

Testimony of Cuqui Rivera,
Member, Integrated Justice Alliance
Before the
Appportionment Commission of New Jersey
February 9, 2011

Thank you, members of the Commission for holding this hearing here today. My name is Cuqui Rivera and I am employed by La Casa de Don Pedro as the Case Manager for the Newark Prisoner Re Entry program, the owner and moderator of the NJ Community and Corrections Working Summit @ YahooGroups.com a news list serve with a member ship nearing 2000, a board member of the Latino Action Network and also a member of the NJ Integrated Justice Alliance, a solution-oriented group of organizations that generates and supports effective public policies before, during, and after incarceration in New Jersey.

We are here this evening to add the weight of our voices to the concerns about prison-based gerrymandering that were raised by other members of our organization during both the Camden and Tom's River hearings. Tonight, we would like to reiterate to the Commission of the serious threats to the principles of democratic government that are inherent in prison-based gerrymandering. At the same time, we would like to extend the discussion and present some concrete examples of why prison-based gerrymandering should be a concern for all of us interested in the process of fair representation, and offer the Commission some solutions to fix this problem.

As you now know, in what amounts to a quirk in the data collection process, the Census counts prisoners as if they were residents of the prison rather than at their home addresses. When these data are used for redistricting purposes, it skews population distributions in New Jersey in ways that violate the Supreme Court's "One Person One Vote" rule.

As you heard in previous hearings, The Census Bureau counts incarcerated people as residents of the prison location, even though they cannot vote and are often not a part of the community that surrounds the prison. As a result, assigning incarcerated people to the census block that contains the prison, rather than the census block that contains their home address, results in a significant enhancement of the weight of a vote cast in districts with prisons and dilutes the votes of all other residents in all other districts in the state.

There is simply no question that to count people who are not truly residents as part of the population of a district is, on the very face of it, undemocratic. But in New Jersey, where almost 80% of the roughly 24,000 people in state prison are African-American or Latino¹, this practice has additional grave implications.

¹ New Jersey Department of Corrections, January 1, 2010.

Consider these facts:

According to the New Jersey Department of Corrections, nearly, two-thirds of the state prison population in 2010 came from Essex or Camden County alone, while over 30% of the state prison population was sent to prisons in Cumberland County- a county where only 2% of the residents, themselves, are incarcerated.

Additional data from the Department of Corrections show that while Essex and Camden are the top counties of prison admissions, Cumberland, Burlington, and Mercer counties house the largest proportion of the total state prison populations, with Cumberland County housing state prisoners at almost 3 times the rate of all other counties in the state.

Indeed, many of us from Essex County have felt the devastating impact of incarceration on our neighborhoods. For example, in 2004, according to the Prison Policy Initiative, Essex County alone was home to 18% of New Jersey's prisoners, but only 9.4 percent of the state's population. At that time, only 11% of the state's prison cells were located in Essex County.

We are here tonight to remind you that the Commission is not powerless to fix this. As you learned, our neighbors in Maryland,² New York³ and Delaware,⁴ have all passed legislation last year to adjust Census data for redistricting purposes. And just last Friday, the Virginia State Legislature unanimously passed a bill in the State Assembly that would empower more counties to avoid prison-based gerrymandering. New Jersey should join these states in giving each resident equal access to government.

We also want to highlight for you that New Jersey has already taken a step in this direction. As you now know, New Jersey law requires school board districts to exclude the prison population when apportioning school boards that have 9 or more members.⁵

Equally important, we want to, again, address the myth that the legislature and the Commission is required by law to use Census data that miscounts prisoners, and we will resubmit for the record the fact sheet that shows how states are authorized to adjust Census data when redistricting.⁶

We are mindful that the clock is ticking, and that our options may be limited. Ideally, the New Jersey State Legislature would pass legislation that requires prisoners to be counted at their home addresses. But there are interim solutions that we want to reiterate tonight.

² HB496 and SB400, 2010 Leg., Reg. Sess. (Md. 2010).

³ Part XX of A9710D/S6610C with technical amendment as A11597/S8415, 2010 Leg., Spec. Sess. (N.Y. 2010).

⁴ HB384, 145th Gen. Assem., Reg. Sess. (Del. 2010).

⁵ N.J.S.A. 18A:13-8; Board v. New Jersey 2004 N.J. Super. LEXIS 361.

⁶ The state is required by federal law to redistrict each decade, but it is not required to use federal Census data to do so. See Mahan v. Howell, 410 U.S. 315, 330-332 (1973) (rejecting Virginia's argument that it was compelled to use Census Bureau assignments of residences of military personnel in its state legislative redistricting, and suggesting that a state may not use Census data it knows to be incorrect). As the Third Circuit has explained:

Although a state is entitled to the number of representatives in the House of Representatives as determined by the federal census, it is not required to use these census figures as a basis for apportioning its own legislature. Borough of Bethel Park v. Stans, 449 F.2d 575, 583 n.4 (3rd Cir. 1971). See also Attached Appendix "States are Authorized to Adjust Census Data to End Prison-Based Gerrymandering, and Many Already Do"

First, you could declare that all people who have been counted as residents of the correctional facilities have been counted there incorrectly. Since we do not have correct home addresses, the Commission could instead declare prisoners' addresses unknown and treat them as at-large members of the state and not in any particular district.

Finally, to show that it is possible to find out where folks in state prisons are currently located, we took a minute before the hearing today to ask our experts to determine where the 2010 census counted people in just one of the 12 state prisons. And in time for our remarks this evening, they were able to determine that in 2010, for example, New Jersey State Prison in Mercer County was counted on Block 1000, Tract 002400 and included 1,899 people in that prison as part of that Census Block and Tract.

We understand that this is just one Block and Tract within the larger context of the state. However, as there are only 12 state prisons in New Jersey, we are confident that New Jersey can properly locate and count the populations of these facilities even within a highly compressed timeframe.

Once again, at the Alliance, we stand prepared to work closely with you to identify which populations in which Census blocks are incarcerated to ensure a fair count, and to ensure that political representation is neither enhanced or diminished by the location of prisons.