

September 21, 2021



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**Re: Sharing data with states for redistricting and voting**

Director Carvajal:

We write on behalf of two national non-profits, the Prison Policy Initiative and the Campaign Legal Center. For nearly two decades, the Prison Policy Initiative has been leading the national effort to urge the Census Bureau to count incarcerated people as residents of their legal home addresses. At the same time, we work closely with state and local governments to develop interim solutions to the harmful distortion of democracy caused by the Census Bureau’s prison count. Campaign Legal Center is a non-partisan, non-profit group dedicated to advancing democracy through law with a practice that is focused on enfranchising justice-involved voters.

There has been a growing understanding that the overpolicing and overincarceration that occurs in communities of color undermines racial equity and dilutes the political power of people of color in our nation. As a result, more states and jurisdictions are undertaking efforts to (1) end prison gerrymandering<sup>1</sup> and (2) ensure that people who are incarcerated, but eligible to vote, are able to participate in the political process.<sup>2</sup>

As you know, these efforts have resulted in the Bureau of Prisons (“BOP”) receiving more requests from states seeking information about their residents who are incarcerated in your facilities. In order to assist states in these endeavors, we ask that the BOP (1) timely provide states with information about their residents for redistricting purposes, (2) ensure that

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<sup>1</sup> Prison gerrymandering—the redistricting practice of assigning incarcerated people to facility location populations rather than at their home communities— inflates political power in the areas where prisons are built (predominately white, rural areas), while divesting power from communities of color.

<sup>2</sup> An increasing number of election officials in several states and the District of Columbia are working to ensure ballot access for eligible incarcerated voters, including voters held in Bureau of Prisons custody.

the information provided respects privacy protocols and includes data that allows states to properly reallocate their prison populations, and (3) establish a data sharing policy to assist states in ensuring ballot access for eligible incarcerated voters.<sup>3</sup>

### **I. The Bureau of Prisons Should Make Data Regarding Home Addresses of People Incarcerated in its Facilities Timely Available.**

For the last decade, the BOP has told states that it cannot provide data for redistricting purposes, citing privacy concerns. We were encouraged to hear that about the BOP's recent response to a request for data submitted by Senator Padilla's office on behalf of the California Citizens Redistricting Commission, which indicates that BOP policy may be shifting.<sup>4</sup>

We urge the BOP to affirmatively establish a policy that such data will be timely provided to states who request it moving forward, which it can do through the promulgation of a new routine use exception.<sup>5</sup> The adoption of such a policy is urgently needed as states begin their redistricting processes—which will establish district lines for the next decade.

### **II. Residential Data Should be Formulated to Allow States to Properly Reallocate their Incarcerated Population, While Protecting the Privacy of those Incarcerated in BOP Facilities.**

In addition to providing BOP data in a timely manner, it is essential that datapoints be provided that address privacy concerns and allow states to properly reallocate their residents who are currently incarcerated in BOP facilities. The data recently provided to California failed to meet these standards.

Ideally, data sharing for redistricting purposes should contain the following information:

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<sup>3</sup> This would also advance the Administration's policy objectives, set forth in the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

<sup>4</sup> Before receiving this request from the Commission, BOP had been approached several times by California's Statewide Database, which processes and maintains redistricting data for the state. It is unclear why BOP chose to share this data freely with the Commission while refusing to do so with the Statewide Database, which provides more privacy safeguards.

<sup>5</sup> See Letter Re: Routine Usage Exception to Allow for Implementation of Universal Enfranchisement and Abolition of Prison Gerrymandering, from CLC, the Washington Lawyers' Committee for Civil Rights Under Law, and the League of Women Voters to Attorney General Merrick Garland (March 30, 2021), [https://campaignlegal.org/sites/default/files/2021-03/DRAFT\\_03.30.2021\\_Routine%20Usage%20Exception%20Letter%20DOJ%20%5Bfinal%5D.pdf](https://campaignlegal.org/sites/default/files/2021-03/DRAFT_03.30.2021_Routine%20Usage%20Exception%20Letter%20DOJ%20%5Bfinal%5D.pdf).

- A. A unique identifier. Each person that data is reported on should be assigned unique identifier; a person's name or BOP Register Number should not be provided for redistricting purposes.<sup>6</sup>
- B. Any information maintained by the BOP about the residential address or addresses at which the person was domiciled before the person's most current term of incarceration. If the BOP is not able to provide states with data achieving this level of granularity, data should include, at the very least, the last known city in which the persons in custody lived and any other geographical information that may help place them in a particular census block.<sup>7</sup>
- C. A person's race and ethnicity. To the extent that such information is maintained by the BOP, data on race and ethnicity should be provided to states.
- D. The address of the facility where a person is incarcerated. The address of the correctional facility where the person is incarcerated on the decennial Census Day.

### **III. The Bureau of Prisons Should Create a Comprehensive Policy for Data Sharing that Allows for Collaboration with States to Affect Their Election Laws.**

The continuing failure of BOP to share population data with states not only has ramifications for our democracy in the redistricting context, but also affects the voting rights of those who are incarcerated in BOP.

Most states allow citizens who are incarcerated for misdemeanor convictions to vote during their incarcerations, and several allow for voting after a felony conviction. However, these jurisdictions cannot directly serve their citizens incarcerated in BOP, because BOP has refused to share comprehensive population data identifying would-be voters and where in BOP they are being held. This failure prevents election officials from conducting effective voter engagement and from fully implementing universal enfranchisement laws like Washington D.C.'s, which requires the automatic issuance of ballots to incarcerated eligible voters. Rather than hindering these efforts, BOP should help.

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<sup>6</sup> We recognize that this information is available in the locator tool, which requires a search by name or number. However, aggregating data about the residents of a state who are incarcerated in BOP facilities in one file, with no limitations or privacy sharing agreements in place on it, flouts privacy concerns and could be used for nefarious purposes. Necessary privacy protections can be achieved through restrictive data sharing agreements.

<sup>7</sup> Information on the last known city is what the BOP shared with the California Citizens Redistricting Commission.

Running the machinery of our democracy is complicated, whether it be undertaking the redistricting process, facilitating voter registration, or providing pathways to the ballot box. These tasks take time, resources, and planning. BOP can and should support jurisdictions that seek to include incarcerated citizens in our democracy by creating infrastructure that allows for collaboration and data sharing.

If you would like to discuss this matter further, please do not hesitate to contact Aleks Kajstura at [akajstura@prisonpolicy.org](mailto:akajstura@prisonpolicy.org) or 413-527-0845 ext. 304 and Aseem Mulji at [amulji@campaignlegalcenter.org](mailto:amulji@campaignlegalcenter.org) or (202) 868-4777.

Thank you for your attention to this matter.

Sincerely,



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