

# PRISON POLICY INITIATIVE

PETER WAGNER

Executive Director

main: (413) 527-0845

direct: (413) 961-0002

[pwagner@prisonpolicy.org](mailto:pwagner@prisonpolicy.org)

69 Garfield Ave, Floor 1  
Easthampton, Mass. 01027

[www.prisonpolicy.org](http://www.prisonpolicy.org)

September 1, 2016

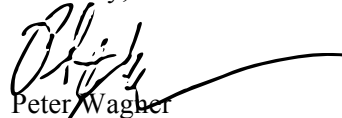
Karen Humes  
Chief, Population Division  
U.S. Census Bureau, Room 6H174  
Washington, DC 20233

Via email at [POP.2020.Residence.Rule@census.gov](mailto: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.<sup>1</sup> 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.

---

<sup>1</sup> 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 third<sup>2</sup> 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.<sup>3</sup> 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 data<sup>4</sup> confirms this:

---

<sup>2</sup> 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>

<sup>3</sup> 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>

<sup>4</sup> 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](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](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](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](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.”<sup>5</sup>

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 <sup>6</sup> 2-12 day median figures, it is clear that a jail cell is not a usual residence.<sup>7</sup>

### 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.<sup>8</sup> And most people in state prisons do

---

<sup>5</sup> 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](https://www.youtube.com/watch?feature=player_detailpage&v=zBfIganIF1s - t=14020s)

<sup>6</sup> 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.

<sup>7</sup> 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](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.

<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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 months<sup>11</sup>; and in New York it is 7.1 months.<sup>12</sup> 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.<sup>13</sup> 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.)

<sup>9</sup> 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>

<sup>10</sup> 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.

<sup>11</sup> 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](http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_all_inmates_2016_06.pdf).

<sup>12</sup> 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](http://www.doccs.ny.gov/Research/Reports/2008/Hub_Report_2008.pdf).

<sup>13</sup> 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](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.<sup>14</sup> 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.<sup>15</sup>

The court in *Davidson v. City of Cranston*<sup>16</sup> 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.”<sup>17</sup>

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.

---

<sup>14</sup> 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.)

<sup>15</sup> 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>

<sup>16</sup> 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.

<sup>17</sup> *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.<sup>18</sup> 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 students<sup>19</sup>**

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).”<sup>20</sup> The Bureau should consider that similar familial ties

---

<sup>18</sup> 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](https://www.brennancenter.org/sites/default/files/legacy/d/download_file_36223.pdf))

<sup>19</sup> 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.

<sup>20</sup> 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.<sup>21</sup> And in fact, incarcerated people are far more likely to return home<sup>22</sup> than boarding students, most of whom move on to college within a few short months after graduation.<sup>23</sup>

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),<sup>24</sup> they

---

42577, 42580 (June 30, 2016)

<sup>21</sup> 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> .

<sup>22</sup> 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](https://www.brennancenter.org/sites/default/files/legacy/d/download_file_36223.pdf)

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

<sup>24</sup> 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.”<sup>25</sup> 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.<sup>26</sup>

---

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/](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](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> .

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

<sup>26</sup> 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.”<sup>27</sup>

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.”<sup>28</sup> 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).<sup>29</sup>

---

<sup>27</sup> 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).

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

<sup>29</sup> 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](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.<sup>30</sup> 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”<sup>31</sup> 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).”

<sup>30</sup> 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>

<sup>31</sup> 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.<sup>32</sup>
- 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

---

<sup>32</sup> 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](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](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](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.”<sup>33</sup> Based on those findings, the Massachusetts legislature sent a resolution to the Bureau urging it to count incarcerated people at home.<sup>34</sup>

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

---

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

<sup>34</sup> 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.<sup>35</sup>

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 padding<sup>36</sup>; 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.<sup>37</sup>

### **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.<sup>38</sup> 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.<sup>39</sup>

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

---

<sup>35</sup> 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/>

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

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

<sup>38</sup> 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>

<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> Similarly, in Connecticut, 75% of the state's prison cells were in state house districts that were disproportionately White.<sup>42</sup>

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.<sup>43</sup> 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

---

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

<sup>41</sup> 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/>.

<sup>42</sup> *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](http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf).

<sup>43</sup> 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](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](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](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,<sup>44</sup> legislative opinion,<sup>45</sup> 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*

---

<sup>44</sup> 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%20Attachments.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.

<sup>45</sup> 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.*<sup>46</sup> [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.

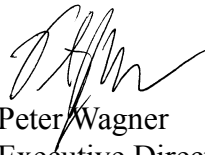
Counting incarcerated people at home, the place where they have family and community ties, accords with the consistent logic of the "usual residence" rule as applied to other similarly situated, albeit economically and racially privileged, populations.

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

Submitted by,



Aleks Kajstura  
Legal Director  
Prison Policy Initiative  
[akajstura@prisonpolicy.org](mailto:akajstura@prisonpolicy.org)  
<http://www.prisonpolicy.org>  
<http://www.prisonersofthecensus.org>  
(413) 527-0845

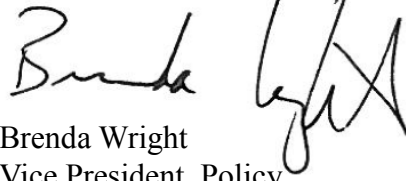


Peter Wagner  
Executive Director  
Prison Policy Initiative  
[pwagner@prisonpolicy.org](mailto:pwagner@prisonpolicy.org)  
<http://www.prisonpolicy.org>  
<http://www.prisonersofthecensus.org>

---

<sup>46</sup> *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  
bwright@demos.org  
<http://www.demos.org>  
(617) 232 5885 ext. 13