Conference of State Legislators Women’s Graduate Fellowship, 1998

PROFESSIONAL SERVICE

Associate PI, American National Election Study, 2018-2021

Associate Editor, *Political Analysis*, 2018-

Chair, POQ Advisory Committee, 2011-

Methods, Measurement, and Statistics Advisory Panel, National Science Foundation, 2018-2020

Board Member, American National Election Studies, 2010-2013, 2014-2017

Scientific Advisory Committee, U.S. Census Bureau, 2012-2018

Political Science Advisory Panel, National Science Foundation, 2010-2012

Member, Executive Council, Midwest Political Science Association, 2014-17

Member, Executive Council, Southern Political Science Association, 2014-17

Editorial Board, *American Political Science Review*, 2016-
 Editorial Board, *Journal of Politics*, 2010-
 Editorial Board, *Public Opinion Quarterly*, 2008-
 Editorial Board, *Political Communication*, 2015-
 Editorial Board, *Journal of Experimental Political Science*, 2013-
 Editorial Board, *Political Behavior*, 2011-
 Editorial Board, *Journal of Elections, Public Opinion and Parties*, 2008-
 Editorial Board, *Political Science Network*, 2007-
 Editorial Board, *The Forum*, 2011-
 Editorial Board, *Political Analysis*, 2015-2017
 Editorial Board, *American Journal of Political Science*, 2009-2012
 Guest Editor, *Public Opinion Quarterly* 2009 Special Issue
 AAPOR Journals Committee (2019)
 APSA EPOVB Best Article in Political Behavior Award Committee (2019)
 APSA Experimental Research Section: Reporting Standards Committee (2011)
 APSA Political Meth Section: Nominations Committee (2010-2012), Diversity
 Committee (2005-08, 2011-12), Miller Prize (2017), Emerging Scholar (2018-
 2020)
 SPSA, VO Key Award Committee, 2013
 APSA Gladys M. Kammerer Award Committee, 2012
 APSA Philip Converse Book Award Committee, 2009, 2010 and 2012
 SPSA Program Committee, 2009 and 2012
 JOP Best Paper Award Committee, 2011
 AAPOR Book Award Committee, 2011, 2016

CONFERENCES ORGANIZED

International Total Survey Error Workshop (6/18)
 Conducting Research Using the Survey of Income and Program Participation
 (SIPP) Panel Study, Durham, NC (2/14)
 Balancing Innovation and Continuity in Longitudinal Surveys, Durham, NC (2/11)
 Assessing Survey Quality, Cambridge, MA (4/09)
 Surveying Multiethnic America, Cambridge, MA (4/07)
 Advances in Questionnaire Design, Cambridge, MA (2/06)

Expert Witness Work

League of Women Voters v. State of North Carolina, Case No. 1:13-CV-660
 NAACP et al. v. Bureau of the Census et al., Case No. 8:18-CV-00891
 New York Immigration Coalition v. Dept. of Commerce, Case No. 18-CV-5025

INVITED PRESENTATIONS(last 5 years)

Plenary, Pacific Association of Public Opinion Research Meeting (12/19)
 Massachusetts Institute of Technology (10/19)
 Michigan State University (9/19)
 Plenary, American Association of Public Opinion Research Meeting (5/19)
 University of North Carolina (2/19)
 Emory University (11/18)
 Duke Alumni Association of Philadelphia (4/18)
 Duke Alumni Association of Los Angeles (6/17)
 Duke Alumni Association of Austin (6/17)

Duke Alumni Association of Denver (5/17)
 Fordham University (4/17)
 Qualtrics Innovation Summit, Salt Lake City (3/17)
 Stanford Alumni Association, Durham (2/17)
 Duke Alumni Association of San Diego (11/16)
 Wake Forest University (11/16)
 Reed College (10/16)
 UNC-Wilmington (10/16)
 Duke Alumni Association of North Texas (9/16)
 Duke Alumni Association of Charlotte (5/16)
 Dept of Political Science, MIT (4/16)
 Center for the Study of Democratic Politics, Princeton (3/16)
 Appalachian State University (3/16)
 Computers, Privacy, and Data Protection Conference, Brussels (1/16)
 Political Persuasion Conference, Laguna Beach, CA (1/16)
 Duke Alumni Association of Tampa (1/16)
 Keynote, Australian Society for Quantitative Political Science, Melbourne (12/15)
 Dept of Communication, U. of Michigan (11/15)
 Dept of Political Science, UNC-Greensboro (11/15)
 Microsoft Panel on Campaign Technology, D.C. (11/15)
 Political Science Dept, U. Texas (12/14)
 ElectionsLive!, Duke University (11/14)
 American Politics Research Group, UNC (11/14)
 American Politics Workshop, UCLA (01/14)
 The American Panel Survey Workshop, Wash U (11/13)
 Intro to Survey Methods, Shanghai Jiao Tong University (06/13)
 Senior Scholar Career Presentation, Visions in Methodology, FSU (04/13)
 American Politics Workshop, Yale University (03/13)
 Google Political Innovation Summit, New York (01/13)

DEPARTMENTAL AND UNIVERSITY SERVICE

Founding Director, Duke Initiative on Survey Methodology, 2010-
 Associate Director, Institutional Review Board, Duke University, 2010-
 Social Science Research Institute Steering Committee, 2011-
 Duke Advisory Committee on Investment Responsibility, 2017-
 EHD-Bass Connections Team Leader, 2017-2020
 Standing Committee for Misconduct in Research, 2019-2022
 Social Science Research Institute (SSRI) Director Search chair, 2018
 Faculty Fellow, Duke Alumni Association, 2015-2018
 POLIS steering committee, 2015-2017
 Social Science Research Institute Planning Committee, 2012
 Behavior and Identity Field Chair, 2011-2012, 2014, 2016-2018
 Behavior and Identity Workshop Organizer, 2010-2012, 2016
 American Politics Field Organizer, 2010-2012
 REP Search Committee, Duke Political Science, 2013, 2017
 China Search Committee, Duke Political Science, 2011
 Graduate Admissions Committee, Duke Political Science, 2009, 2014

D.S. Hillygus

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Undergraduate Curriculum Committee, Duke Political Science, 2009
Faculty Organizer, Duke Political Science Graduate Orientation, 2009
Harvard University Faculty Advisory Group for Metrics and Analysis, 2006-2009
Faculty Advisory Board for the Social Sciences, Harvard FAS, 2008-2009
Executive Committee, Center for American Political Studies, 2003-2009
Organizer, Political Psychology and Behavior Workshop, 2003-2008
Standing Committee on Women, Harvard FAS 2004-2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMON CAUSE, et al.,

Plaintiffs,

vs.

20-CV-02023 (CRC)

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

Defendants.

Expert Declaration of Mr. John Thompson

I. Introduction

1. As I explain in more detail below, I served as the Director of the U.S. Census Bureau from August 2013 to June 2017.
2. On July 21, 2020 President Trump issued a Memorandum for the Secretary of Commerce on *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census* (in the remainder of this document I will use the term “Memorandum” to refer to this document). I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 Census and the resulting Census Apportionment counts.
3. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the Congress of the United States and the Electoral College. The 2020 Census will also be used for numerous other functions to support good policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over \$1.5 trillion of federal funds annually; informing sound policy development; providing critical information for state, local and tribal government planning; and supplying critical information to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.
4. I have carefully reviewed the Memorandum instructing the Secretary of Commerce to provide information to exclude undocumented persons from the Apportionment counts. I have also reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic. As I describe below, the Memorandum is concerning, in part, because it lacks transparency as required by law and the Census Bureau Statistical Quality Standards

that would allow for the assessment of the methodology that might be used in response to the direction to exclude undocumented persons from the 2020 Census Apportionment counts.

II. Qualifications

5. Below I briefly describe specific aspects of my qualifications and work experience that establish my credentials as a statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.
6. I have served as both the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a professional in the area of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.
7. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.
8. The Census Bureau is the largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization Survey, the National Health Interview Survey; the Economic Census; the release of 13 principal key economic indicators on a monthly or quarterly basis; and about 100 additional surveys. The Director of the Census Bureau is appointed by the President and confirmed by the Senate.
9. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan. In addition, major field tests were conducted in 2013, 2014, 2015 and 2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. During my service, the Census Bureau reviewed the residence criteria used to determine where to count the residents of the United States. A preliminary proposal for the 2020 residence criteria was issued for public comment on June 30, 2016. In particular, the Census Bureau was following the same principles that had guided each previous Decennial Census: the Constitution requires that everyone living in the United States should be included in the enumeration, regardless of immigration status, for all uses of the census, including Apportionment. The final 2020 Census residence criteria were issued on February 5, 2018, and again followed these same principles to count everyone living in the United States at their usual place of residence regardless of immigration status for Apportionment and all other uses.

10. Prior to being appointed Director of the Census Bureau, I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies.
11. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.
12. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Opinions

A. Background on the Decennial Census

13. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the Congress; redrawing congressional and state legislative voting districts; allocating over \$1.5 trillion in federal funds annually; supporting evidence-based policy making by state, local and tribal governments; and allowing informed decisions by large and small business to generate economic growth and job creation.

B. Lack of Transparency Concerning the Census Bureau's Methodology for Excluding Undocumented Immigrants

14. At this point, little is known about the ultimate quality and accuracy of the 2020 Census. The location and magnitude of errors caused by potential undercounts and overcounts has not been determined. In addition, the level of inclusion of undocumented persons in the 2020 Census is also unknown and unknowable in time to implement the President's Memorandum to apportion the House of Representatives.
15. It will be very challenging for the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census at the time when

Apportionment data is required to be reported. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. The Memorandum does not provide any specific directions and the Census Bureau has not publicly described how it will comply with the Memorandum.

16. There are legal and statistical standards that the Census Bureau has followed and should continue to follow with respect to transparency:
 - a. The Census Bureau is a Federal Statistical Agency and as Director Dillingham noted in sworn testimony July 29, 2020, the Census Bureau intends to follow the principles and practices identified by the Committee on National Statistics for Federal Statistical Agencies. Principle 2, *Credibility among Data Users*, states: “Also essential to building credibility are for an agency to be open and transparent about its data sources and their limitations, demonstrate understanding of users’ needs and priorities, fully document the processes used to produce and disseminate statistical products, and take proactive steps to preserve data for future use.”
 - b. The Office of Management and Budget issued a Memorandum on April 24, 2019 titled *Improving Implementation of the Information Quality Act*, to the Heads of all Executive Departments and Agencies strengthening previous guidance in this area. This document states: “The IQA requires agencies [to] conduct pre-dissemination review of their information products. During this review, each agency should consider the appropriate level of quality for each of the products that it disseminates based on the likely use of that information.”
17. In 2013 the Census Bureau issued Statistical Quality Standards that are currently guiding the conduct of all their programs including the 2020 Census. In particular:
 - a. Statistical Quality Standard F1, *Releasing Information Products* Requirement F1-6 states: “Information products must comply with the Census Bureau’s statistical quality standards and must be free of serious data quality issues in order to be released outside the Census Bureau without restrictions.”
 - b. Statistical Quality Standard F2, *Providing Documentation to Support Transparency in Information Products* Requirement F2-2 states: “Documentation must be readily accessible in sufficient detail to allow qualified users to understand and analyze the information and to reproduce (within the constraints of confidentiality requirements) and evaluate the results.”
18. The most important information produced and released by the Census Bureau is the constitutionally mandated Apportionment data. Because this information is so vital to our democracy, it is critically important that the Department of Commerce and the Census Bureau are transparent in their adherence to their legal and statistical standards. At a minimum, the Census Bureau has an obligation to assure the public and stakeholders that any methods it develops for determining the number of undocumented individuals is

statistically sound.

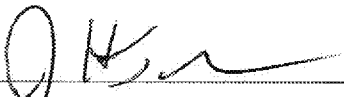
19. The Census Bureau has always understood the Constitution to require an actual enumeration of all persons in the United States for purposes of apportionment. This actual enumeration has always included immigrants, including undocumented immigrants. To my knowledge, no actual enumeration that identifies the number of undocumented immigrants has been undertaken by the Census Bureau and, at this late date, it is too late to undertake such an actual enumeration of undocumented immigrants for purposes of apportionment based on the 2020 census.
20. At this point, I am not aware of any methodology consistent with the Census Bureau's standards that would allow the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census in order to comply with the Memorandum's instruction.

IV. Conclusion

21. In conclusion, it is my opinion that the Census Bureau has provided no transparency or documentation of how the quality and fitness for use of the Apportionment counts will be determined, nor is there any documentation of how the number of undocumented persons potentially included in the 2020 Census will be determined.

Executed on August 14, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.



John Thompson

Appendix A

JOHN H. THOMPSON

BRIEF CAREER HISTORY

Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present

Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:

- Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
 - New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
 - Robyn Kravitz et al., v. United States department of Commerce, et al
- Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
- Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics – July 2017 to August 2018

The Council of Professional Associations on Federal Statistics (COPAFS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAFS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to *Advance Excellence in Federal Statistics*. Activities include:

- Advocated on behalf of federal agencies. For example, COPAFS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
- Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
- Ensured members of Congress, COPAFS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
- Alerted members and stakeholders of breaking issues that needed immediate support and attention;
- Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
- Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;

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- Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;
- Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and
- Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

Director, United States Census Bureau – August 2013 to June 2017

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding \$1 billion. Key accomplishments include:

- Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;
- Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save \$5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;
- Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;
- Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;
- Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;
- Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;
- Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and
- Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,

John H. Thompson
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in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization's high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC's portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC's overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.

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Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of \$6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee’s recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

- M.S. Virginia Polytechnic Institute and State University, 1975 Mathematics
Graduate course work in statistics - George Washington University 1977-1981
- B.S. Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

- American Statistical Association, 1975 to Present
 - Chair, Social Statistics Section – 2011
 - Chair, ASA Committee on Fellows - 2009
- National Academy of Sciences,
 - Member of the Committee on National Statistics – 2011 - 2013
 - Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments
 - Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

- Virginia Tech College of Science Hall of Distinction inaugural class, 2013
- Presidential Rank Award of Meritorious Executive, 2001
- Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000
- Elected Fellow of the American Statistical Association, 2000
- Department of Commerce, Silver Medal, U.S. Bureau of the Census, 1998
- Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

PAPERS AND PUBLICATIONS

- 2018 Thompson, John H and Yablon, Robert. Issue Brief: "Preparing for the 2020 Census Considerations for State Attorneys General". American Constitution Society., October 10, 2018
- 2012 Thompson, John H. (Panel Member). "Panel Discussion: Considering Changing Sectors in the Research Industry?: Advice From Those Who Have Done It!" AAPOR 67th Annual Conference, Orlando, Florida, May 19, 2012
- 2012 Thompson, John H. (Discussant). "Future is Now: Realignment of Current Survey Management and Operations at the Census Bureau". Population Association of America 2012 Annual Meeting, San Francisco, California, May 4, 2012.
- 2012 Thompson, John H. (Discussant). "Use of Administrative Records in the 2020 Census." Federal Committee on Statistical Methodology, Washington, DC., January 10, 2012
- 2011 Weinberg, Daniel H. and Thompson, John H., "Organization and Administration of the 2010 U.S. Census." In Margo J. Anderson, Constance F. Citro, and Joseph J. Salvo (eds.) *Encyclopedia of the U.S. Census*, Second Edition, CQ Press., July 2011
- 2010 Thompson, John H., "Challenges, Innovation and Quality for the 21st Century" Keynote Speech at the 2010 FCSM Statistical Policy Seminar, Washington, DC, December 14, 2010.
- 2010 Thompson, John H., "The Future of Survey Research: Opportunities and Challenges" Paper presented at the Applied Demography Conference, San Antonio, Texas., January 11, 2010 and at the Population Association of America 2010 Annual meeting, Dallas, Texas, April 15, 2010.
- 2008 Thompson, John H. (Panel Member). "Panel Discussion: The American Community Survey: Promise, Products and Perspectives." Population Association of America Annual Meeting, New Orleans, Louisiana, April 17, 2008.
- 2006 Thompson, John H. (Discussant). "Census 2010: A New Census for the 21st Century." Population Association of America Annual Meeting, Los Angeles, California, March 30, 2006.
- 2004 Thompson, John H., "Interviewer Falsification of Survey Data." Paper presented at the Joint Meetings of the American Statistical Association, Toronto, Canada, August 11, 2004.
- 2003 Thompson, John H., "Is Interviewer Falsification Scientific Misconduct?" Roundtable paper presented at the American Association for Public Opinion Research 58th Annual Conference, Nashville, Tennessee, May 16, 2003.
- 2002 Thompson, John H. (Discussant). "Eliminating the 2010 Census Long Form? – Current Status of the American Community Survey." Population Association of America Annual Meeting, Atlanta, Georgia, May 9, 2002.
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John H. Thompson
Page 6

- 2001 Thompson, John H., "Decision on Release of Statistically Corrected Redistricting Data." Invited paper presented at the Joint Meetings of the American Statistical Association, Atlanta Georgia, August 6, 2001.
- 1999 Thompson, John H., "Census 2000 – Innovations and New Technology." Paper presented at the Economic Commission for Europe's Conference of European Statisticians Meeting, Geneva, Switzerland, February 15-17, 1999.
- 1998 Thompson, John H. and Robert E. Fay, "Census 2000: The Statistical Issues." Paper presented at the Joint Meetings of the American Statistical Association, Dallas, Texas, August 9-13, 1998.
- 1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.
- 1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.
- 1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.
- 1989 Edson, Robert G. and John H. Thompson, "1990 Decennial Census Coverage Improvement Program." Paper presented at the Annual Winter Meetings of the American Statistical Association, San Diego, California, January, 1989.
- 1988 Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.
- 1987 Griffin, Richard A. and John H. Thompson, "Confidentiality Techniques for the 1990 Census." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, October, 1987.
- U.S. Bureau of the Census, "Programs to Improve Coverage in the 1980 Census," by John H. Thompson. Evaluation and Research Reports, PHC80-E3.
- 1986 Thompson, John H. and David Franklin, "Test Census Results and Applications for the 1990 Planning." Paper presented at the Census Bureau Second Annual Research Conference, Reston, Virginia, March, 1986.
- 1984 Miskura, Susan M., John H. Thompson, Henry F. Woltman, "Uses of Sampling for the Census Count." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.
- Fan, Milton C., Martha L. Sutt, and John H. Thompson, "Evaluation of the 1980 Census Precanvass Coverage Improvement Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.
- Keeley, Catherine and John H. Thompson, "The 1980 Census Nonhousehold Sources Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

- 1983 Miskura, Susan M. and John H. Thompson, "1980 Census Findings and Their Implications for 1990 Census Planning." Presented at the Joint Statistical Meetings, Toronto, Canada, August, 1983.
- Tauber, Cynthia and John H. Thompson, "1980 Census Data: The Quality of the Data and Some Anomalies." Paper presented at the Annual Meeting of the Population Association of America, April, 1983.
- 1982 Fan, Milton C., John H. Thompson, Jay Kim, and Henry F. Woltman, "Sample Design, Estimation and Presentation of Sampling Errors for the 1980 Census Early Publications National Sample." Paper presented at the Annual Meetings of the American Statistical Association, Chicago, Illinois, August, 1982.
- 1981 Woltman, Henry F., Susan M. Miskura, John H. Thompson, and Peter A. Bounpane, "1980 Census Weighting and Variance Estimation Studies, Design and Methodology." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- Kim, Jay, John H. Thompson, Henry F. Woltman, and Stephen M. Vajs, "Empirical Results from the 1980 Census Sample Estimation Study." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- Fan, Milton, C., John H. Thompson, and Susan M. Miskura, "1980 Census Variance Estimation Procedure." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- Thompson, John H., "Convergence Properties of the Iterative 1980 Census Estimator." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- 1978 Thompson, John H., "The Nonhousehold Sources Program." Paper presented at the Annual Meetings of the American Statistical Association, San Diego, California, August, 1978.

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Fed. R. Civ. P. 56(c) and Local Civil Rule 7(h)(1), Plaintiffs Common Cause et al. submit the following statement of material facts as to which there is no genuine issue to be tried.

BACKGROUND

1. Throughout American history, documented and undocumented noncitizen immigrants have been counted in every census and in the base for every resulting congressional apportionment. *See, e.g., 2020 Decennial Census Residence Rule and Residence Situations*, 80 Fed. Reg. 28,950, 28,950, (2015) (showing that “[c]itizens of foreign countries living in the U.S.” will be “[c]ounted at the U.S. residence where they live and sleep most of the time”); *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018); *Fed’n. for Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C.) (three-judge court) (stating that, for over “two centuries,” the Census Bureau “has always attempted to count every person residing in [each] state,” and that “the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully

within our borders”), *appeal dismissed*, 447 U.S. 916 (1980); Expert Declaration of John Thompson ¶ 19 (Ex. 23).¹

2. In 2015, Dr. Thomas B. Hofeller prepared a study titled “The Use of Citizen Voting Age Population in Redistricting.” Dr. Thomas B. Hofeller, “The Use of Citizen Voting Age Population in Redistricting,” *available at* <https://www.commoncause.org/wp-content/uploads/2019/05/2015-Hofeller-Study.pdf> (last accessed August 19, 2020). In the study, Dr. Hofeller, analyzed “the practicality of the use of citizen voting age population (CVAP) as a basis for achieving population equality for legislative redistricting.” *Id.* at 1. Dr. Hofeller concluded that “[a] switch to the use of citizen voting age population as the redistricting population base for redistricting would be advantageous to Republicans and non-Hispanic whites” and would dilute the political power of Hispanics. *Id.* at 9. Further, because precinct-by-precinct data on citizenship did not exist, he concluded, such a switch would be “functionally unworkable” without “add[ing] a citizenship question to the 2020 Decennial Census form.” *Id.* at 4, 9.

3. When Donald J. Trump was elected to the presidency in 2016, Dr. Hofeller “urg[ed] [his] transition team to tack the [citizenship] question onto the census.” Michael Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, New York Times (May 30, 2019), <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html> (last accessed August 19, 2020); *see also Kravitz v. Dep’t of Commerce*, 382 F. Supp. 3d 393, 398 (D. Md. 2019).

4. The transition staffer with whom Dr. Hofeller spoke, Mark Neuman, then discussed the issue with Secretary of Commerce Wilbur L. Ross, Jr. and his advisors several times in the

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Peter A. Nelson dated August 19, 2020.

early days of the new administration. *Wines, Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*; see also *Kravitz*, 382 F. Supp. 3d at 398.

5. Soon thereafter, Dr. Hofeller ghostwrote “the key portion of a draft Justice Department letter” that falsely and pretextually claimed 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. *Wines, Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*; see also *Kravitz*, 382 F. Supp. 3d at 398.

6. In March 2018, Defendant Ross, in his capacity as Secretary of Commerce, issued a Memorandum in which he announced his intention to reinstate a question about citizenship on the 2020 decennial census questionnaire. Memorandum from W. Ross on Reinstatement of a Citizenship Question on the 2020 Decennial Census (March 26, 2018), *available at* https://www.commerce.gov/sites/default/files/2018-03-26_2.pdf (last accessed August 19, 2020). In that Memorandum, Secretary Ross stated that he was acting at the request of the Department of Justice, which purportedly sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act. *Id.*

7. After a bench trial on the validity of the citizenship question, the United States District Court for the Southern District of New York ruled that Secretary Ross’s decision to add the citizenship question “was unlawful for a multitude of independent reasons.” *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 679 (S.D.N.Y. 2019). Among those reasons, the Court found, “perhaps most egregiously, the evidence is clear that Secretary Ross’s rationale was pretextual— that is, that the real reason for his decision was something other than the sole reason he put forward in his Memorandum, namely enhancement of DOJ’s VRA enforcement efforts.” *Id.* at 660.

8. The Supreme Court reversed some portions of the District Court’s ruling, but

agreed that “the Secretary’s rationale for reinstating the citizenship question was pretextual—that is, that the real reason for his decision was something other than the sole reason he put forward in his memorandum, namely enhancement of DOJ’s VRA enforcement efforts.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2578 (2019) (internal quotation marks omitted). The Court found that

evidence showed that 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. In the District Court’s view, this evidence established that the Secretary had made up his mind to reinstate a citizenship question “well before” receiving DOJ’s request, and did so for reasons unknown but unrelated to the VRA.

Id. at 2574. The Court further explained that “agencies must pursue their goals reasonably. Reasoned decisionmaking under the Administrative Procedure Act calls for an explanation for agency action. What was provided here was more of a distraction.” *Id.* at 2576.

9. On July 5, 2019, at a press conference, President Trump was asked: “What’s the reason . . . for trying to get a citizenship question on the census?” *Remarks by President Trump Before Marine One Departure*, July 5, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/> (last accessed August 19, 2020). The President answered: “Congress. You need it for Congress, for districting. You need it for appropriations. Where are the funds going?” *Id.*

10. Six days later, at another press conference, President Trump similarly stated that

the citizenship information his administration had sought was “relevant to administering our elections,” because “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population.” 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/> (last accessed August 19, 2020). He went on to say: “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.” *Id.*

11. On July 11, 2019, the President issued Executive Order 13880, *Collecting Information About Citizenship Status in Connection With the Decennial Census*, 84 Fed. Reg. 33821 (July 11, 2019). In that Executive Order, the President acknowledged that collecting citizenship data was important to enable the “design ... [of] legislative districts based on the population of voter-eligible citizens,” rather than total population. *Id.* at 33823-24.

12. In Executive Order 13880, the President further acknowledged that the Supreme Court’s ruling in *New York*, 139 S. Ct. 2551, “made it impossible, as a practical matter, to include a citizenship question on the 2020 decennial census questionnaire.” 84 Fed. Reg. at 33821. The President asserted that

[n]evertheless, we shall ensure that accurate citizenship data is compiled in connection with the census by other means. To achieve that goal, I have determined that it is imperative that all executive departments and agencies (agencies) provide the [Commerce] Department the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that

the [Commerce] Department may request to administrative records that may be useful in accomplishing that objective.

Id.

13. The President further “order[ed] all agencies to share information requested by the [Commerce] Department to the maximum extent permissible under law.” *Id.* The President also “direct[ed] the [Commerce] Department to strengthen its efforts ... to obtain State administrative records concerning citizenship.” *Id.* at 33822.

14. The President further proclaimed that “[i]t is the policy of the United States to develop complete and accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” *Id.* at 33824.

15. On July 21, 2020, President Trump issued a Memorandum, *Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020) (the “Memorandum”), available at <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/> (last accessed August 19, 2020). In the Memorandum, President Trump declared that “it is 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 and consistent with the discretion delegated to the executive branch.” *Id.* at 44680. The justification proffered for this “policy” is the President’s belief that “[e]xcluding ... illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government.” *Id.*

16. The Memorandum further states 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.* The Memorandum specifies 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.*

17. The Memorandum declares that the relevant constitutional language—“the whole number of persons in each State”—is ambiguous based on the fact that “aliens who are only temporarily in the United States, such as for business and tourism, and certain foreign diplomatic personnel are ‘persons’ who have been excluded from the apportionment base in past censuses.” *Id.* at 44679. The Memorandum concludes that determining the true meaning of the constitutional language “requires the exercise of judgment.” *Id.*

18. The Memorandum further states that, following the 2020 census, 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.*

19. The Memorandum further asserts that these 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.*

20. 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.* at 44680. The Memorandum also notes that in Executive Order 13880, the

President “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.”

Id.

21. In a statement accompanying the Memorandum, President Trump stated: “Today, I am . . . directing the Secretary of Commerce to exclude illegal aliens from the apportionment base following the 2020 census.” *Statement from the President Regarding Apportionment* (July 21, 2020), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/> (last accessed August 19, 2020). He further stated: “There used to be a time when you could proudly declare, ‘I am a citizen of the United States.’ But now, the radical left is trying to erase the existence of this concept and conceal the number of illegal aliens in our country. This is all part of a broader left-wing effort to erode the rights of American citizens, and I will not stand for it.” *Id.*

22. Two days after President Trump issued the Memorandum, his reelection campaign sent a mass email to supporters characterizing the Memorandum as an “EXECUTIVE ORDER BLOCKING ILLEGAL ALIENS FROM BEING COUNTED IN [THE] U.S. CENSUS.” Hansi Lo Wang (@hansilowang), Twitter (July 23, 2020, 3:34 PM), <https://twitter.com/hansilowang/status/1286384297314844672> (last accessed August 19, 2020). The email went on to state that “President Trump just signed an Executive Order that will block illegal aliens from receiving congressional representation, and ultimately, being counted in the U.S. Census.” *Id.* The email asserted that this “Executive Order” was necessary because “Democrats are prioritizing dangerous, unlawful immigrants over American Citizens.” *Id.*

23. At a recent congressional hearing, Census Bureau Director Steven Dillingham

testified that the Secretary of Commerce had already “giv[en] [the Bureau] the directive ... to proceed with the requirements of the Presidential Memorandum,” and that the “process [was] underway” and “moving [as] rapidly as possible.” *Counting Every Person: Hearing on Safeguarding the 2020 Census Against the Trump Administration’s Unconstitutional Attacks Before the House Comm. on Oversight & Reform, 116th Cong. (2020)*, available at <https://www.youtube.com/watch?v=SKXS8e1Ew7c> (last accessed August 19, 2020) (relevant exchanges at 2:53:36-3:02:07). In particular, he testified that the Bureau “ha[d] received most of the data” and that its experts were “beginning the process of looking at methodologies.” *Id.*

24. At a hearing in another related litigation, the Census Bureau’s counsel stated that “[t]here may need to be some statistical modeling,” but that the Bureau “ha[sn’t] formulated a methodology.” Hansi Lo Wang, *Trump Sued Over Attempt To Omit Unauthorized Immigrants From A Key Census Count*, NPR (July 24, 2020), <https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count> (last accessed August 19, 2020).

25. The statutory deadline for the President to prepare and transmit his apportionment tables to Congress is in early January 2021, *i.e.*, “[o]n the first day, or within one week thereafter, of the first regular session of the [next] Congress.” 2 U.S.C. § 2a(a). On August 3, 2020—less than two weeks after the Memorandum was issued—the Census Bureau abruptly reversed its earlier decision to extend all census deadlines in light of the COVID-19 pandemic, shortening data collection by a month and putting the integrity of the decade-long census effort at severe risk. U.S. Census Bureau, “Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count” (Aug. 3, 2020), available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count>.

[html](#) (last accessed August 19, 2020); *see also* Alexa Ura, *An abrupt change to the census deadline shortened the response period by a month, increasing fears of an undercount in Texas*, The Texas Tribune (Aug. 4, 2020), available at <https://www.texastribune.org/2020/08/04/texas-census-deadline-hispanic/> (last accessed August 19, 2020); Mike Schneider, *Worries about 2020 census' accuracy grow with cut schedule*, AP News (Aug. 4, 2020), available at <https://apnews.com/c564b5c4a2318215360dec1a0529a124> (last accessed August 19, 2020); Dartunorro Clark, *'An insidious ploy': Trump admin's decision to cut census short could have dire consequences*, NBC News (Aug. 8, 2020), available at <https://www.nbcnews.com/politics/politics-news/insidious-ploy-trump-admin-s-decision-cut-census-short-could-n1236156> (last accessed August 19, 2020). The Administration has offered no public explanation for this sudden about-face, but the only plausible motivation is to ensure that the census count is finalized in time for President Trump to finish implementing the Memorandum before his current term in office ends on January 20, 2021. Hansi Lo Wang, *Census Cuts All Counting Efforts Short By A Month*, NPR (Aug. 3, 2020), available at <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (last accessed August 19, 2020); Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, New York Times (Aug. 4, 2020), available at <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (last accessed August 19, 2020).

PLAINTIFFS

26. 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. Declaration of Karen Hobert Flynn ¶ 2 (Ex. 1).

27. 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 who are voters or who are eligible to vote in all 50 states and in every congressional district. *Id.* at ¶ 3.

28. Common Cause's mission is to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. *Id.* at ¶ 5. This includes undocumented immigrants. *Id.* at ¶ 4.

29. Because the census is a cornerstone of our democratic system, ensuring a fair and accurate census that counts all Americans is pivotal to Common Cause's mission. To that end, Common Cause has conducted public education about the importance of responding to the census and encouraged its members to lobby their representatives for a fair, accurate, and fully funded count. *Id.* at ¶ 6.

30. By discouraging immigrants (both documented and undocumented) from responding to the census, and by seeking to exclude undocumented immigrants from the apportionment base, the Memorandum directly impairs and undermines Common Cause's organizational mission of ensuring equal representation for all. It also requires Common Cause to divert its limited resources from projects and priorities that it would otherwise pursue to counter the adverse effect of the Memorandum on its mission to ensure a fair and accurate census. *Id.* at ¶ 7.

31. Specifically, Common Cause has increased its efforts to promote census participation among communities that are likely to be adversely affected by the Memorandum, including urban and immigrant communities. *Id.* at ¶ 8.

32. Because Common Cause has members who are voters or who are eligible to vote

in all 50 states, including California, Texas, Florida, New York, and New Jersey, it has some members that will lose a congressional representative because of the exclusion of undocumented immigrants from the apportionment calculations. *Id.* at ¶ 14.

33. Plaintiff Paula Aguirre is a natural-born U.S. citizen, and a resident of Queens, New York City, New York. Declaration of Paula Aguirre ¶ 1 (Ex. 2). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

34. Plaintiff Roberto Aguirre is a naturalized U.S. Citizen, and a resident of Queens, New York City, New York. Declaration of Roberto Aguirre ¶ 1 (Ex. 3). He is a member of Common Cause. *Id.* at ¶ 3. He is a registered voter, and regularly exercises his right to vote. *Id.* at ¶ 5.

35. Plaintiff Sheila Aguirre is a natural-born U.S. citizen and a resident of Queens, New York City, New York. Declaration of Sheila Aguirre ¶ 1 (Ex. 4). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

36. Plaintiff Angelo Ancheta is a natural-born U.S. citizen and a resident of San Francisco, California. Declaration of Angelo Ancheta ¶ 1 (Ex. 5). He is a registered voter, and regularly exercises his right to vote. *Id.* at ¶ 4.

37. Plaintiff Cynthia Ming-Hui Dai is a natural-born U.S. citizen and a resident of San Francisco, California. Declaration of Cynthia Ming-Hui Dai ¶ 1 (Ex. 6). She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 4.

38. Plaintiff Simon Fischer-Baum is a natural-born U.S. citizen and a resident of Houston, Texas. Declaration of Fischer-Baum ¶ 1 (Ex. 7). He is a registered voter, and regularly exercises his right to vote. *Id.* at ¶ 4.

39. Plaintiff Connie Galambos Malloy is a natural-born U.S. citizen and a resident of

Pasadena, California. Declaration of Connie Galambos Malloy ¶ 1 (Ex. 8). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 4.

40. Plaintiff Raquel Morsy is a U.S. citizen and a resident of Hillside, New Jersey. Declaration of Raquel Morsy ¶ 1 (Ex. 9). She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 4.

41. Plaintiff Norma (Robin) Mote is a natural-born U.S. citizen and a resident of Dallas, Texas. Declaration of Norma (Robin) Mote ¶ 1 (Ex. 10). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

42. Plaintiff Lilbert (Gil) Roy Ontai is a natural-born U.S. citizen and a resident of San Diego, California. Declaration of Lilbert (Gil) Roy Ontai ¶ 1 (Ex. 11). He is a registered voter, and regularly exercises his right to vote. *Id.* at ¶ 4.

43. Plaintiff Sara Pavon is a naturalized U.S. citizen and a resident of Queens, New York City, New York. Declaration of Sara Pavon ¶ 1 (Ex. 12). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

44. Plaintiff Coleen P. Stevens Porcher is a naturalized U.S. citizen and a resident of Montclair, New Jersey. Declaration of Coleen P. Stevens Porcher ¶ 1 (Ex. 13). She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 4.

45. Plaintiff Jeanne Ellen Raya is a natural-born U.S. citizen and a resident of San Gabriel, California. Declaration of Jeanne Ellen Raya ¶ 1 (Ex. 14). She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 4.

46. Plaintiff Jonathan Allan Reiss is a naturalized U.S. citizen and a resident of Manhattan, New York. Declaration of Jonathan Allan Reiss ¶ 1 (Ex. 15). He is a member of

Common Cause. *Id.* at ¶ 3. He is a registered voter, and regularly exercises his right to vote. *Id.* at ¶ 5.

47. Plaintiff Inge Spungen is a naturalized U.S. citizen and a resident of Patterson, New Jersey. Declaration of Inge Spungen ¶ 1 (Ex. 16). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

48. Plaintiff Irene Sterling is a U.S. citizen and a resident of Belleville, New Jersey. Declaration of Irene Sterling ¶ 1 (Ex. 17). She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 4.

49. Plaintiff Dennis Vroegindewey is a U.S. citizen and a resident of Whippany, New Jersey. Declaration of Dennis Vroegindewey ¶ 1 (Ex. 18). He is a registered voter, and regularly exercises his right to vote. *Id.* at ¶ 4.

50. Plaintiff Susan N. Wilson is a natural-born U.S. citizen and a resident of Princeton, New Jersey. Declaration of Susan N. Wilson ¶ 1 (Ex. 19). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

51. Plaintiff Myra Young is a naturalized U.S. citizen and a resident of Fort Myers, Florida. Declaration of Myra Young ¶ 1 (Ex. 20). She is a member of Common Cause. *Id.* at ¶ 3. She is a registered voter, and regularly exercises her right to vote. *Id.* at ¶ 5.

ARGUMENT

52. The Census Bureau did not inquire about census respondents' citizenship, let alone about their compliance with immigration laws (*i.e.*, their documented/undocumented status), in connection with the 2020 census. *See* Exec. Order No. 13880, 84 Fed. Reg. 33821 (noting that citizenship question will not appear on the 2020 census); *see also New York*, 139 S. Ct. 2551.

53. It is far too late to add a citizenship question to the census now. As of July 2019,

the President acknowledged that the Supreme Court’s ruling in *New York*, 139 S. Ct. 2551, made it “impossible, as a practical matter, to include a citizenship question on the 2020 decennial census questionnaire.” Exec. Order No. 13880, 84 Fed. Reg. at 33821; *see also* Expert Declaration of Dr. D. Sunshine Hillygus ¶ 14 (Ex. 22).

54. Plaintiff’s expert, Dr. Christopher Warshaw, has been an Assistant Professor of Political Science at George Washington University since August 2017, and will become a tenured Associate Professor on September 1, 2020. Expert Declaration of Dr. Christopher Warshaw ¶ 1 (Ex. 21). Prior to working at George Washington University, Dr. Warshaw was an Associate Professor at the Massachusetts Institute of Technology from July 2016 – July 2017, and an Assistant Professor at MIT from July 2012 – July 2016. *Id.* Dr. Warshaw earned his Ph.D. in Political Science from Stanford University, where his graduate training included courses in political science and statistics. *Id.* at ¶ 5. Dr. Warshaw also has a J.D. from Stanford Law School. *Id.* Dr. Warshaw’s academic research and teaching focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American politics. *Id.* Dr. Warshaw has also taught courses on statistical analysis. *Id.*

55. In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, Dr. Warshaw (a) estimated the baseline population of each state in 2020 based on the Census Bureau’s annual estimates of the population of each state from the past three decades, which included overseas federal employees and their dependents; (b) used data from the Pew Research Center (“Pew”), which is the most widely used data in the academic literature on the undocumented immigrant population, to estimate the number of undocumented immigrants in each state in 2020; (c) estimated the proportion of each state’s population that would be excluded from the enumeration used for apportionment due

to the Memorandum, and then used the official apportionment table published by the U.S. Census Bureau to estimate the number of congressional seats that states would gain or lose; and (d) evaluated the robustness of the findings to a variety of alternative data sources and modeling strategies. *Id.* at ¶ 11.

56. While the estimated numbers of undocumented immigrants from Pew and other sources (e.g., Migration Policy Institution (“MPI”), Center for Migration Studies (“CMS”), and others) may be used for research and analysis, the Census Bureau cannot use such estimated numbers to exclude undocumented immigrants for the purpose of counting the actual apportionment base because they are not “enumerations.” *Id.* at ¶ 25.

57. The estimated numbers of Pew, MPI and CMS all rely on the American Community Survey (“ACS”) dataset, which is constructed based on surveys of a sample of the American public. *Id.* at ¶¶ 31, 52. Therefore, the estimated numbers derived by Pew, MPI and CMS necessarily rely on statistical sampling and are subject to sampling error. *Id.*

58. The exclusion of undocumented immigrants from the apportionment base (i.e., the population enumeration used for apportionment) is likely to have substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House of Representatives. *Id.* at ¶ 12.

59. The exclusion of undocumented immigrants from the apportionment base will almost certainly (98.3% probability) lead Texas to lose a seat. *Id.* at ¶¶ 12, 44. It is likely to lead California (72.1% probability) and New Jersey (69.8% probability) to lose a congressional seat. *Id.* It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. *Id.*

60. There is a 100% probability that the exclusion of undocumented immigrants from

the apportionment base will lead at least one of the states where the individual Plaintiffs in this lawsuit live (Texas, California, New Jersey, New York, and Florida) to lose a seat. *Id.* at ¶¶ 12, 45.

61. There is a 99.1% probability that at least one of California, Florida, New Jersey, or New York (i.e., the four states other than Texas where the individual Plaintiffs in this lawsuit live) would lose a seat. *Id.* at ¶¶ 12, 45.

62. There is a 97.4% probability that Texas would lose a seat and that at least one of California, Florida, New Jersey, or New York would also lose a seat. *Id.* at ¶ 45.

63. There is a 100% probability that the exclusion of undocumented immigrants from the apportionment base will lead at least one state in the United States to lose a seat. *Id.* at ¶¶ 12, 45.

64. Dr. Warshaw's overall conclusions are similar across multiple data sources on the prevalence of undocumented immigrants, across different estimates of undocumented immigrants, and across different modeling strategies. *Id.* at ¶¶ 50-58.

65. They are also similar to the conclusions reached by a variety of independent analysts and organizations. *Id.* at ¶¶ 63-65.

66. The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. *Id.* at ¶ 12.

67. It is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress. *Id.*

68. Plaintiffs' expert, Dr. D. Sunshine Hillygus, has been a Professor of Political Science and Public Policy at Duke University since 2015. Hillygus Decl. ¶ 1. Before that, she was an associate professor at Duke from 2009 – 2015 and a faculty member at Harvard University

from 2003 – 2009. *Id.* Dr. Hillygus earned a Ph.D. in political science from Stanford University in 2003. *Id.* Dr. Hillygus has over 20 years of experience in survey design, implementation, and analysis, including publishing research on the topics of census participation, survey methodology, survey non-response, and data quality in respected academic journals including *Public Opinion Quarterly*, *Journal of Survey Statistics and Methodology*, *Statistical Science*, *Political Analysis*, and *Annals of Applied Statistics*. *Id.* From 2012 – 2018, she served as a member of the Census Scientific Advisory Committee (CSAC), a committee that advises the director of the U.S. Census Bureau on the uses of scientific developments in statistical data collection, survey methodology, geospatial and statistical analysis, econometrics, cognitive psychology, business operations, and computer science as they pertain to the full range of Census Bureau programs and activities, including census tests, policies, and operations. *Id.*

69. Any attempt to count undocumented immigrants for producing an apportionment count would leave the Census Bureau with only a few options: (a) using the 2020 Census, (b) using existing estimates from outside of the Census Bureau, and (c) using administrative records. *Id.* at ¶ 13. None of these options would constitute an enumeration as required by the Constitution. *Id.* Moreover, using existing estimates from outside of the Census Bureau or administrative records would require statistical sampling, which is prohibited for use in apportionment by statute. *Id.* There is therefore no feasible way to produce an accurate and reliable 2020 apportionment count that excludes undocumented immigrants that does not violate the mandates of the Constitution and the governing statutory framework. *Id.*

70. The proposed citizenship question that the Trump administration unsuccessfully attempted to add to the census questionnaire would not have enabled the production of apportionment numbers excluding undocumented immigrants because it did not distinguish

foreign-born residents with formal legal status from those without formal legal status (i.e., undocumented immigrants). *Id.*

71. The decennial census questionnaire does not ask, nor has it ever asked, about the legal status of foreign-born residents. *Id.* at ¶ 14. It is too late to ask such a question on the 2020 questionnaire, so producing an apportionment count that excludes undocumented immigrants will necessarily require a methodology that departs from the 2020 Operational Plan. *Id.* The 2020 Operational Plan “covers all operations required to execute the 2020 Census, starting with precensus address and geographic feature updates, and ending once census data products are disseminated and coverage and quality are measured.” 2020 Census Operational Plan, U.S. Census Bureau (Dec. 31, 2018), <https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/planning-docs/operational-plan.html>.

72. Although the Census Bureau does not currently have a data product that would allow for the exclusion of undocumented persons from the apportionment count, estimates of the undocumented population have been produced outside the Census Bureau. *Id.* at ¶ 16. While these estimates may be useful for research and analysis, they are not adequate or permissible for use in apportionment. *Id.*

73. Although several organizations have produced estimates of the undocumented population, including Pew, CMS, MPI, and The Office of Immigration Statistics (“OIS”), these estimates were not produced to estimate the undocumented population *as of Census Day* (April 1, 2020), as the Census Act requires. *Id.* at ¶ 17.

74. These estimates are not reliable enough to be used for purposes of apportionment. *Id.* at ¶ 18.

75. Broadly, the available estimates rely on a methodology called the “residual

technique,” which estimates the number of undocumented immigrants by subtracting the number of immigrants in compliance with immigration laws (typically estimated from government records) from the total number of immigrants in the country, as estimated from self-report responses to sample surveys (most often, the Census Bureau’s ACS). *Id.* at ¶¶ 18 – 19.

76. The ACS is a survey designed and conducted by the Census Bureau that collects social, economic, housing, and demographic characteristics from a sample of approximately 1.6% of households annually. *Id.* That is, the ACS data product is a result of sampling. *Id.*

77. As such, existing estimates of undocumented populations that rely on the ACS would necessarily use sampling, are subject to significant uncertainty from sampling error and are prohibited from use for purposes of apportionment. *Id.* These estimates cannot be used for purposes of apportionment because they rely on statistical sampling and adjustment. *Id.* at ¶ 24. Any method that relies on statistical sampling and/or adjustment is not an actual enumeration, as the Constitution requires. *Id.*

78. In *Department of Commerce v. U.S. House of Representatives* (1999), the Supreme Court ruled that the Census Act precluded the use of sampling to produce the apportionment count “[w]hether used as a ‘supplement’ or as a ‘substitute.’” *Id.*

79. As a matter of accuracy, a sample of the population, in contrast to a census, is subject to uncertainty from random sampling error. *Id.* That sampling error is often reported as a margin-of-error with survey statistics. The greater the margin of error, the less confidence one should have in the resulting statistical estimate. *Id.*

80. Without an actual enumeration, there is no known method of excluding undocumented immigrants from the 2020 census count for purposes of apportionment, including the use of administrative records, that does not rely on statistical sampling. *Id.* at ¶ 29.

81. Administrative records concerning citizenship and immigration status are often incomplete, outdated, and inaccurate—they are a flawed and biased sample from which to attempt extrapolation. *Id.* Specifically, very few administrative records directly identify those individuals with undocumented status, and the few that do so are fundamentally flawed, so it would not be possible to perform a direct enumeration of the number of undocumented immigrants from the available administrative records. *Id.*

82. The administrative records identifying citizens and legal non-citizens are also a nonrandom sample with known inaccuracies, and include data sources that explicitly rely on statistical sampling. *Id.*

83. Any method to extrapolate from this sample to the population necessarily requires extensive statistical modeling in ways that are fundamentally different than the kind of imputation that the Supreme Court has permitted for apportionment purposes. *Id.*

84. Among other reasons, the scale of the population that would need to be filled in using statistical modeling if undocumented immigrants were to be excluded from the apportionment base is orders of magnitude larger than what has been permitted by the Supreme Court and cannot be considered a “sparing” use. *Id.*

85. The census deadlines do not leave sufficient time to follow requirements for testing and stakeholder engagement before apportionment numbers are due to the President by the end of the year. *Id.*

86. Accordingly, it is not currently feasible for the Census Bureau to produce estimates of undocumented immigrants from administrative records that would be lawful or of sufficient quality to use for the 2020 apportionment count. *Id.*

87. The Census Bureau is not able to conduct an actual enumeration of undocumented

immigrants based on administrative records. *Id.* at ¶ 30.

88. There are very few administrative records that directly document those with undocumented status. *Id.* Among the limited sources available are administrative records of individuals who entered the country undetected but were subsequently apprehended. *Id.* The Census Bureau has received such administrative data from the Department of Justice, Department of Prisons, and the Bureau of Justice Statistics National Corrections Reporting Program (“NCRP”). *Id.* However, apprehended undocumented immigrants represent a tiny fraction of those in the country without formal legal immigration status. *Id.*

89. Scrutiny of these records also highlights that—even for those in federal custody—the administrative records do not provide accurate, reliable, and timely information. *Id.* at ¶ 31.

90. Given the grossly incomplete coverage of administrative records identifying undocumented immigrants, any attempt to produce a count of the undocumented population for purposes of exclusion from the 2020 apportionment count would require extensive statistical modeling. *Id.* at ¶ 34.

91. Even in the limited Census Bureau documentation available about how administrative records will be used to estimate citizenship and immigration status, there is explicit mention of reliance on data collected by sampling. *Id.* at ¶ 40.

92. Because the potential data sources that the Census Bureau is likely to use to estimate citizenship and immigration status through statistical modeling rely on statistical sampling techniques, any population estimates of citizenship and immigration status that depends on these data sources would necessarily incorporate sampling at some level in the analysis and would not be an enumeration or imputation. *Id.* at ¶ 41.

93. The statistical modeling and adjustment required to produce population estimates

of undocumented immigrants differ in fundamental ways from the current use of statistical modeling and administrative records used in counting the household size of U.S. addresses. *Id.* at ¶ 42.

94. These differences parallel the differences between sampling and imputation discussed in the Supreme Court’s decision to prohibit sampling (but not imputation) for producing apportion counts: the nature, scope, immediate objective of the statistical methods, and impact on accuracy of the resulting counts. *Id.*

95. The Census Bureau does not use administrative records on their own to enumerate a household—administrative records are used only after giving the entire population an opportunity to self-respond and after an attempt to enumerate the household by field staff. *Id.* at ¶ 44. In other words, they are used solely for processing data, not collecting it in the first place. *Id.*

96. In contrast, the use of administrative records for producing counts of undocumented immigrants is data collection. *Id.* No one is asked to self-respond about their legal status or citizenship status in the decennial census, so administrative records are collected separately from the decennial census, for purposes of gathering information about citizenship and legal status from the sample of administrative records available to extrapolate about the characteristics of the population. *Id.*

97. Characteristic imputation, as currently practiced by the Census Bureau, is a “downstream” procedure—that is, it occurs *after* and *entirely separate from* the determination of the apportionment count required by the Constitution. *Id.* at ¶ 47. Rather, it is used only for generating auxiliary population statistics that are not part of the census’s constitutional role. *Id.*

98. The scope of any statistical modeling required to estimate the number of

undocumented immigrants would be unprecedented for use in enumerating the apportionment population. *Id.* at ¶ 48.

99. Count imputation is used sparingly, and only after giving the entire population an opportunity to self-respond, and attempting to follow up with anyone who does not respond. *Id.*

100. Given the scarcity of administrative records that directly document unauthorized immigrants, under any methodology that the Census Bureau might use to identify the number of undocumented immigrants in each state, *almost all* individuals identified as undocumented, and thus excluded from apportionment numbers, will have been estimated based on extrapolated data from a sample of administrative records. *Id.* at ¶ 49.

101. The scale of the population that would be enumerated through statistical methods rather than traditional methods is orders of magnitude larger than anything the Census Bureau has ever attempted before, and certainly cannot be considered “sparing” use. *Id.* For individuals in the census who are unable to be linked to administrative records, the extent of the exercise is even more striking: they could be excluded from the apportionment count based only on their demographic characteristics (e.g., their race or ethnicity) and local area information (the only information available in the decennial questionnaire), if the Census Bureau’s modeling formula identifies them as a probable undocumented immigrant based on this information. *Id.*; *see also id.* ¶¶ 25, 37, 47, 63-64 (discussing Defendants’ intent to use data on race and ethnicity in connection with predicting citizenship).

102. Whereas the current use of count imputation makes the census more accurate, the exclusion of undocumented immigrants through statistical modeling of administrative records will make the census less accurate. *Id.* at ¶ 51. Fundamental shortcomings in the availability, accuracy, reliability, and timeliness of administrative records concerning citizenship and legal status will

impact the predictive accuracy of the model results. *Id.*

103. Plaintiffs' expert, John Thompson, served as Director of the U.S. Census Bureau from August 2013 to June 2017. Thompson Decl. at ¶¶ 1, 7. Before that, Thompson worked at the Census Bureau for 27 years (1975 –2002) and as the Executive Vice President (2002 – 2008) and President (2008 – 2013) of the National Opinion Research Center (“NORC”) at the University of Chicago. *Id.* at ¶ 7. Thompson spent the majority of his employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, a role in which Thompson was the senior career executive in charge of management of all aspects of the 2000 Decennial Census. *Id.* at ¶¶ 7, 9.

104. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. *Id.* at ¶ 15.

105. The Memorandum does not provide any specific directions and the Census Bureau has not publicly described how it will comply with the Memorandum. *Id.*

106. The Census Bureau has always understood the Constitution to require an actual enumeration of all persons in the United States for purposes of apportionment. *Id.* at ¶ 19.

107. This actual enumeration has always included immigrants, including undocumented immigrants. *Id.*

108. No actual enumeration that identifies the number of undocumented immigrants has been undertaken by the Census Bureau and, at this late date, it is too late to undertake such an actual enumeration of undocumented immigrants for purposes of apportionment based on the 2020 census. *Id.*

109. There is no known methodology consistent with the Census Bureau's standards that would allow the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census in order to comply with the Memorandum's instruction. *Id.* at ¶ 20.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Upon consideration of Plaintiffs' Motion for Summary Judgment, and any Opposition thereto, it is this _____ day of _____, 2020, hereby ORDERED: that the Plaintiffs' Motion for Summary Judgment be, and hereby is GRANTED, and it is further ORDERED that:

1. The July 21, 2020 Presidential Memorandum, *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020) (the "Memorandum"), is declared invalid and unlawful because it violates Article I and the Fourteenth Amendment to the U.S. Constitution;
2. The Memorandum is declared invalid and *ultra vires* because it violates 2 U.S.C. § 2(a), 13 U.S.C. § 195, and 13 U.S.C. § 141;
3. Defendants and all others acting in concert with them are enjoined from taking any steps to comply with, implement, or enforce the Memorandum.

SO ORDERED this ____ day of _____ 2020.

DATED: August 19, 2020

/s/ Daniel S. Ruzumna

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**UNITED STATES DISTRICT COURT
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No. 1:20-cv-02023-CRC

NOTICE OF MOTION TO EXPEDITE PROCEEDINGS

Plaintiffs respectfully file this motion seeking to expedite the oral argument and decision on their motion, filed contemporaneously herewith, for partial summary judgment, or in the alternative, an expedited trial on the merits. Pursuant to Rule 7 of the Rules of the United States District Court for the District of Columbia, a supporting memorandum of points and authorities is attached.

DATED: August 19, 2020

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**UNITED STATES DISTRICT COURT
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COMMON CAUSE, et al.

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No. 1:20-cv-02023-CRC

Motion to Expedite Proceedings

MOTION TO EXPEDITE PROCEEDINGS

In this action, Plaintiffs challenge a July 21, 2020 Memorandum issued by President Donald J. Trump, titled “Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census” (the “Memorandum”). By separate motion, Plaintiffs move for summary judgment that the Memorandum and its implementation violate the constitutional and statutory frameworks governing the apportionment of Congressional representatives.¹ Plaintiffs hereby move to expedite proceedings so that a final judgment and appeal to the U.S. Supreme Court can be completed before January 10, 2021, when the President is scheduled to transmit his unlawful apportionment numbers to Congress.

Congress has made clear that challenges to apportionment are to be decided on an expedited basis. Expedition is especially appropriate here, because the unlawful policy set forth in the Memorandum is due to be carried out on a very short timeframe and the reason for that short timeframe is entirely due to the President’s decision to wait until the very end of the multi-year census process to issue the Memorandum. The Memorandum invokes the President’s duty under 2 U.S.C. §2a to transmit the relevant apportionment numbers to Congress “within one

¹ The Memorandum in support of that motion will be cited here as “SJ Mot.”

week” of the first regular session of Congress, that is, no later than January 10, 2021. Unless final judgment in this action and a subsequent appeal to the Supreme Court are resolved by that date, President Trump will implement the Memorandum without a final judicial determination of its legality, throwing the apportionment process into disorder and doubt.

Meanwhile, as set forth in the accompanying motion for summary judgment, Plaintiffs’ claims present legal issues that are suitable for speedy resolution. Indeed, a related case in the Southern District of New York involving overlapping but non-identical claims is already being heard on an expedited schedule, with briefing to be completed by August 28, 2020. Here, the parties have agreed on a proposed briefing schedule under which briefing on Plaintiffs’ summary judgment motion will be complete by mid to late September. Plaintiffs respectfully request that the Court order an expedited hearing on their motion, and, if the motion is denied, an expedited trial on the merits of Plaintiffs’ claims.²

ARGUMENT

I. CONGRESS HAS PROVIDED FOR CHALLENGES TO APPORTIONMENT TO BE HEARD ON AN EXPEDITED BASIS

A. 28 U.S.C. § 2284(a) Calls for Expedited Proceedings

Because apportionment decisions impact a cascade of time-delimited political processes, Congress has provided for challenges to apportionment to be resolved expeditiously. Under 28 U.S.C. § 2284(a), which Defendants have acknowledged applies here (ECF No. 30), challenges to the constitutionality of apportionment are heard by a three-judge court whose decision may be directly appealed to the Supreme Court. As the legislative history indicates, the purpose of this procedure is to ensure that “every reasonable means should be provided for speeding the litigation.” 36 Cong. Rec. 1679 (1903) (statement of Sen. Fairbanks); *see also Swift*

² Defendants have indicated that they oppose this relief.

and Co. v. Wickham, 382 U.S. 111, 124 (1965) (observing that “[t]he purpose of the three-judge scheme was in major part to expedite important litigation”); *Graham v. Minter*, 437 F.2d 427, 429 (1st Cir. 1971) (three-judge court procedure was “designed to be expeditious”). The same policy that calls for convening a three-judge court calls for expediting proceedings so that the legality of the Memorandum can be timely adjudicated.

B. 13 U.S.C. § 195 Calls for Expedited Proceedings

Similarly, 13 U.S.C. § 195, the statute governing Plaintiffs’ claim that the Memorandum calls for the illegal use of statistical sampling to apportion representatives (*see* SJ Mot. at 32-41), expressly requires expedition. Congress has provided that “[i]t shall be the duty of a United States district court hearing an action” challenging the use of a “statistical method” in the apportionment of congressional districts to “***advance on the docket and to expedite to the greatest possible extent*** the disposition of . . . such matter.” Pub. L. 105-119, Title II, § 209(b) & (e)(2) (emphasis added). As courts have noted, this “language evidences congressional intent to facilitate a prospective remedy for any constitutional or statutory infirmity in a procedure Defendants propose to use in a decennial census before the procedure is actually used.” *Utah v. Evans*, 182 F. Supp. 2d 1165, 1173–74 (D. Utah 2001), *aff’d*, 536 U.S. 452 (2002). The *Utah* court further observed that “Congress clearly intended section 209 to provide a vehicle for expedited review of the methods chosen by Defendants for use in the . . . census prior to the actual undertaking and completion of the census.” *Id.* On this basis, the court in *Utah* expedited proceedings. *See Utah v. Evans*, Index No. 01-CV-00292, ECF No. 15 (D. Utah May 21, 2001). The Court should do the same here.

II. EXPEDITION IS NECESSARY TO ENSURE TIMELY RESOLUTION OF PLAINTIFFS' CLAIMS

Expedited proceedings are particularly necessary here because the President issued the Memorandum in the waning months of the Census process, leaving little time to adjudicate its legality before implementation. Amended Compl. ¶¶ 59, 92, 159. Under the statutory framework, the reapportionment process is “virtually self-executing,” *Franklin v. Massachusetts*, 505 U.S. 788, 791–92 (1992), with the number of Representatives allotted to each State determined by the President and certified to the States on a rapid timeline culminating in January 2021. Within nine months after the April 1, 2020 “decennial census date,” i.e., by December 31, 2020, 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.” 13 U.S.C. § 141(b).³ The President then transmits the apportionment calculation to Congress “on the first day, or within one week thereafter, of the first regular session” after the census, 2 U.S.C. § 2a(a), that is, between January 3 and January 10, 2021. The Clerk of the House must certify the apportionment to each State within 15 days thereafter, that is, by January 25, 2021. 2 U.S.C. § 2a(b).

Importantly, Congress has not provided any procedure for correcting inaccurate or incomplete counts once they are reported to the President and he transmits them to Congress as required by statute. Accordingly, unless this legal challenge is resolved *prior* to January 2021, there will be no statutory guidance regarding how to proceed with apportionment if the President’s counts are subsequently ruled illegal. Because a ruling that the Memorandum is

³ The Government has determined that the deadline for tabulation is December 31, 2020. *See* Frequently Asked Questions (FAQs), U.S. Census Bureau (March 30, 2020); <https://www.census.gov/topics/public-sector/congressional-apportionment/about/faqs.html#Q13>.

illegal would require calculating a new apportionment base for all 50 states, delay in adjudicating this challenge could cause serious disruption to the political process.

In order to avoid such disruptions, cases concerning apportionment and the census routinely proceed on an expedited basis. *See Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (ordering expedited briefing in action concerning inclusion of citizenship question in census questionnaire); *Veith v. Pennsylvania*, 67 F. App'x 95, 96–97 (3d Cir. 2003) (expedited discovery schedule and evidentiary hearing in action contesting constitutionality of redistricting plan); *New York v. United States Dep't of Commerce*, 339 F. Supp. 3d 144, 148–49 (S.D.N.Y. 2018) (expedited discovery schedule in case challenging the Commerce Department's decision to include a citizenship question on the census questionnaire); *New York v. Trump*, 20-CV-05770 (S.D.N.Y. Aug. 14, 2020) ECF No. 95 (expedited briefing in action contesting constitutionality of excluding undocumented immigrants from the apportionment count); *Rybicki v. State Bd. of Elections of State of Ill.*, 574 F. Supp. 1082, 1085 (N.D. Ill. 1982) (expedited trial in action contesting constitutionality of state redistricting plan). Given the short statutory timetables at issue, the need for expedition is even more pronounced in this case.

III. EXPEDITION IS FEASIBLE AND WILL NOT PREJUDICE DEFENDANTS

As a practical matter, Plaintiffs' claims here can comfortably be resolved on an expedited schedule. Plaintiffs' primary claims, that the Memorandum violates the Constitutional and statutory requirements that apportionment be based on the "the whole number of persons in each state," U.S. Const., amend. XIV, cl. 2; 2 U.S.C. §2a(a), present a straightforward legal issue that is suitably for resolution on the pleadings.⁴ SJ Mot. at 19-26. Furthermore, this issue is already being presented to the United States District Court for the Southern District of New

⁴ Plaintiffs have submitted expert declarations establishing that they have standing to challenge the Memorandum, but they do not rely on any record evidence on the merits of this claim.

York, on an accelerated briefing schedule set to be completed by August 28. *New York v. Trump*, 20-CV-05770, ECF No. 95 (S.D.N.Y. Aug. 14, 2020). It will be straightforward for Defendants to respond to Plaintiffs' motion on an expedited schedule, given that they will already have completed briefing on the similar claim in the New York litigation.

Although the second set of claims on which Plaintiffs move for summary judgment – their claims under 13 U.S.C. § 195 and the “actual Enumeration” clause of the Constitution – are not presented in the pending motions in New York, they are also feasible to resolve on an expedited schedule. As Plaintiffs show in their motion for summary judgment and accompanying declarations, it is impossible for the Census Bureau to determine the population of undocumented immigrants on the statutory timetable without running afoul of Article I, Section 2's “actual Enumeration” requirement and Section 195's prohibition on the use of statistical sampling, because no actual enumeration of undocumented immigrants exists or will possibly exist by the close of the census process. SJ Motion at 37–39. Because there is no basis for a reasonable factfinder to find otherwise, Plaintiffs' claim is suitable for resolution as a matter of law, without the need for discovery or further proceedings. *Id.* There is no reason that this question of law cannot be addressed on an expedited schedule.

Even if the Court were to conclude that there are disputed issues of fact, the speed at which the relevant statutes require Defendants to proceed makes it feasible to hold an expedited trial. As noted, the statutory framework requires the Secretary of Commerce to *complete* its calculation of the apportionment base by December 31, 2020. 13 U.S.C. § 141(b). In order to meet this deadline, Defendants will need to finalize their methods for estimating the population of undocumented immigrants well before that time. Analyzing whether these methods comply with Constitutional and statutory requirements presents a targeted issue for expert discovery,

without any need for extensive fact discovery or other proceedings. An expedited trial addressing the narrow question as to whether Defendants have conducted an “actual Enumeration” or, instead, have engaged in prohibited statistical sampling, would not be burdensome for the Court or the parties. To ensure timely resolution of Plaintiffs’ claims without disruption to the political process, Plaintiffs respectfully request that the Court order expedited proceedings.

CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for expedited briefing, and, if necessary, an expedited trial on the merits, should be granted.

DATED: August 19, 2020

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023-CRC

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION
TO EXPEDITE**

THIS CAUSE came before the Court upon Plaintiffs' Motion to Expedite Proceedings. Having read the Motion and being otherwise fully informed of its premises, it is hereby ORDERED and ADJUDGED that the Motion is GRANTED. The Court orders that oral argument on Plaintiffs' motion for partial summary judgment be held on _____ 2020 and that a trial on any genuine dispute(s) of material fact, if necessary, be held no later than _____, 2020.

SO ORDERED this ____ day of _____ 2020.

DATED: August 19, 2020

/s/ Daniel S. Ruzumna

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