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July 10, 2015

Karen Humes, Chief

Population Division

U.S. Census Bureau

Room 5H174

Washington, DC 20233

Dear Ms. Humes:

I am writing in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). I urge you and your colleagues at Census to count incarcerated people at their home address, rather than at the particular facility in which they happen to be located on Census day.

I am a Professor of Law at the University of Michigan Law School, and my work focuses on criminal law and criminal justice policy. I am also an empirical economist. I use data in my work, and I know how important data can be, both in arriving at truth and in helping us understand the world. It also affects the world, as you well know. Counting incarcerated people in the wrong place inflates the political power of people who live near prisons, when those counts are used for redistricting or other purposes. As you can imagine, this practice has serious repercussions for state legislative decisions that impact incarceration, but also it can have a huge impact on representational equality in the small communities that host the facilities.

I’m pleased to note that Michigan has been at the forefront of how to deal with such population quirks. In our state, cities and counties are required to adjust their redistricting data to exclude people in state institutions who are not residents of the county or city where the facility is located. (Mich. Comp. Laws Ann. §§ 117.27a(1)(5) and 46.404(g), respectively.) Essentially, localities are forbidden from engaging what is now commonly termed “prison gerrymandering” (though these statutes date back to the 1960s). At the same time, the state clearly views Census data as generally the best data to use for redistricting; the same statutes identify the “latest official published figures of the United States official census” as the default source of data, but then creates an exemption for cases where the Bureau’s data falls short of Michigan’s standards of accuracy (such as counting incarcerated people in the wrong place).

I believe that a strong democracy and fair criminal justice policy depend on a population count that accurately represents all communities. Accordingly, I urge you to count incarcerated people as residents in the jurisdiction of their home address. Thank you for this opportunity to comment on the Residence Rule and Residence Situations as the Bureau strives to count everyone in the right place.

Yours truly,

James J. Prescott