

November 5, 2021

Chair Brittney Miller
Interim Committee on Reapportionment and Redistricting
401 S. Carson St.
Carson City, NV 89701



Dear Chair Miller and Members of the Committee

The ACLU of Nevada (ACLUNV) writes to express our grave concerns with the Nevada Department of Corrections' (NDOC) failure to meet its statutory obligation to compile addresses of persons in its custody for purposes of reapportionment and redistricting.¹ The NDOC's actions not only frustrate the Legislature's crucial public policy objectives of fairness and equal representation in the redistricting process but also places the Legislature at risk of violating Nevada's Constitutional requirement to base reapportionment on accurate data.²

NDOC's Inadequate Efforts to Compile Residential Addresses Violate NRS 209.131

During the 2019 legislative session, lawmakers passed Assembly Bill 450 (AB 450) aimed at ending the practice of prison gerrymandering in Nevada.³ Prior to AB 450 incarcerated Nevadans were counted at the prison where they were housed rather than in their home communities. This method undermines fairness in our democratic institutions by distorting political representation at the state and local levels. The population counts of small communities in Nevada were artificially bolstered by the presence of large correctional institutions housing hundreds of individuals with no ties to those communities and no intention of remaining there after incarceration. AB 450 sought to remedy this distortion.

Since July 1, 2019, AB 450 has required that the Department of Corrections "[c]ompile the last known residential address of each

¹ Nev. Rev. Stat. § 209.131(11).

² *Clark Cty. v. City of Las Vegas*, 92 Nev. 323, 333, 550 P.2d 779, 786 (1976).

³ NEV. A.B. 450, 81st Reg. Sess. (2019) (enacted), available at <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6863/Text>. See generally, <https://www.prisonersofthecensus.org/>.

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offender immediately before the offender was sentenced to imprisonment in a facility or institution of the Department.”⁴ In January of 2021, voting rights and prison reform advocates began requesting information from the NDOC regarding the policies and procedures it intended to utilize to compile the last known address of individuals in its custody. Although there were conversations between advocates and the State Demographer, the NDOC failed to respond.⁵

The first public report on whether and how addresses were compiled and incarcerated people reallocated occurred at your meeting on October 27, 2021.⁶ The presentation by the State Demographer and the NDOC revealed that the NDOC’s efforts were wholly inadequate as NDOC failed to compile address information for nearly half of the incarcerated population.

When pressed on this matter during the October 27 meeting, NDOC representative Alejandra Livingston explained that most addresses came from the Nevada Offender Tracking Information System (NOTIS). According to Livingston’s testimony, NDOC is aware that the addresses in that system are provided from a variety of sources and the system often contains inaccurate information. She further indicated that a memo⁷ was sent to incarcerated persons with missing data and that staff interviewed them if they were still housed in their facilities, but that the interview process was voluntary and several people declined to be interviewed. She stated that “most of these [incarcerated] individuals do not have the lifestyles the rest of us have. They do not necessarily have a set address where they lived,” suggesting that nearly half of Nevada’s prison population was unhoused or transient.⁸ She did not provide any data to explain how many people refused to provide an address or did not have an address.

Put simply, the information provided to the State Demographer by the NDOC is incomplete and thus inaccurate. First, the statute places no temporal limit on the NDOC’s duty to compile address data, meaning that the NDOC’s obligation is ongoing. When the NDOC does not have an address on file, it has an ongoing obligation to “compile” those addresses under the plain language of the statute. In turn, when an address on file cannot be verified it is an “unknown” address, requiring the NDOC to determine whether there is a “known” address that can be compiled.

Likewise, the NDOC’s so-called “memo” is a blank form with no information about the census, redistricting, the reason NDOC was collecting the information, or even

⁴ A.B. 450 (enacted); Nev. Rev. Stat. § 209.131(11).

⁵ Appx., Ex. 1.

⁶ S. REP. NO. 25791 (2021), available at <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/25791>.

⁷ Appx., Ex. 2.

⁸ *Committee to Conduct an Investigation into Matters Relating to Reapportionment and Redistricting in Nevada*, Interim Session (2021) at 6:09:27.

that it is an official NDOC document. The NDOC failed to put those in their custody on notice of the importance of this matter by explaining how this process will impact the individual after incarceration. The Nevada Legislature is committed to expanding access to democracy and demonstrated this through AB 450 and when they restored the right to vote to over 77,000 formerly incarcerated Nevadans.⁹ Furthermore, the NDOC is well aware of the lack of trust persons in its custody have in NDOC officials. Voting rights advocates and census professionals offered their assistance to collect address data. At some point the NDOC should have reached out to those groups and advocates for incarcerated persons to help the NDOC fulfill their statutory obligations.

Finally, although lawmakers should never ignore the strong nexus between housing instability and the likelihood of one entering the criminal legal system, the suggestion that the NDOC failed to fulfill its duty because nearly half of the prison population were unhoused or transient prior to incarceration is statistically impossible. Nevada does have one of the highest per capita rates of unhoused people in the nation, but they represent only .22% of Nevada's total population. A disproportionate number of incarcerated persons are unhoused prior to incarceration but those numbers do not exceed 10% of the total prison population.¹⁰ At most, this issue should only impact approximately 1200 people counted in Nevada prisons on census day and those individuals' addresses should be collected in accordance with Census Bureau guidelines on counting the unhoused and transient population.¹¹

A Redistricting Scheme Based on Current Data Would Violate Article 1 § 13 of the Nevada Constitution

The Nevada Constitution states that “[r]epresentation shall be apportioned according to population.”¹² Nevada law defines “population” as “the number of people in a specified area as determined by the last preceding national decennial census” and permits the Legislature to expand or limit the definition expressly “in a particular statute or as required by the context.”¹³ NRS 360.288 expressly amends the definition of “population” set forth in NRS 0.050 by requiring the State Demographer to “revise the population counts of every block, block group and

⁹ NEV. A.B. 431, 80th Reg. Sess. (2019) (enacted), available at <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6819/Overview>

¹⁰ *State of Homelessness*, NATIONAL COALITION TO END HOMELESSNESS (2020), available at <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-dashboards/?State=Nevada>. See Patricia McKernan, *Evidence-Based Strategies That Promote Improved Outcomes*, VOA, available at <https://www.voa.org/homelessness-and-prisoner-reentry>.

¹¹ *Fact Sheet*, U.S. CENSUS (2020), available at <https://www.census.gov/content/dam/Census/library/factsheets/2020/dec/census-counts-homeless.pdf>.

¹² Nev. Const. art. I, § 13

¹³ Nev. Rev. Stat. § 0.050.

census tract as set forth in the census to count every inmate who was a resident of the State before incarceration.” Read in conjunction with article I, section 13, the State may only reapportion representation based upon the population count after the State Demographer’s population count revisions are complete.

The Nevada Supreme Court has found that reapportionment violates the Nevada constitution when it is based on inaccurate population data when more accurate data is available. The State Demographer is obligated to not use information that it knows is inaccurate, and the Legislature and other governmental entities are obligated to not reapportion representation based upon the “inaccurate population estimates.”¹⁴ The previous section makes clear that the NDOC submitted incomplete information to the State Demographer when more accurate data is available through further investigation and collaboration. The Legislature cannot rely on current numbers provided by the State Demographer without violating the Nevada Constitution and subjecting the state to potential litigation.

Conclusion and Recommendations

The ACLUNV calls on this committee to require the NDOC fulfill its statutory duty and compile addresses for the remaining 4,326 incarcerated Nevadan’s who were not reallocated to the communities where they lived (and are likely to return) prior to incarceration. Ms. Livingston stated in her testimony that, “if there is anything we can still do to collect information we can certainly try to do so.”¹⁵ We have laid out solutions to this matter. The ACLUNV, a trusted voice for incarcerated Nevadans, and partner organizations are willing and ready to assist the NDOC in fulfilling their legal obligations.

There is still time to act to ensure an expeditious redistricting process and ensure that *all* Nevadans count.

Sincerely,

/s/Holly Welborn
Policy Director

/s/Chris Peterson
Senior Staff Attorney

CC: Governor Steve Sisolak
Attorney General Aaron Ford
Charles Daniels, Director, Nevada Department of Corrections

****Sent via mail and email****

¹⁴ See *Cnty. of Clark v. Las Vegas*, 92 Nev. 323, 333 (1976).

¹⁵ *Supra* note 8, at 6:19:50.

Attachment 1



Noe Orosco <noe@silverstatevoices.org>

Re: Meeting Request

1 message

Noe Orosco <norosco@statevoices.org>
To: "Jeff M. Hardcastle" <jhardcastle@tax.state.nv.us>

Fri, Jan 8, 2021 at 5:21 PM

Mr. Hardcastle,

Thank you for your response. We can meet on Monday, at 1:00 p.m. I'll send an invite following this message.

Again, thank you,

Noé

On Fri, Jan 8, 2021 at 4:09 PM Jeff M. Hardcastle <jhardcastle@tax.state.nv.us> wrote:

Hi Noe –

We can chat next week. Any day but Thursday from 1:00 to 2:30 and Friday 8:00 to 9:30 looks open for now.

Thank you,

Jeff

From: Noe Orosco <norosco@statevoices.org>
Sent: Tuesday, January 5, 2021 3:50 PM
To: Jeff M. Hardcastle <jhardcastle@tax.state.nv.us>
Subject: Meeting Request

Mr. Hardcastle,

I hope you had a safe and happy New Year!

Following up on our conversation last month, I'd like to meet with you to discuss the State Demographer's role with redistricting incarcerated persons. This would not be a presentation, rather it would be a phone or Zoom call, so I can better understand your role. One of my colleagues would most likely join the call as well.

I have a fairly good understanding of the redistricting process on the Legislative side. Some initial thoughts I have include:

- The role of the State Demographer both before and after AB 450
- Collaboration with federal and local agencies
- What is done if a correctional facility does not have the previous address for an incarcerated person
- Are there deadlines for the State Demographer to provide requested data?

Thank you in advance,

--

Noé Orosco

Census and Redistricting Coordinator

Pronouns: he/him

Cell: 559.350.0364



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Noé Orosco

Census and Redistricting Coordinator

Pronouns: he/him

Cell: 559.350.0364



April 5, 2021

Nevada Department of Corrections
5500 Snyder Avenue, Bldg. 17
P.O. Box 7011
Carson City, NV 89702

To whom it may concern:

Please allow this letter to serve as a request under the Nevada Public Records Act, NRS § 239 *et seq.*, by the American Civil Liberties Union of Nevada (ACLUNV) for the public records held by the Nevada Department of Corrections (NDOC) and its associated subdivisions as detailed below.

A. The Requester

The ACLUNV is a statewide affiliate of the American Civil Liberties Union, a national organization whose work protects the civil liberties and civil rights of all people. Our mission includes safeguarding the basic constitutional rights to due process, equal protection, and the civil rights of marginalized communities including individuals in the criminal legal system. One of the ACLUNV's main functions is disseminating information to the public about issues of concern to the ACLUNV and its members.

B. Request

The ACLUNV requests, in electronic format where available and pursuant to NRS 239.010(3-5), any and all records in your custody or under your control, which relate to NDOC's policies and procedures for complying with Assembly Bill 450, signed by the Governor in 2019, which revised the manner in which incarcerated persons are counted for purposes of apportionment, including:

1. Any and all policies, procedures, memoranda, and any written communications, including internal e-mails, detailing compliance with NRS 209.131(11), which instructs the Director of NDOC to "[c]ompile the last known residential address of each offender immediately before the offender was sentenced to imprisonment in a facility or institution of the Department." Information sought includes, but is not limited to:
 - a. The process by which NDOC compiles the last known residential address of each inmate, including the timeline for compiling said data.
 - b. The process NDOC follows if it cannot find the last known residential address of an inmate.

- c. The process NDOC follows to verify the accuracy of this data.
 - d. The policy for reporting data for an inmate whose last known residential address is outside of Nevada.
2. Any and all policies, procedures, memoranda, and any written communications, including internal e-mails, detailing compliance with NRS 360.288, which says that “[t]he Department of Corrections shall, upon request, provide to the State Demographer all available information requested by the State Demographer in carrying out the provisions of subsection 1.” Information sought includes, but is not limited to:
 - a. The process by which NDOC provides the above-referenced information to the State Demographer.
 - b. The amount of time within which NDOC provides the above-referenced information to the State Demographer after it is requested.

The ACLUNV does not request any information considered confidential pursuant to state law or statute.

C. Waiver of Fees

The ACLUNV requests a waiver of any and all fees associated with this request.

In relation to both federal and state public records requests, fees are generally waived for nonprofit organizations seeking copies of materials without commercial interest and for the purpose of contributing to public understanding and education. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53 (9th Cir. 1997); *Friends of Oceano Dunes, Inc. v. Salazar*, No. C-11-1476 EMC, 2011 WL 6748575 (N.D. Cal. Dec. 22, 2011); *North Cnty. Parents Org. for Children with Special Needs v. Dep't of Educ.*, 23 Cal. App. 4th 144 (Cal. Ct. App. 1994).

Here, the documents requested benefit the public's knowledge and oversight of the Las Vegas Metropolitan Police Department and the Clark County Detention Center and are not sought for commercial interest. As a nonprofit 501(c)(3) and 501(c)(4) organization, the ACLUNV is well situated to disseminate information it gains from this request to the general public as well as to other targeted communities.

Dissemination of information to the public is a critical and substantial component of ACLUNV's mission and work.

D. Fulfillment of Request

The State of Nevada mandates that all state agency records are public unless declared confidential by law. NRS § 239.010. Recent changes to the Public Records

Act reaffirm the state's commitment to transparency and maximizing the public's right of access to agency records. NRS § 239.001.

As of October 1, 2019, Nevada law imposes additional duties on governmental entities to fulfill requests. If a governmental entity willfully fails to comply with any provision of NRS § 239 *et seq*, it is subject to up to \$10,000 in civil penalties "in addition to any other rights or remedies that may exist in law or in equity." NRS § 239.340.

If all or any part of this request is denied, Nevada law requires that you provide the ACLUNV a written statement of the grounds for the denial, citing the law or regulations under which you believe you may deny access for each document. NRS 239.0107. Furthermore, if you determine that some portions of the requested records are exempt from disclosure, we expect that you provide us with any reasonable severable portion of the records sought.

Please be advised that if any refusal to disclose is based on confidentiality, then "[t]he public official or agency bears the burden of establishing the existence of privilege based upon confidentiality. It is settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly." *D.R Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616, 622 (2000).

Pursuant to state law, we request copies and/or access to these public records be forwarded to the ACLUNV within five (5) days of this letter. NRS 239.0107(1). If you are unable to make the records available by this date, you are statutorily required to state that fact in writing explaining why the book or record is unavailable and a date and time when the record will be available. NRS 239.1007(1)(c)(1).

The updated Public Records Act imposes a duty on governmental entities to "make a reasonable effort to assist the requester to focus the request in such a manner as to maximize the likelihood the requestor will be able to [access] the public book or record as expeditiously as possible." NRS 239.1007(1)(c)(2). Please contact the ACLUNV within the five (5) day statutory time frame if, for some reason, this request requires clarification.

Please forward copies of documents as they are identified, even if production is not fully complete. We appreciate your assistance with this request.

You may contact me directly at 702-830-9205 or levy@aclunv.org.

Best,

Nikki Levy
Staff Attorney
American Civil Liberties Union of Nevada

Reply all Delete Junk Block ...

NDOC Public Records Request Update

Some content in this message has been blocked because the sender isn't in your Safe senders list. [I trust content from noe@silverstatevoices.org.](#) | [Show blocked content](#)

NO

Noe Orosco <noe@silverstatevoices.org>

Tue 9/7/2021 10:48 AM

To: Nicole Levy

Cc: Holly Welborn



ory	Count	Per
f-Jurisdiction:	894	
own Addresses:	4,326	
te Addresses:		
Address (located):	5,592	
Parole Address (located):	683	
own Address (cannot):	719	
records received from C:	12,214	10

Hi Nikki and Holly,

I hope you both had a good and restful weekend.

Now that the redistricting data is out, I reached out to the state demographer to inquire about getting the number of addresses they were able to reallocate. I also asked if he could provide me the number of folks that were reallocated from each prison and where they were allocated. (No personal info, just 10 folks from "x" prison and where those 10 individuals were reallocated). Unfortunately, he could not provide me this information, and he asked LCB if they could weigh in. I have not heard back from LCB.

Is there any update on the department of corrections with regards to the public records request. I know they sent ACLUNV the standard "we received your request..." Is it possible to follow up? I'd be happy to hop on a call if you feel it best.

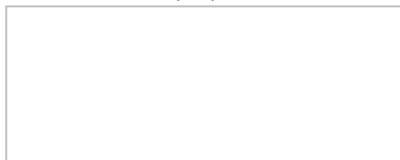
Thanks!

--

Noé Orosco

Census and Redistricting Coordinator

Pronouns: he/el/ima



Reply | Reply all | Forward

Attachment 2

INMATE NAME: _____

INMATE NUMBER: _____

LOCATION: _____

This information is needed for statistical purposes. Please provide the last address where you resided. If you do not remember this information, please give the best information possible

PREVIOUS STREET ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____

CURRENT COMMUNITY OR PLANNED

PAROLE STREET ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____