

Accuracy Counts: **Incarcerated People &** **the Census**

Raising Voices

A Series by the Brennan Center for Justice

About the Brennan Center

The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. Our mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms. The Center operates in the areas of Democracy, Poverty, and Criminal Justice.

About the Raising Voices Series

Raising Voices is a series produced by the Criminal Justice Program at the Brennan Center for Justice at NYU School of Law. Our Program's goal is to highlight and address the implications of the criminal justice system in order to make it more just, informed, and effective. We also seek to promote sensible approaches to public safety in all communities through policy and legislative advocacy, public education, and litigation. The Raising Voices series elevates the voices and experiences of low-income communities and communities of color that are often treated most harshly by criminal justice policies but least likely to have a role in shaping them.

Accuracy Counts: Incarcerated People and the Census discusses how the Census Bureau's approach to counting people in prison—as residents of prison towns rather than their home towns—hurts communities that lose large numbers of people to prison and runs counter to the Bureau's mission to provide data that paints an accurate picture of the nation's communities.

About the Authors

Patricia Allard is Associate Counsel in the Criminal Justice Program at the Brennan Center for Justice at NYU School of Law.

Kirsten D. Levingston directs the Criminal Justice Program at the Brennan Center for Justice at NYU School of Law.

Acknowledgements

This paper was made possible by the generous support of the JEHT Foundation and the Ford Foundation, for which the Center is grateful. The authors wish to thank Elizabeth-Merry Condon, Chris Pelham and Cate Freilly for their research assistance and input. The authors also wish to thank Marsha Weissman, Marc Mauer and Ryan King for their review and comments.



Accuracy Counts: Incarcerated People & the Census

by Patricia Allard and Kirsten D. Levingston

Raising Voices

A Series by the Brennan Center for Justice

Table of Contents

Foreword	i
I. Introduction	1
II. Evolving Uses of Census Data	2
III. Criminal Justice Trends Affecting Communities	4
“Get Tough” Policy Shift	4
Rural Prison Siting	5
Formerly Incarcerated People Coming Home	7
IV. Interpreting “Usual Residence”	9
Census Bureau Policy	9
Judicial Interpretation	10
V. Implications of Enumerating People in Prison in the Age of Mass Incarceration	13
Enduring Ties to Pre-Incarceration Home Communities	13
Local Communities’ Use of Census Data	14
VI. Conclusion	15
VII. Recommendations	16
Endnotes	17
Appendix 1: Residence Rules	22

Foreword

By Dr. Kenneth Prewitt

Columbia University
Carnegie Professor of Public Affairs
School of International and Public Affairs

The Census Bureau has a long history of drawing on the expert advice of professional associations and university scholars who bring fresh analysis to bear on the always complex challenge of conducting an accurate census. Accuracy has two meanings—correctly counting and correctly locating every American resident. For the second of these tasks, the Census Bureau depends on a “residency rule” that has not changed much in more than 200 years. That residency rule is now being reexamined by the bureau. As with any examination by the Census Bureau of its basic procedures, attention will focus not just on accuracy, but on fairness.* Concern about census fairness is not new. It led, for example, to more than a half-century of technical work on how to minimize the tendency of a census to undercount the urban poor and racial minorities. Census 2000 managed to reduce the undercount to an historic low. If, however, racial minorities and the poor are counted but not properly located, census fairness suffers.

The fresh analysis presented in this report is guided by issues of fairness as well as accuracy. The analysis is persuasive. Changes in the criminal justice system over the last three decades call into question the fairness of counting persons where they are imprisoned rather than where they were living when arrested, and to which they return on release. Current census residency rules ignore the reality of prison life. Incarcerated people have virtually no contact with the community surrounding the prison. Upon release the vast majority return to the community in which they lived prior to incarceration. (In these, and in additional ways, prisoners differ from college students, the other sizable group living, though in their case voluntarily so, away from “home.”) With over 1.4 million people in prison, and 650,000 people returning home from prison annually, where to count the incarcerated population is no small matter. Counting people in prison as residents of their home communities offers a more accurate picture of the size, demographics, and needs of our nation’s communities, and will lead to more informed policies and a more just distribution of public funds.

Dr. Prewitt served as Director of the U.S. Census Bureau from 1998—2001.

* For a non-technical discussion of “numerical accuracy” and “distributional accuracy”—the former referring to the count and the second to the correct distribution of the population across geographic units—see Kenneth Prewitt, *Politics and Science in Census Taking* (Washington D.C., Population Reference Bureau, 2003).

I. Introduction

Through its decennial census and other data collection, the Census Bureau aims to provide an accurate picture of American society, one that informs national and local policymakers, agencies and organizations, and businesses that direct resources and services to diverse communities.¹ However, the convergence of the Census Bureau's enumeration method and current criminal justice trends threaten the accuracy of this picture. First, the prison population has increased more than six-fold since 1970. While this nation's prisons incarcerated 200,000 that year, they held over 1.4 million by the end of 2002.² Second, U.S. prisons are overwhelmingly sited in rural areas often hundreds of miles from the urban centers from which the majority of inmates come.³ Third, over 650,000 people leave prison every year,⁴ virtually always returning to the neighborhood they lived in before their incarceration.⁵ And finally, the Census Bureau's policy is to count incarcerated people as residents of prison towns instead of their home communities.⁶ Given these current criminal justice trends, the Bureau's counting method disserves communities that lose significant numbers of people in at least two critical ways:

- By denying vital information about the number of residents in prison, individuals who will eventually return home from prison, the census misinforms policymakers, service providers and community-based organizations.
- By preventing communities from receiving their fair share of essential public dollars that support services and programs for families, communities, and people returning home from prison.

As it reviews and improves its methods for the next count the Census Bureau should reconsider its approach to enumerating people in prisons. Counting incarcerated people according to their home of record is the fairest and most accurate way to assess the true size and needs of urban communities, and to ensure equitable distribution of population-based funding and political power.

Accuracy Counts examines the necessity and feasibility of adapting the Census Bureau's current method of enumerating incarcerated people. Part I of this policy paper offers a brief overview of the ever-evolving use of census data. Part II documents three current criminal justice trends that affect low-income communities and communities of color. Part III examines the origin and interpretation of the "usual residence" principle, the backbone of the enumeration methodology. Part IV, the final section, explores the implications for policymakers of counting incarcerated people as residents of prison towns in the age of mass incarceration.

II. Evolving Uses of Census Data

Following its independence, our young Nation had a pressing need to count its population in order to meet constitutional requirements set forth by the founding fathers. The U.S. Constitution’s original census provision of Article I, Section 2, adopted in 1787 and implemented in 1790, stated:

Representatives and direct taxes shall be apportioned among the several States which may be included in 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.⁷ . . . The actual Enumeration shall be made within three Years of the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct.

Our founders believed that counting people for both taxation and representation in the House would ensure accuracy and fairness. “[S]tates’ wishes to report few people in order to lower their shares in the war debt would be offset by a desire for the largest possible representation in Congress.”⁸ While the introduction of the personal income tax in 1913 eliminated the Census’ role in tax collection, its apportionment function continues.

Today, as a matter of federal and state law, Census figures also dictate how states draw their own political districts and apportion political power, as well as the way in which officials distribute billions of dollars each year in public dollars.⁹ The General Accounting Office reports that in 1998 \$175 billion in federal funding programs were driven by Census data¹⁰ (see Figure 1).

Notwithstanding the limited constitutional mandate—congressional redistricting and apportionment—in practice “the Census Bureau is the premier source of information about the American people and the economy. More than just numbers, this information shapes important policy decisions that help improve the nation’s social and economic conditions.”¹¹

Figure 1: Top 15 Federal Funding Programs Based on Decennial Census Data

Program Title	Estimated Obligation (Billions)	Percentage of Total
Medicaid	\$104.4	63%
Highway Planning and Construction	19.7	12
Title I Grants to Local Education Agencies	3.7	2
Foster Care	3.7	2
Federal Mass Transit Grants	3.1	2
Community Development Block Grant	3.0	2
WIC (Food)	3.0	2
Social Services Block Grant	2.4	1
Rehabilitation Services: Basic Support	2.2	1
Employment and Training—Dislocated Workers	1.4	1
Prevention and Treatment of Substance Abuse	1.4	1
HOME Investment Partnerships Program	1.3	1
Community Development, State Program	1.2	1
Job Training Partnership Act, Title II-A	1.1	1
Child Care and Development Block Grant	1.0	1

Source: General Accounting Office, Formula Grants: Effects of Adjusted Population Counts on Federal Funding to States

Many individuals, nonprofit organizations, and corporations rely on census data to make decisions affecting their communities. For instance, during a 1998 Census Bureau symposium in Houston, Texas, Dr. Judith Craven, president of the United Way of the Texas Gulf, indicated that her agency uses census data to assess the social service needs of communities, and to determine where to distribute United Way funds. Craven pointed out that in order to serve communities effectively, “it’s essential . . . that we have accurate data in order to distribute those dollars [\$67 million in 1997] to those that are most in need—and in a fair and equitable way.”¹² Census data are also crucial to market analyses, which inform business owners of potential profitable markets, and may even influence the number of grocery stores, laundromats, and other essential businesses a community will have for its residents.¹³

With census data at the heart of government, philanthropic, and business decisions, the Census Bureau properly concludes, “it is even more important now than it was in 1790 that every person . . . be counted and that the information about each be accurate and complete.”¹⁴ Recognizing the decennial census’ significance in shaping the social, economic and political infrastructure of the nation, and, most importantly, in the daily lives of all U.S. residents, it is imperative that we revisit the residence rules and their applicability to people in prison.

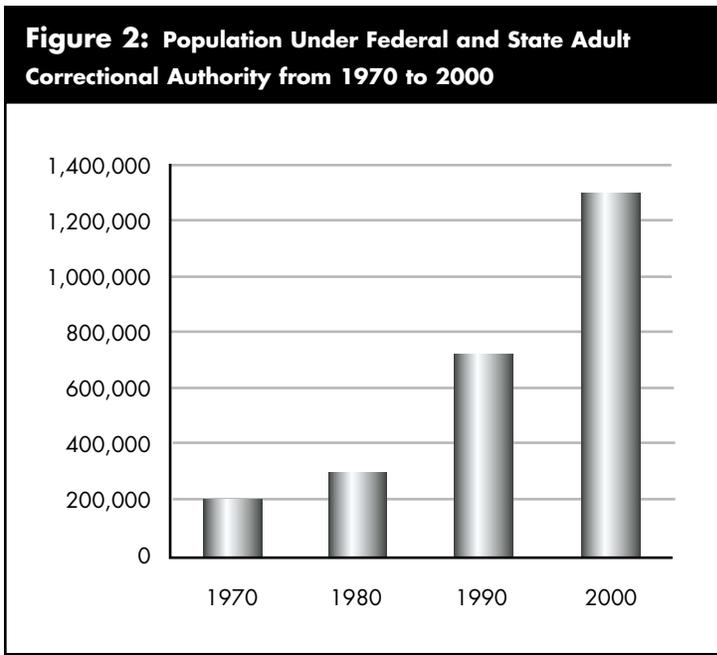
III. Criminal Justice Trends Affecting Communities

To fully understand the implications of the enumeration policy the Census Bureau applies to people in prison, it is important to lay out three current criminal justice dynamics—mass incarceration, rural prison siting, and the return of formerly incarcerated people to their home communities. These trends combine with the Census Bureau’s method of enumerating people in prison to hurt urban communities—the localities that lose concentrated numbers of people to prison.

“Get Tough” Policy Shift

Until the 1970s, the American criminal justice system was characterized by an indeterminate sentencing scheme in which judges exercised great discretion in sentencing, and rehabilitation remained a major objective of sentencing. This model came under attack in the 1960s. Liberals took the position that the broad discretion available to sentencing judges resulted in discriminatory sentencing practices, while conservatives argued that people were not punished severely enough. As a result, in the early 70s there was a shift toward determinate sentencing structures. The shift limited judicial discretion and led to stiffer sentences, but failed to address discriminatory practices. New York’s 1973 Rockefeller Drug Laws represent one example of the early determinate sentencing structures. Under these provisions anyone convicted of selling two ounces or possessing four ounces of narcotics is subject to a 15-year prison term, regardless of the individual’s criminal history or the circumstances surrounding the offense.¹⁵ The movement towards determinate sentencing quickened in the 1980s and continues today. As a result of “get tough on crime” policies the U.S. prison population has grown rapidly over the past 30 years.

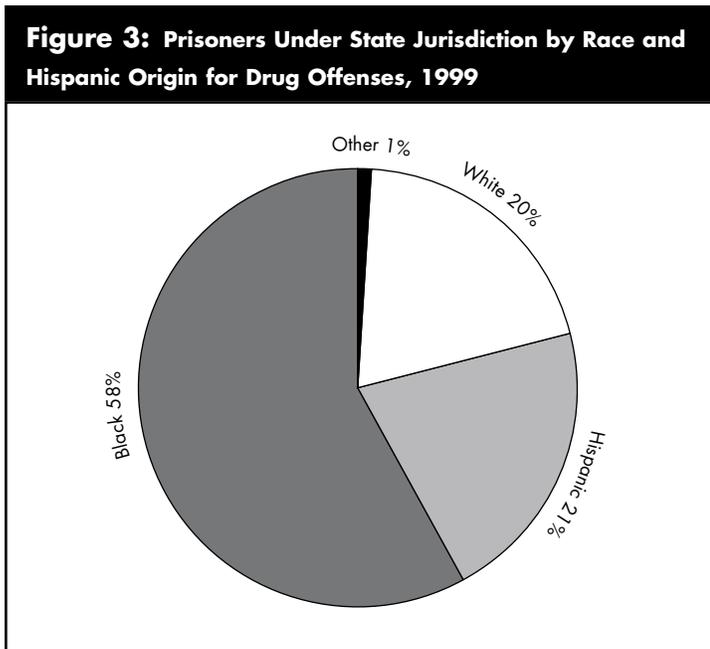
Since 1970, the number of people incarcerated in state and federal prisons has increased more than six-fold (see Figure 2). In 1970, U.S. prisons held approximately



Source: Bureau of Justice Statistics, *Source Book of Criminal Justice Statistics 2002*

200,000 people; this number rose to over 1.3 million in 2000¹⁶ according to the most recent census. As of 2002, there were more than 2 million people behind bars in the U.S., 1.4 million of them incarcerated in state and federal prisons.

The “war on drugs,” declared by the Reagan Administration in the early ‘80s, is one of the most significant contributing factors to the dramatic growth in the prison population. According to arrest data collected by the Federal of Bureau of Investigations, “[d]rug arrests have tripled since 1980.¹⁷ There are eleven times more people in our state prison for drug offenses than there were in 1980.” African-American and Latino communities have been devastated by the “war on drugs.” Although research shows that white people and people of color use drugs at relatively similar rates, white people represent the majority of drug users because they represent a larger segment of the overall population.¹⁸ Yet, African Americans and Latinos are disproportionately arrested and incarcerated for drug offenses (See Figure 3). This anomaly is in large part due to law enforcement policies targeting inner-city neighbor-



Source: Bureau of Justice Statistics, *Prisoners 2000*

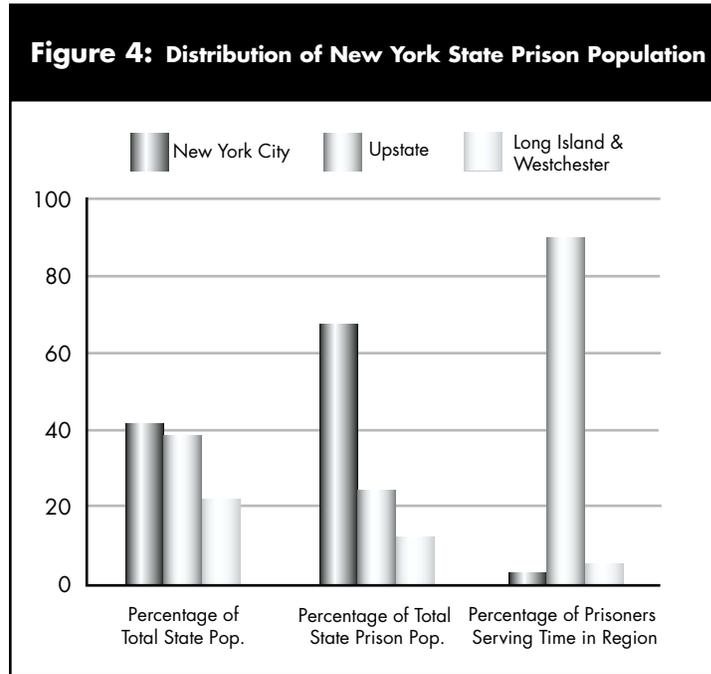
hoods and draconian sentencing laws. The sentencing disparity under federal law between powder cocaine (mostly used by whites) and crack cocaine (predominately used by African Americans) illustrates how current sentencing schemes lead to racial disparity. In the late 1980s, Congress passed federal sentencing laws, mandating “harsher punishments for crack offenses than for powder cocaine crimes. Thus, the sale of 500 grams of cocaine powder resulted in a mandatory five-year prison term, while only 5 grams of crack was required to trigger the same mandatory penalty.”¹⁹

Rural Prison Siting

The significant increase in rural prison siting over the past two decades has also made a reevaluation of Census methodology more compelling. Between 1980 and 1991, 213 prisons were constructed in rural areas, at a rate of 16 per year. Between 1991 and 2000, the rate of rural prison construction rose, with a new facility being developed in a rural area every fifteen days.²⁰ The number of people incarcerated in these facilities grew by 120% during the 1990’s, compared to only 55% growth in the pop-

ulation incarcerated in metropolitan-area facilities over the same period. Today, nearly 40% of incarcerated persons nationwide are incarcerated in rural facilities, even as those areas account for only 20% of the total U.S. population.²¹

New York State and California exemplify this national trend toward moving urban residents into rural prison facilities. Since 1982, all prison facilities in New York State have been constructed in the predominantly rural upstate region.²² Ninety-one percent of all individuals incarcerated in New York State are in upstate facilities, even though 66% of those people are from New York City (see Figure 4). In California, 16 out of the 20 prison facilities constructed by the state since 1983 are located outside of major metropolitan areas.²³



Source: Peter Wagner, *Importing Constituents: Prisoners & Political Clout in New York*

Many rural governments perceive prison construction as a source of economic development.²⁴ Local officials are aware of the fiscal dividends paid by having local prison populations. The town of Florence, Arizona, for example, has, since the 1980's, expanded its municipal boundaries and annexed surrounding prison facilities. Today, incarcerated persons make up 70% of the town's population. In 2001, people in prison were responsible for \$4 million in state and federal population-based monies awarded to Florence; the city collected only slightly more than that from local taxation and grants tied to its non-incarcerated population.²⁵ The town's mayor has admitted that Florence's eligibility for such funding is only a result of the Census' method for counting prisoners, calling the counting policy a "big plus."²⁶

Within states, counties have waged intense battles to host prisons. During the rural prison construction boom in West Texas in the 1990's, for example, municipalities spent millions of dollars on land, water, and sewer improvements. Some also subsidized residential developments for anticipated prison employees.²⁷ Many local governments nationwide offer free land to state and federal authorities, in addition to cash incentives and discounts on utilities.²⁸ Several have also hired lobbyists to focus exclusively on prison development issues.²⁹

For some rural areas prison siting presents a political opportunity. Because Census data is generally used for state redistricting, incarcerated persons, who cannot vote in 48 states, but are counted as prison town residents for redistricting purposes, become “constituents” for rural representatives.³⁰ Unfortunately, some of these representatives disregard the concerns and interests of incarcerated people in their districts, fully devoting themselves to district voters. For instance, New York State Senator Dale Volker (R-Deppew), whose district contains six prisons, “says it’s a good thing his captive constituents can’t vote, because if they could, ‘They would never vote for me.’”³¹ Since people in prison cannot vote, the non-incarcerated citizens of districts in which prison facilities are located have greater per-capita political power than those of other districts.

In New York State, for example, incarcerated people make up 2% of the constituencies of at least four state Senate and ten state Assembly districts, and almost 7% in one Assembly district.³² In 2000, over 40,000 incarcerated persons from New York City were counted as upstate residents, and contributed to the political clout of those districts in which they served time.³³ According to one researcher, if prisoners were not to be included in the populations of at least seven New York State Senate districts, the constituencies of those districts would be at least 5.5% smaller than the average size of state Senate districts.³⁴ The constituencies of one of those seven districts would also be over 10% smaller than that of the largest state Senate constituency in New York State—located in Queens, New York City;³⁵ a disparity that raises concerns under the Voting Rights Act and the Equal Protection Clause.³⁶ Similarly, in Connecticut, another researcher found that incarcerated people make up over 10% of the populations of four lower house legislative districts.³⁷ When these non-voting groups are removed from these districts’ population figures, the population disparity between the state’s smallest and largest lower house legislative districts is 19%, a significant figure that also raises constitutional concerns.³⁸

Formerly Incarcerated People Coming Home

A renewed emphasis on rehabilitation and post-incarceration services demands that policymakers take notice of the communities incarcerated people come from, and the extent to which those communities are adequately prepared to absorb residents returning home from prison. As the nation’s prison population dramatically increased in the 80s and 90s, so too has the rate of release from state and federal prisons.³⁹ The number of people released from prisons steadily grew each year during the 1990’s. In 2001, 46% more people were released from state prisons than in 1990.⁴⁰ Currently, federal and state prisons release more than 650,000 people every year, at a rate of 1,600 daily.⁴¹ Thus, the issue of “reentry”—the process of reintegrating formerly incarcerated people into society—has grown in importance.

Both federal and state officials have started taking steps to better support people returning home from prison and the communities to which they return home. Several states, which formerly sent people with convictions to serve their prison term out-of-state have terminated their contracts with out-of-state prison facilities. Wisconsin, for example, has brought all of its incarcerated residents back home, concerned that sending them out of state “makes it less likely that [they] will rejoin society

[once released] as law-abiding, productive citizens.”⁴² Pennsylvania, Colorado, and other states are contemplating similar initiatives.⁴³ Other states are partnering with the Department of Justice Serious and Violent Offender Reentry Initiative and are receiving federal grants to fund local reentry programs. In 2002, the Department of Justice awarded \$200 million in 68 such grants to state governments for the purposes of assisting released people with felony convictions and insuring the safety of those communities to which they return.⁴⁴ The Department of Labor and the Department of Health and Human Services are also supporting reentry efforts. President Bush also recently recognized the importance of providing support for local reentry programs in his 2004 State of the Union address.⁴⁵ In his own words,

We know from long experience that if [incarcerated persons] can't find work, or a home, or help, they are much more likely to commit crime and return to prison. So tonight, I propose a four-year, \$300 million prisoner re-entry initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups. America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.⁴⁶

These trends—punitive sentencing, rural prison siting, and the return of formerly incarcerated people to their home communities—when combined with the Bureau’s prison enumeration approach lead to skewed results. Neither communities that house prisons nor communities that lose people to prison are reflected accurately in the data produced under the current counting method. Given this inaccuracy, the Census Bureau should search for a better approach to enumerating people in prison

IV. Interpreting “Usual Residence”

Census Bureau Policy

The First Decennial Census Act⁴⁷ required the Census to count persons in their “usual place of abode.” Today, this principle is embodied in the “usual residence” rule, narrowly defined as “the place where a person lives and sleeps most of the time,” even though it may not necessarily be the same place deemed to be the person’s voting residence or legal residence.⁴⁸ The Bureau has identified two broad categories of residence—households and group quarters. A household includes all the people who occupy a housing unit as their usual place of residence.⁴⁹ A group quarter is any housing arrangement other than a housing unit. “Given our nation’s wide diversity in types of living arrangements . . . [t]he Census Bureau has developed residence rules that provide instructions on where people should be counted on Census Day.”⁵⁰ For example, the Bureau recommends that children living under joint custody agreements be counted where they live most of the time. However, if an equal amount of time is spent at either residence, the children should be counted where they are on Census Day (see Appendix 1 for other examples). In addition, Census officials allow some respondents to select their residency from a narrow set of options. Congress members, for example, may select Washington, D.C., or their home state address.

Figure 5: Group Quarters Facilities by Category

Institutional	Non-Institutional
Nursing Homes	College Dormitories
Hospitals	Military Facilities
Wards	Group Homes
Hospices	Shelters
Prisons	Missions

Source: Census Bureau, *Your Gateway to Census 2000*

The Census Bureau classifies all people not living in households as living in group quarters. As shown in the table below, there are two types of group quarters: institutional and non-institutional. The institutionalized population includes people under formally authorized supervised care or custody at the time of enumeration. Such people are classified as “patients or inmates” of an

institution regardless of the availability of nursing or medical care, the length of stay, or the number of people in the institution. Generally, the institutionalized population is restricted to the institutional buildings and grounds (or must have passes or escorts to leave) and thus has limited interaction with the surrounding community. The noninstitutionalized population includes all people who live in group quarters other than institutions, and are at liberty to travel to and from their residences.

The Census Bureau has developed a detailed set of residence rules for group quarters that provide instructions on where people should be counted on Census Day. For example, crew of military vessels

with a U.S. homeport may be counted at their usual onshore residence if they report one or at their vessel's homeport (see Appendix 1 for other examples).⁵¹

The Census Bureau's usual residence rule has evolved over time. For instance, both boarding school and college students were once enumerated at the addresses their parents reported. However, since 1950 the Bureau requires college students living away from home while attending college to list their college addresses on enumeration forms. The change resulted in part from the recommendation of a study conducted in 1948 by the Census Bureau's Technical Advisory Committee on general Population Statistics, which noted that large numbers of college students were not reported at either their parental homes or at their colleges, and that the best way of remedying this problem was to count students where they lived while attending college. In addition, the Census Bureau sought to eliminate the inconsistency caused by not counting college students at a place where they usually ate, slept and worked, the standard uniformly applied to other major groups.

Both the nuanced residence rules developed for group quarters and the reform of the residence rule for students make clear that the Census Bureau has flexibility in deciding how to enumerate people on Census day. Thus, as a matter of *policy*, Census officials may count incarcerated individuals as residents of a pre-incarceration address.

Judicial Interpretation

The Bureau articulated its flexible view of the “usual residence rule” in *Franklin v. Massachusetts*,⁵² a case in which the state of Massachusetts challenged the Bureau's decision to treat federal personnel serving overseas as residents of their “home of record” during the 1990 census. Following the 1990 count, in which over 900,000 overseas federal employees were counted back home, Massachusetts lost a congressional seat to Washington. Massachusetts' suit argued that using “home of record” information maintained in employee personnel files to apportion congressional seats was arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. Section 701 et seq. The federal trial court agreed and ordered the President to change the congressional allocation. In appealing that decision to the U.S. Supreme Court the Bureau argued “[i]t is far too late in the Nation's history to suggest that enumeration of the population of the States must be based on a rigid rule of physical presence on the census date—a rule that has never been applied and that is especially out of place in an age of ever-increasing mobility.”⁵³

In assessing the sensibility of counting overseas personnel in their “home of record” the *Franklin* Court considered other standards available to the Census Bureau, including “legal residence” and “last duty station.” Addresses in those classifications, the Court found, failed to comply with the Bureau's “usual residence” requirement because they were motivated by something other than the person's sense of where they actually resided. “Legal residence,” the Court found, was driven by income tax benefits in the particular jurisdiction, while “last duty station” represented a work locale, not necessarily a home. In contrast the Court found “home of record” information, provided at the time an employee joined a

federal agency, to be in keeping with the Census Bureau’s historic standard in that it “reflected the more enduring tie of usual residence.”⁵⁴ Usual residence, the Court noted, “can mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place.”⁵⁵

From the count’s inception enduring ties, rather than physical presence, has informed the enumeration process. The *Franklin* Court explained “[t]he first enumeration Act itself provided that “every person occasionally absent at the time of enumeration [shall be counted] as belonging to that place in which he usually resides in the United States.”⁵⁶ The Act placed no limit on the duration of the absence, which, considering the modes of transportation available at the time, may have been quite lengthy. For 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 counted, however, as a resident of Virginia.⁵⁷

Historically, congressional residence qualifications have been informed by this “enduring ties” concept. As the *Franklin* Court explained “James Madison interpreted the constitutional term “inhabitant” to include “persons absent occasionally for a considerable time on public or private business.”⁵⁸ Today, this construction of “usual residence” still holds true. Members of Congress physically in Washington, D.C. for most of the year may be counted as residents of their home states at Census time.

Other courts grappling with residency questions concerning people in prison have similarly looked beyond mere physical presence. While the Census Bureau is not bound by these state constructions, it is striking that the agency’s approach is at odds with the majority of states that continue to treat incarcerated people as belonging to their pre-incarceration communities for a range of legal purposes. Over a century ago in *New York v. Cady*,⁵⁹ prosecutors brought charges against someone who listed the city prison as his residence on a voter registration form. For many years the defendant, Michael Cady, confessed to vagrancy in order to have himself committed for six months at a time to the local prison. Cady was prosecuted for illegal registration because he enrolled to vote as a resident of the prison. The prosecution’s theory, adopted by the court, was that the state constitution prevents a prison from being a residence,⁶⁰ and that Cady must have lived somewhere else before he went to prison. Upholding the conviction, New York’s high court said:

The domicile or home requisite as a qualification for voting purposes means a residence which the voter voluntarily chooses and has a right to take as such, and which he is at liberty to leave, as interest or caprice may dictate, but without any present intention to change it. The prison is not a place of residence. It is not constructed or maintained for that purpose. It is a place of confinement for all except the keeper and his family, and a person cannot under the guise of a commitment, or even without any commitment, go there as a prisoner, having a right to be there only as a prisoner, and gain a residence there.⁶¹

In *Stifel v. Hopkins*,⁶² a federal prisoner claimed citizenship of the state in which he was incarcerated in order to invoke diversity jurisdiction as the basis for his federal complaint.⁶³ The *Stifel* court found it appropriate to presume that an incarcerated person is not a resident of the prison in which he is

housed, but found that presumption rebuttable when the person intends to change his domicile. The court said:

We believe that the prisoner, like the service man or the Cabinet official, should not be precluded from showing that he has developed the intention to be domiciled at the place to which he has been forced to remove. No good reason appears for applying a contrary *per se* rule to him by making the presumption that he has retained his former domicile an irrefutable one.⁶⁴

State courts dealing with prisoner residency and domicile issues use pre-incarceration addresses for purposes of determining venue in judicial proceedings,⁶⁵ determining residency,⁶⁶ and voting.⁶⁷ At least one court has upheld a state's decision to count people in prison as residents of their pre-incarceration addresses for purposes of state apportionment.⁶⁸

V. Implications of Enumerating People in Prison in the Age of Mass Incarceration

Enduring Ties to Pre-Incarceration Home Communities

The Census Bureau's interpretation of the usual residence standard in *Franklin* applies to the enumeration of incarcerated people, who while physically present in a prison town located outside their community of origin lack any other ties to the places in which they are incarcerated. Incarcerated people do not vote,⁶⁹ or use local parks, schools or libraries in prison towns. Nor do they join in the civic life of the prison town. The primary contact incarcerated people have with the outside world is through family members and friends from their communities of origin. As a result, incarcerated people are likely to maintain enduring ties with their hometown and return home upon release. In some cases formerly incarcerated people are even required to return to their home communities.

The presence of family and children in a home community often contributes to the maintenance of ties there. The U.S. Department of Justice estimates that in 1999 there were over 720,000 parents of minor children in state and federal prisons—55% of state prisoners and 63% of federal prisoners had a child under the age of 18.⁷⁰

Recognizing that incarcerated people who maintain family ties have lower rates of recidivism,⁷¹ there is a growing commitment on the part of prison officials and community-based organizations to foster family bonds.⁷² The Bureau of Justice Statistics estimates that approximately 40 percent of fathers and 60 percent of mothers in state prison are in weekly contact with their children. Of the mothers in state prison, nearly 40 percent speak to their children by telephone at least once a week. Initiatives that specifically cultivate strong parent-child relationships are prevalent in the criminal justice landscape. The Department of Justice works with the Girl Scouts of America to foster bonds between more than 500 girls annually and their incarcerated mothers. The Girl Scout's program spans 29 prisons in 23 states. In New York, the Osborne Association, a Manhattan-based advocacy group, provides more than 1,000 incarcerated fathers parenting skills classes, and its Family Ties program facilitates visits between incarcerated mothers and their children. Chicago Legal Aid to Incarcerated Mothers, Inc. (CLAIM), in Chicago, Illinois, the Project Seek, in Flint, Michigan, and Aid to Children of Imprisoned Mothers, Inc. (AIM), in Atlanta, Georgia, also provide a variety of services to maintain contact between incarcerated parents and their children.

Parenting programs for prisoners that encourage contact ensure, despite the obstacles posed by incarceration, that the natural parent-child bond remains strong in hopes that the family will reunite after

the parent's release. The Department of Health and Human Services Administration for Children and Families, in a recently issued request for proposals, stresses the importance of communication between incarcerated parents and their children: "In situations where incarcerated parents were actively engaged in the mentoring process, through visits, phone conversations or letters, reunification is a natural process."⁷³

Local Communities' Use of Census Data

The Census Bureau has over 50 Census Information Centers (CICs) nationwide that "use census data to serve underserved communities in varied and meaningful ways."⁷⁴ The Census Bureau's enumeration of incarcerated people impedes the ability of CICs to assist community organizations and local governments that rely upon census data to assess the population they intend to serve, as well as the needs of those populations, and to plan accordingly. Because incarcerated persons are not considered residents of the communities to which they have permanent ties and are likely to return, CICs cannot accurately document the impact that the absence of such persons has on local communities, or help service providers anticipate the resources formerly incarcerated people will likely require upon their release.

Officials in Nashville-Davidson County, Tennessee, for example, finished conducting a countywide assessment of the health and welfare of county youth in 2003 to develop a strategic plan to make local children "healthy, safe, successful in school, connected to caring adults, and [capable of] giving back to their community."⁷⁵ As part of the assessment, county officials consulted the local CIC for 2000 Census data and analysis, and utilized that information to help calculate child well-being. The information used as indicators of child-well being included family composition (i.e. married couple family or single parent family), income, and parental participation in the labor force. The county used the research to identify resources available to meet the needs of children, as well as the gaps in services. Unfortunately, the needs of children who have parents in prison could not be assessed and may not be addressed because the local CIC did not have the data to document the number of parents in Nashville-Davidson County who are incarcerated.

On the flip side, local governments and service providers need to know how many people are likely to return to their communities to anticipate the services required for successful reintegration. For instance, many people leaving prison require certain health care services. The Bureau of Justice Statistics estimates that in 1997 one in six incarcerated people had a medical problem—HIV/AIDS, cancer, heart, kidney/liver, respiratory, neurological, skeletal and diabetes. Because incarcerated persons are not counted in their home communities, CICs are unable to document the number of people likely to return to particular communities, which prevents local communities and service providers from anticipating and meeting the needs of the returning population.

VI. Conclusion

The significant demographic changes of the prison population over the last three decades and evolving use of Census data by policymakers, service providers and businesses compel the Census Bureau, in the name of fairness and accuracy, to count incarcerated people in their home communities. The prison enumeration rule may have had relatively limited consequences in the past for urban communities. However, key criminal justice policy trends—“get tough” sentencing provisions, expansive rural prison siting, and disproportionate incarceration of people of color—intensify the adverse effects of the Bureau’s counting policy. Those relying on Census data today to guide their policy decisions are simply ill-equipped to address the needs of many urban communities.

In their pronouncement of “usual place of abode” in 1790, the founding fathers authorized the Census Bureau to address some of the complexities of residency. As articulated by the U.S. Supreme Court “usual residence” means more than physical presence, and people’s enduring ties to their community can also be taken into consideration. People’s temporary absence from their usual residence should not preclude them from being counted there for census purposes. Incarcerated people are “unwilling sojourners”⁷⁶ in communities in which they do not participate, and their interests are not represented. Though temporarily absent from their home communities, prisoners are likely to maintain enduring ties to them and, ultimately, to return. Changes in American society and in the use of census data require the Bureau to count incarcerated people at their “home of record” in order to provide an accurate picture of American society and a fair distribution of public resources.

VII. Recommendations

As the Census Bureau reevaluates its residency rules in preparation for the 2010 Census, it should implement these new approaches to counting incarcerated people.

1. Enumerate Incarcerated People as Residents of their Home Communities

The Bureau should enumerate people in prison as residents of their home communities by adopting the “home of record” approach used to enumerate overseas military personnel. In collaboration with state and federal corrections agencies, the Bureau should identify a person’s home community as recorded during the prison admission process or as collected through use of an Individual Census Report (“ICR”). For example, the ICR could be revised to include the question “What was the address of your last residence prior to entering this facility?”

2. Enforce a Uniform Prison Enumeration

Census enumeration methods for people in prison vary from facility to facility. In some prisons officials complete census forms on behalf of incarcerated people, while in others officials distribute forms to individuals who complete and return them. The Census Bureau should study the accuracy of the approaches currently utilized and select one to apply uniformly at all prison facilities, ensuring quality control of the counting process.

3. Identify the Informational Needs of Data Users

The Bureau should survey data users who set policies and provide services aimed at meeting the needs of people released from prison and their communities to determine the information necessary to help these data users serve communities effectively.

Endnotes

- ¹ U.S. CENSUS BUREAU, U.S. CENSUS BUREAU STRATEGIC PLAN, FY 2004-2008 at <http://www.census.gov/main/www/strategicplan/strategic03.pdf> (last accessed Sept. 29, 2003).
- ² At the end of 2002, there were 2,166,260 people behind bars in this country, including those held in INS and juvenile detention centers, jails, and prisons on reservations. See <http://www.ojp.usdoj.gov/pressreleases/BJ03114.htm>.
- ³ PETER WAGNER, PRISON POLICY INITIATIVE, IMPORTING CONSTITUENTS: PRISONERS AND POLITICAL CLOUT IN NEW YORK (2002). In New York, for example, while 66 percent of state inmates come from New York City, some 91 percent of state inmates are housed outside New York City, the majority in prisons hundreds of miles from the city.
- ⁴ Office of Justice Programs, U.S. Dep't of Justice, *Learn About Reentry at* <http://www.ojp.usdoj.gov/reentry/learn.html> (last accessed Mar. 29, 2004).
- ⁵ In the experience of Lenny Marks, bureau chief for the New York State Division of Parole, people leaving prison return to their pre-incarceration neighborhoods "99 times out of 100." See Interview with Lenny Marks, Bureau Chief, N.Y. Div. of Parole (Dec. 1, 2002) (notes on file with the Brennan Center).
- ⁶ See Appendix 1.
- ⁷ Amended by Section Two of the Fourteenth Amendment. U.S. CONST. amend. XIV, § 2.
- ⁸ U.S. CENSUS BUREAU, FACTFINDER FOR THE NATION (May 2000) at <http://www.census.gov/prod/2000pubs/cff-4.pdf>.
- ⁹ PETER WAGNER, PRISON POLICY INITIATIVE, DETAINING FOR DOLLARS: FEDERAL AID FOLLOWS INNER-CITY PRISONERS TO RURAL TOWN COFFERS, (Sept. 4, 2002) at <http://www.prisonpolicy.org/articles/detainingfordollars.pdf>.
- ¹⁰ U.S. GEN. ACCOUNTING OFFICE, FORMULA GRANTS: EFFECTS OF ADJUSTED POPULATION COUNTS ON FEDERAL FUNDING TO STATES (1999); see also *Detroit v. Franklin*, 4 F.3d 1367 (6th Cir. 1993); Benjamin J. Razi, *Census Politics Revisited: What to Do When the Government Can't Count*, 48 AM. U.L. REV. 1101 (June 1999) (citing National Research Council, *Modernizing the U.S. Census* 32, 33 (Barry Edmonston & Charles Schultze eds., 1995)).
- ¹¹ U.S. CENSUS BUREAU, U.S. CENSUS BUREAU STRATEGIC PLAN, FY 2004-2008 at <http://www.census.gov/main/www/strategicplan/strategic03.pdf> (last accessed Sept. 29, 2003).
- ¹² U.S. Census Bureau, How the People Use the Census, *United States Census Bureau 2000*, at <http://www.census.gov/dmd/www/dropin4.htm> (last accessed Mar. 29, 2004).
- ¹³ U.S. Census Bureau, "How People Use Economic Census Data," *Guide to the 1997 Economic Census*, at <http://www.census.gov/epcd/www/ec97use2.htm>. The Census Bureau offers the following example: "A major food store chain uses retail census data and population figures to estimate potential weekly food store sales in the trade area for each of its stores. These estimates allow the company to calculate market share for each existing store, and to evaluate prospective sites for new stores."

- ¹⁴ CENSUS BUREAU, *supra* note 8, at 3.
- ¹⁵ MARC MAUER, CATHY POTLER & RICHARD WOLF, THE SENTENCING PROJECT, GENDER AND JUSTICE: WOMEN, DRUGS, AND SENTENCING POLICY (1999).
- ¹⁶ ALLEN J. BECK & PAIGE M. HARRISON, U.S. DEP'T OF JUSTICE, PRISONERS IN 2000 (2001).
- ¹⁷ Marc Mauer, *Race, Drug Laws, and Criminal Justice*, 10 TEMP. POL. & CIV. RTS. L. REV., 321 (Spring 2001).
- ¹⁸ MARC MAUER, RACE TO INCARCERATE, 147 (New York, NY: The New Press, 1999).
- ¹⁹ *Id.* at 155.
- ²⁰ Tracy Huling, *Building a Prison Economy in Rural America*, in INVISIBLE PUNISHMENTS: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT (MARC Mauer & Chesney-Lind eds., 2002) at http://www.afsc.org/az/womens_prisons/tracy.pdf.
- ²¹ HOUS. ASSISTANCE COUNCIL, TAKING STOCK OF RURAL PEOPLE, POVERTY, AND HOUSING FOR THE 21ST CENTURY (Dec. 2002) at <http://www.ruralhome.org/pubs/hsganalysis/ts2000/TS2BNational.pdf> (last accessed Mar. 29, 2004).
- ²² *N.Y. State Legis. Task Force on Demographic Research & Reapportionment* (Mar. 14, 2002) (statement of Peter Wagner, Assistant Dir., Prison Policy Initiative) at http://www.prisonpolicy.org/articles/ny_legis031402.pdf.
- ²³ Cal. Dep't of Corr., Cal.'s Corr. Facilities, state map at http://www.corr.ca.gov/InstitutionsDiv/INSTDIV/facilities/facility_map.pdf (last accessed Mar. 29, 2004).
- ²⁴ Over 25 years, however, “no significant difference or discernable pattern of economic trends between seven rural counties in New York that hosted a prison and the seven rural counties that did not host a prison. While prisons clearly create new jobs, these benefits do not aid host county to any substantial degree since local residents are not necessarily in a position to be hired for these jobs.” RYAN KING, MARC MAUER & TRACY HULING, THE SENTENCING PROJECT, BIG PRISONS, SMALL TOWNS: PRISON ECONOMICS IN RURAL AMERICA, 2 (2003).
- ²⁵ Nicholas Kulish, *Crime Pays: Since Census Counts Convicts, Some Towns Can't Get Enough*, WALL ST. J., August 9, 2001.
- ²⁶ *Id.*
- ²⁷ Scott Parks, *West Texas Towns Embrace Infusion of Jobs from Prison Industry Buildup*, DALLAS MORNING NEWS, August 17, 1997.
- ²⁸ Deeann Glamsner, *Towns Now Welcoming Prisons: The Incentive is Economic in Rural Areas*, USA TODAY, Mar. 13, 1996.
- ²⁹ Barbara A. Serrano, *Criminals—A Hot Commodity: Struggling Small Towns Compete for the State's Next Prison in the Hope of an Economic Boost*, SEATTLE TIMES, July 17, 1994.
- ³⁰ Jonathan Tilove, *Minority Prison Inmates Skew Local Populations as States Redistrict*, NEWHOUSE NEWS SERVICE (2002) at <http://www.newhousenews.com/archive/story1a031202.html>.

- ³¹ *Id.*
- ³² PRISON POLICY INITIATIVE, DISENFRANCHISED URBAN PRISONERS ARE NOT RURAL CONSTITUENTS at <http://www.prisonersofthecensus.org/news/fact-24-11-2003.shtml> (last accessed Mar. 29, 2004).
- ³³ PETER WAGNER, PRISON POLICY INITIATIVE, IMPORTING CONSTITUENTS: PRISONERS AND POLITICAL CLOUT IN NEW YORK (Apr. 2002) at <http://www.prison-policy.org/importing/importing.shtml>.
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ Taren Stinebrickner-Kaufman, *Counting Matters—Prison Inmates, Population Bases, and ‘One Person-One Vote’*, 11 VA. J. SOC. POLY & LAW 229, 266 (2004) (noting that significant discrepancies in populations of legislative districts may be held unconstitutional under Supreme Court precedence).
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ THE URBAN INSTITUTE, FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 4 (2001) at http://www.urban.org/UploadedPDF/from_prison_to_home.pdf (last accessed Mar. 29, 2004).
- ⁴⁰ BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, REENTRY TRENDS IN THE U.S.—RELEASES FROM STATE PRISON at <http://www.ojp.usdoj.gov/bjs/reentry/releases.htm> (last accessed Mar. 29, 2004).
- ⁴¹ OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE, LEARN ABOUT REENTRY at <http://www.ojp.usdoj.gov/reentry/learn.html> (last accessed Mar. 29, 2004).
- ⁴² Nicholas Kulish, *Homeward Bound: States That Exported Inmates in 1990s Have Second Thoughts Now*, WALL ST. J., Dec. 20, 2001.
- ⁴³ *Id.*
- ⁴⁴ Press Release, Ill. Dep’t of Corr., Governor Ryan Announces State to Receive \$2 Million in Federal Funds for Department of Corrections—Illinois Going Home Program to Support Prisoner Reentry Initiatives, at <http://www.idoc.state.il.us/subsections/news/archive/7232002.shtml> (last accessed Mar. 29, 2004).
- ⁴⁵ President George W. Bush, *State of the Union Address* (Jan. 20, 2004) at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html> (last accessed Mar. 29, 2004).
- ⁴⁶ *Id.*
- ⁴⁷ I Stat. 101.
- ⁴⁸ U.S. Census Bureau, Plans and Rules for Taking the Census, Residence Rules, *United States Census Bureau 2000*, available at <http://www.census.gov/dmd/www/plnsruls.html> (last accessed Mar. 31, 2004).

- ⁴⁹ The Census Bureau’s definition of a housing unit includes a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as separate living quarters, or if vacant, intended for occupancy as separate living quarters.
- ⁵⁰ CENSUS BUREAU, *supra* note 48.
- ⁵¹ Crew members may choose either their “usual onshore residence” or their vessel’s homeport as their residence for Census purposes.
- ⁵² *Franklin v. Massachusetts*, 505 U.S. 788 (1992).
- ⁵³ Secretary of Commerce, 1991 U.S. Briefs 1502.
- ⁵⁴ *Franklin*, 505 U.S. at 795.
- ⁵⁵ *Id.* at 804.
- ⁵⁶ *Id.* (quoting Act of Mar. 1, 1790).
- ⁵⁷ *Id.* (citing T. Clemence, Place of Abode, reproduced in App. 83).
- ⁵⁸ *Id.* at 805 (referencing 2 Farrand, Records of the Fed. Convention of 1787, at 217).
- ⁵⁹ *New York v. Cady*, 37 N.E. 673 (N.Y. 1894).
- ⁶⁰ N.Y. CONST. art. II, § 4. (“For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence . . . while confined in any public prison”).
- ⁶¹ *Cady*, 37 N.E. at 674-675.
- ⁶² *Stifel v. Hopkins*, 477 F.2d 1116, 1124 (6th Cir. 1973).
- ⁶³ The inmate who filed suit against his attorney and parents in Ohio federal court claimed that he was a citizen of Pennsylvania and that the defendants were residents of Ohio. Prior to his conviction and removal to a federal prison in Pennsylvania, the plaintiff resided in Ohio.
- ⁶⁴ *Stifel*, 477 F.2d at 1124.
- ⁶⁵ See *Ex parte Sides*, 594 So. 2d 93, 95-96 (Ala. 1992); *B.C. Cook & Sons Enter., Inc. v. R. & W. Fruit Co.*, 512 So. 2d 980, 981 (Fla. Dist. Ct. App. 1987); *Scott v. Scott*, 15 S.E.2d 416, 417-18 (Ga. 1941); *Shanklin v. Shireman*, 659 N.E.2d 640, 643 (Ind. Ct. App. 1995); *Ferguson’s Adm’r v. Ferguson’s Adm’r*, 73 S.W.2d 31 (Ky. Ct. App. 1934); *Fowler v. Fowler*, 477 N.W.2d 112, 113 (Mich. Ct. App. 1991); *State ex. rel. Henderson v. Blaeuer*, 723 S.W.2d 589, 590 (Mo. Ct. App. 1987); *Farrell v. Lautob Realty Corp.*, 612 N.Y.S.2d 190 (N.Y. App. Div. 1994); *Shulze v. Shulze*, 322 N.W.2d 250 (N.D. 1982).
- ⁶⁶ *People v. Carman*, 52 N.E. 2d 197, 199 (Ill. 1943) (recognizing that “the rule that involuntary imprisonment cannot change a man’s legal residence”).
- ⁶⁷ *Clark v. Clark*, 225 P.2d 486, 488-89 (Ariz. 1950) (finding that when incarcerated persons possess necessary intent and express it outwardly, they may acquire domicile in Arizona); *Matter of Appeal in Coconino County Juvenile Action No. J-12187*, 885 P.2d 197, 199 (Ariz. Ct. App. 1994) (holding that for voting purposes incarceration does not change individual’s voting residence).

- ⁶⁸ *Carpenter v. Hammond*, 667 P.2d 1204, 1211 (Alaska 1983) (holding that for population counts used in state legislative district reapportionment, when individual's presence is under physical or legal compulsion, she does not acquire domicile).
- ⁶⁹ Maine and Vermont are the only two states that allow prisoners to vote. Those prisoners cast votes by absentee ballot in their home communities. PrisonersoftheCensus.org, Analysis, Fact of the Week, *available at* <http://www.prisonersofthecensus.org/news/fact-15-12-2003.shtml>.
- ⁷⁰ As a consequence of racial disparity in the criminal justice system, children in African American and Latino communities are especially hard hit by the incarceration of parents. Black children (7.0 percent) are nearly nine times more likely to have a parent in prison than white children (0.8 percent) while Hispanic children (2.6 percent) are three times as likely as white children to have an incarcerated parent. Research shows that when fathers are incarcerated in State prison 90 percent of the time the child's mother continues to be the caregiver, whereas the same is true of fathers only three times out of ten. Children of incarcerated mothers are five times more likely to be in the foster care system than when their fathers are in prison. In order to avoid termination of parental rights when a child enters the foster care system, the parent must work with a child welfare case to continue her involvement in the child's life. Despite the difficulties in participating in their child's case service planning from prison, this involvement strengthens the parent's ties to their community of origin. CHRISTOPHER J. MUMOLA, DEP'T OF JUSTICE, INCARCERATED PARENTS AND THEIR CHILDREN (2000).
- ⁷¹ Christy A. Visher and Jeremy Travis, "Transitions From Prison to Community: Understanding Individual Pathways," *Annual Review of Sociology*, Vol. 29 (August 2003).
- ⁷² The Bureau of Prisons (BOP) offers parenting programs to help inmates maintain family ties and parental bonds while they are in prison. Among the activities BOP provides are parenting education, family literacy, community-based social services, and visiting room activities for parents and children.
- ⁷³ Mumola, *supra* note 72.
- ⁷⁴ U.S. CENSUS BUREAU, USING CENSUS DATA TO HELP LOCAL COMMUNITIES: CENSUS INFORMATION CENTERS AT WORK (2003).
- ⁷⁵ *Id.* at 8.
- ⁷⁶ *See Cady*, 37 N.E. 673 (N.Y. 1894).

Appendix 1: Residence Rules

People Away on Vacation or Business

- People Temporarily Away on Vacation or a Business Trip on Census Day—Counted at their usual residence, that is, the place where they live and sleep most of the time.

People Without Housing

- People Without a Usual Residence—Counted where they are staying on Census Day.

People With Multiple Residence

- Commuter Workers Living Away Part of the Week While Working—Counted at the residence where they stay most of the week.
- Snowbirds (people who live in one state but spend the winter in another state with a warmer climate)—counted at the residence where they live most of the year.
- Children in Joint Custody—Counted at the residence where they live most of the time. If time is equally divided, they are counted where they are staying on Census Day.
- People Who Own More Than One Residence—Counted at the residence where they live most of the time.

Students

- Boarding School Students—Counted at their parental home rather than at the boarding school.
- College Students Living Away From Home While Attending College—Counted where they are living at college.
- College Students Living At Their Parental Home While Attending College—Counted at their parental home.

Live-Ins

- Live-In Nannies—Counted where they live most of the week.
- Foster Children—Counted where they are living.
- Roomers or Boarders—Counted where they are living.
- Housemates or Roommates—Counted where they are living.

Military or Merchant Marine Personnel in the U.S.

- People in the Military Residing in the United States—Counted at their usual residence (the place where they live and sleep most of the time), whether it is on-base or off-base.

- Crews of Military Vessels With a U.S. Homeport—Counted at their usual onshore residence if they report one (the place where they live and sleep most of the time when they are onshore) or otherwise at their vessel's homeport.
- Crews of U.S. Flag Merchant Vessels Engaged in Inland Waterway Transportation—Counted at their usual onshore residence (the place where they live and sleep most of the time when they are onshore).
- Crews of U.S. Flag Merchant Vessels Docked in a U.S. Port or Sailing From One U.S. Port to Another U.S. Port—Counted at their usual onshore residence if they report one (the place where they live and sleep most of the time when they are onshore) or otherwise on the vessel.

Military or Merchant Marine Personnel Outside the U.S.

- People in the Military Assigned to Military Installations Outside the U.S., Including Family Members With Them—Counted as part of the U.S. overseas population and not as part of the U.S. resident population.
- Crews of Military Vessels With a Homeport Outside the U.S.—Counted as part of the U.S. overseas population and not as part of the U.S. resident population.
- Crews of U.S. Flag Merchant Vessels Docked in a Foreign Port, Sailing From One Foreign Port to Another Foreign Port, Sailing From a U.S. Port to a Foreign Port, or Sailing From a Foreign Port to a U.S. Port—Not included in the census.

People in Hospitals, Prisons, or Other Institutions

- Patients in General Hospitals or Wards, Including Newborn Babies—Counted at their usual residence (the place where they live and sleep most of the time). Newborn babies are counted at the residence in which they will be living.
- Patients in Chronic or Long-Term Disease Hospitals or Wards—Counted at the hospital or ward.
- People in Nursing or Convalescent Homes for the Aged or Dependent—Counted at the nursing or convalescent home.
- Patients Staying in Hospice Facilities—Counted at the hospice.
- People Staying in Homes, Schools, Hospitals, or Wards for the Physically Handicapped, Mentally Retarded, or Mentally Ill; or in Drug/Alcohol Recovery Facilities—Counted at the institution.
- Inmates of Correctional Institutions, Including Prisons, Jails, Detention Centers, or Halfway Houses—Counted at the institution.
- Children in Juvenile Institutions such as Residential Care Facilities for Neglected or Abused Children or Orphanages—Counted at the institution.

- Staff Members Living in Hospitals, Nursing Homes, Prisons, or Other Institutions—Counted at their usual residence if they report one (the place where they live and sleep most of the time) or otherwise at the institution.

People in Noninstitutional Group Quarters

- Migrant Farmworkers—Counted at their usual U.S. residence if they report one (the place where they live and sleep most of the time) or otherwise at the workers' camp.
- People at Hostels, YMCA's/YWCA's, or Public or Commercial Campgrounds—Counted at their usual residence if they report one (the place where they live and sleep most of the time) or otherwise at the hostel, etc.
- Members of Religious Orders Living in Monasteries or Convents—Counted at their usual residence if they report one (the place where they live and sleep most of the time) or otherwise at the monastery, etc.
- People Staying at Job Corps or Other Post-High School Residential Vocational Training Facilities—Counted at their usual residence if they report one (the place where they live and sleep most of the time) or otherwise at the Job Corps Center, etc.
- People at Soup Kitchens or Mobile Food Vans—Counted at their usual residence if they report one (the place where they live and sleep most of the time) or otherwise at the soup kitchen, etc.
- Shelters With Sleeping Facilities for People Without Housing, for Abused Women, or for Runaway or Neglected Youth—Counted at the shelter.

Foreign Citizens

- Citizens of Foreign Countries Who Have Established a Household or Are Part of an Established Household in the U.S. While Working or Studying, Including Family Members With Them—Counted at the household.
- Citizens of Foreign Countries Who Are Living in the U.S. at Embassies, Ministries, Legations, or Consulates—Counted at the embassy, etc.
- Citizens of Foreign Countries Temporarily Traveling or Visiting in the U.S.—Not included in the census.

U.S. Citizens Abroad

- U.S. Citizens Employed Overseas as Civilians by the U.S. Government, Including Family Members With Them—Counted as part of the U.S. overseas population and not as part of the U.S. resident population.
- U.S. Citizens Not Employed by the U.S. Government who are Working, Studying, or Living Overseas—Not included in the census.

Brennan Center for Justice Board of Directors & Officers

William J. Brennan, III
Chair
Smith, Stratton, Wise, Heher & Brennan

Tom Gerety
Executive Director
Brennan Center for Justice

Nancy Brennan
Executive Director, Plimoth Plantation

Professor Nancy Morawetz
NYU School of Law

David W. Carpenter
Sidley, Austin, Brown & Wood

Professor Burt Neuborne
NYU School of Law

Zachary W. Carter
Dorsey & Whitney LLP

Lawrence B. Pedowitz
Wachtell, Lipton, Rosen & Ktat

Professor John Ferejohn
NYU School Of Law
Stanford University

Richard Revesz
Dean, NYU School of Law

Peter M. Fishbein
Kaye Scholer

Daniel A. Reznick
Office of the DC Corporation Counsel

Susan Sachs Goldman

Professor Stephen Schulhofer
NYU School Of Law

Professor Helen Hershkoff
NYU School Of Law

John Sexton
President, New York University

James E. Johnson
Morrison & Foerster

Robert Shrum
Shrum, Devine & Donilon

Professor Thomas M. Jorde
Boalt Hall School of Law

Walter J. Smith, S.J.
President & CEO,
The HealthCare Chaplaincy, Inc.

Jeffrey B. Kindler
Pfizer

Clyde A. Szuch
Pitney, Hardin, Kipp, & Szuch

Professor Larry Kramer
NYU School Of Law

Professor Adam Winkler
UCLA School of Law

Ruth Lazarus

Jeannemarie E. Smith, Treasurer
CFO, NYU School of Law

Steven A. Reiss, General Counsel
Weil, Gotshal & Manges, LLP

Brennan Center for Justice
at NYU School of Law
161 Avenue of the Americas, 12th Floor
New York, NY 10013
212-998-6730
www.brennancenter.org

