

AN EXAMINATION OF PRISON LABOR IN AMERICA

HEARING
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE
AND COUNTERTERRORISM
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AN EXAMINATION OF PRISON LABOR IN AMERICA

TUESDAY, MAY 21, 2024

UNITED STATES SENATE,
SUBCOMMITTEE ON CRIMINAL JUSTICE
AND COUNTERTERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice at 2:36 p.m., in Room 226, Dirksen Senate Office Building, Hon. Cory A. Booker, Chair of the Subcommittee, presiding.

Present: Senators Booker [presiding], Padilla, Cotton, and Kennedy.

Also present: Chair Durbin.

OPENING STATEMENT OF HON. CORY A. BOOKER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Chair BOOKER. All right. We're going to begin now that Senator Cotton is here, and I want to say good afternoon. I'm really grateful that you all are here for really an important, I think, constructive discussion. Welcome to our witnesses who've traveled here to provide testimony to this Subcommittee. I'm particularly grateful to Ranking Member Cotton for his perspective on this important topic relating to labor in prisons.

Most Americans really are shocked that they learn that the 13th Amendment, which formerly abolished slavery in our country, excludes incarcerated people. It's called the Exception Clause, which was approved by our very Senate Judiciary Committee in 1864. The language of the Exception Clause lives on not only in our Federal Constitution, but also in 16 State Constitutions.

Today, almost 150 years after ratification, we're here to discuss the legacy of this clause and how it impacts the treatment of incarcerated workers in our Nation's prisons and jails.

This hearing is intended to shed light on the real issues facing the workforce that lives behind bars, not to end the opportunity to work in prisons. I want to emphasize that. I was grateful in reading the testimony of all of our witnesses about how everybody understands that work in prisons is a—it could be a very important part of rehabilitation preparing people for life outside of prison, and, frankly, to help lower recidivism rates.

And I'm glad that from reading the testimony of all four witnesses, there seems to be some accord in that it should be in our goal, really, a collective goal in our society, that people in prison develop the professional skills that set them up for success once

they're released. But they can only do so within a humane system that honors human dignity.

This goal, I know, is shared by Republicans and Democrats alike because for my 25 years in my professional life, I've worked with people on both sides of the aisle on these issues, and the reality is that most people that go to prison actually come out.

We saw some draconian measures at times where people said, why should we have Pell Grants for people in prison? Well, every dollar we try to take away from investing in education actually cost taxpayers much more than that in terms of recidivism rates. Empowering people to take responsibility and to learn skills is something we support.

What I'm excited about also is that in Red States and in Blue States, Nebraska, Utah, Alabama, Oregon, Tennessee, Vermont, Colorado, they've passed initiatives to remove the Exception Clause language from their constitutions. It's amazingly popular with voters. We want our founding documents to reflect the democratic ideals that unite us as Americans, and that's why the Federal Government too should look at and make the necessary fixes that Red and Blue States, Republican and Democratic voters alike, are doing to address the problems currently within our system of prison labor.

It's the language, this language, that allows incarcerated workers to be denied the same protections every other workers enjoy. Under current law, virtually every single worker in our country is guaranteed certain protections against exploitation and abuse.

The Government guarantees American workers that their workplace also will be safe, and hazard free, and that they will not be discriminated against in the workplace, and that they will receive a minimum wage for their labor. I've been excited. Recently, we've seen bipartisan legislation from this Committee to stop gender discrimination and recently, age discrimination in the workplace.

While we have laws that protect workers across the country, and the Judiciary Committee in a bipartisan manner is doing even more on that, these laws do not reach the people who work within the walls of our Nation's jails and prisons. There are close to 1.2 million people incarcerated in this country, and today, around 800,000 of them have a job.

Incarcerated Americans contribute to our economy by working jobs that touch many products and goods that we all use and purchase. They produce and process foods that we eat. They work in factories, manufacturing, license plates, traffic signs, uniforms, and furniture, much of which bears the sought-after "Made in America" label.

They also provide critical public services by fighting wildfires, repairing, and maintaining roads, and responding to natural disasters, and they work in prison facilities to help maintain the operations. Most of us have no idea how this labor contributes to our Nation's economy.

Incarcerated workers around the country produce more than \$2 billion in goods and over \$9 billion a year in services maintaining the prisons in which they live. Yet, an incarcerated worker can earn an averagely hourly wage of literally a few cents per hour to half a dollar.

In 7 States, incarcerated workers are paid nothing for their labor. They also lack a minimum health and safety standards in their workplaces, and cannot refuse to work even if they are injured or sick, facing harsh disciplinary consequences I know we'll clear about today, if they should.

I want to acknowledge that this topic may make some of us uncomfortable. Many of us bristle when we hear words like slavery, and that the fact that we are causing folks to work who do not want to. I'm keenly aware that we are at a point in our Nation where we can objectively analyze; does this reflect our values, our collective values, as a country?

We know that it's hard to reconcile a lot of the practices with the democratic ideals of our country, but we must face it together so that we ultimately can address it. Our prisons should reflect the best of who we are, they should reflect our values, and they should, in my strong opinion, be places that are not just for punishment, but for rehabilitation, and for creating roads of redemption.

I believe the ideals of redemption are very much a part of our Nation's core values and help us create a safer, stronger nation by ensuring that incarcerated people receive workplace protections, that they're compensated fairly, and they're not retaliated against.

If they decline work, we can create a system that reflects those values and builds the vocational skills necessary for people to have successful reentry, thereby improving public safety.

I look forward to having a productive and constructive conversation. This extraordinary panel, I'm grateful that you're here. And with that, I'll turn to my Ranking Member of the Subcommittee, my colleague from Arkansas, Tom Cotton.

**OPENING STATEMENT OF HON. TOM COTTON,
A U.S. SENATOR FROM THE STATE OF ARKANSAS**

Senator COTTON. Well, unlike Senator Booker, I don't think many Americans would be surprised or shocked that the 13th Amendment allows prison labor. It's been there from the very beginning. It's just as much a part of our constitution as is any other provision.

I do suspect though at this hearing we're going to hear more from Democratic Senators and their witnesses unfairly attacking our prison systems and the outstanding men and women who serve in them. They might even compare prison work programs to slavery. This is a vicious and ugly smear against the very skilled, brave men and women who work and serve in our prisons as law enforcement and correctional officers.

Such talk may be fashionable in faculty lounges, in Washington, DC cocktail parties, but it's wholly divorced from the reality on the ground in our prisons. Prisons are dangerous places full of dangerous people. Given nothing to occupy their time, prisoners will usually regress back to doing what they were sent to prison for in the first place. Idle hands are the devil's workshop.

Reducing idle time has always been a key policy objective for prison labor programs. Almost 100 years ago, this very Committee held hearings on prison labor just like this one. The Committee issued a report finding that prison work programs help maintain order inside prisons. This Committee, "Unanimously conceded that

idleness in prisons breeds disorder and aggravates criminal tendencies,” and concluded that, “Prison work prevents prison violence by replacing idle time with productive activity.”

But it’s not just about filling otherwise idle time. This Committee’s 1930 report also found that prison jobs help prepare inmates for life on the outside by teaching them, “habits of industry.”

Our prison work programs have come a long way since 1930. Today, many prisons partner with technical college that gives inmates the opportunity to receive job skill certificates. Many offer pre-apprenticeship opportunities as well. Some programs even allow inmates to work for private employers at market wages, giving them the opportunity to pay off victim restitution, meet child support obligations, and save money for life after prison.

Contrary to what we’ll probably hear today, there’s nothing illegal or unconstitutional about prison labor, even for little or no pay, nor is there anything immoral about it. Prison labor is a way for inmates to give something back to the society they wronged. American society doesn’t owe criminals restitution. Criminals owe our society restitution, and if that means scrubbing toilets, mopping floors, or picking up the garbage, then so be it.

In summary, prison jobs help keep the peace, teach inmates job skills and work habits, and fulfill the original objectives of prison. Most prison officials would tell our Committee just that, which is why I wish we had a representative from a prison here today to speak about these programs.

I had invited a respected representative of the Arkansas prison system to testify, and he had agreed, but after seeing the amended title of this hearing, which for a few days last week, equated prison labor to slavery, he chose not to attend. That’s very understandable on his part, but it’s also unfortunate for us. If the Democrats were not interested in pursuing an ideological agenda, we might have learned something today.

In any case, I look forward to hearing from our witnesses.

Chair BOOKER. Thank you, Senator Cotton.

We will now introduce and swear in the distinguished panel of witnesses. The witnesses will give their opening testimony and Senators will have 5 minutes for questioning. I’ll briefly introduce the majority witnesses, and then I’ll ask the Ranking Member, Senator Cotton to introduce the final witness.

Our first witness is Terrence Winn. At the age of 16, Mr. Winn was sentenced to life imprisonment without parole and ultimately served 30 years of imprisonment. After the U.S. Supreme Court decision in *Miller v. Alabama* and *Montgomery v. Louisiana* resulted in his eligibility for parole.

Mr. Winn was incarcerated in the Louisiana State penitentiary, commonly known as Angola, where he worked on the cotton fields of Angola, in culinary services, and as a nurse’s aide. Since his release, Mr. Winn has become an advocate for prison reform, and serves as the executive director and founder of the Louisiana non-profit, Priorities, Intentions Practical Exchanges, or PIPE.

Our second witness is Jennifer Turner. Ms. Turner is the principal human rights researcher in the human rights program at the American Civil Liberties Union.

For more than 16 years, she has conducted documented research and advocacy on human rights violations in the United States with a focus on the criminal legal system, policing, economic injustice, and racial injustice in the United States.

She led a multi-year human rights investigation on incarcerated labor and is the primary author of “Captive Labor,” a report co-published by the ACLU and the Global Human Rights Clinic of the University of Chicago Law School, documenting the exploitation of incarcerated workers. Ms. Turner’s a graduate of New York University Law School where she was a Root-Tilden-Kern scholar, and Yale University.

Our third witness is Professor Andrea Armstrong. Professor Armstrong is a 2023 MacArthur Fellow, and the Dr. Norman C. Francis distinguished professor at Loyola University, New Orleans College of Law, where she teaches in the related fields of constitutional law, criminal law and procedure.

She is a scholar on incarceration law and brings much needed transparency to incarceration practices in the United States. She integrates law, history, public health, and the arts in her efforts to educate broad audiences about the human costs of incarceration. Professor Armstrong is a graduate of Yale Law School, the Princeton School of Public and International Affairs, and New York University.

I’ll turn to Senator Cotton now to introduce the final witness, Mr. Charles Lehman.

Senator COTTON. Thank you.

Charles Lehman is a fellow at the Manhattan Institute where he works on the Policing and Public Safety Initiative and as a contributing editor of City Journal. His work has appeared in outlets, including The Atlantic, The Wall Street Journal, National Affairs and National Review.

He has discussed public safety policy before the House of Representatives and the U.S. Commission on Civil Rights and at colleges such as Carnegie Mellon and Cornell. He’s a 2023 and 2024 Robert Novak Fellow with the Fund for American Studies.

Before joining the Manhattan Institute in 2021, he was a staff writer at The Washington Free Beacon. He’s originally from Pittsburgh, Pennsylvania. He now lives outside Washington with his wife and sons.

Chair BOOKER. Thank you very much. And now I’m going to ask all the witnesses to please rise and raise your right hand.

[Witnesses are sworn in.]

Chair BOOKER. I’m going to mark that everybody said yes. Let the record show that is the affirmative, and you all can sit down now. And you will each have 5 minutes for your opening testimony, starting with Mr. Winn, and then proceeding to your left, my right.

Mr. WINN.

**STATEMENT OF TERRANCE WINN,
PRISON REFORM ADVOCATE, SHREVEPORT, LOUISIANA**

Mr. WINN. Hello, and thank you, everyone, for the opportunity to address you today.

My name is Department of Corrections number 296659 or Terrance Winn, a native of the plantation known as Angola, by way

of Shreveport. Angola is also known as the Louisiana State Penitentiary, an 18,000-acre prison larger than the Island of Manhattan.

My name change took place on December 25, 1989, when I was a 16-year-old kid and took the life of Jeffrey Owens, and attempted to take the life of Dejuan Lewis. For my actions, I was arrested and taken to Shreveport's Juvenile Detention Center where Judge Gallagher ordered that I be tried as an adult.

I was immediately taken from juvie and left in a one-man cell at the Parish jail for my crimes. Judge Hamilton gave me life without the possibility of parole, plus 25 years to be served at hard labor. I heard my mother cry when the judge read the sentence, but I promised her and myself that one day I would come home.

I was eventually transferred to Angola, at the time, one of the bloodiest penitentiaries in the world. Upon entering the gates of that former plantation, one sees a beautiful manicured lawn. There are flowers and open fields. For one second, I thought maybe this wouldn't be so bad. That second didn't last. Within a few days, I was transferred to the infirmary where a doctor is in charge of determining if a person is fit to work the fields.

As a 17-year-old, the doctor confirmed that I was fit to work. I had never worked a day in my life when I found myself walking out of a gate, rifle was pointed at me, next to a guy that I didn't know. The line was made up of 125 men. When the last guy came through the gates, we were counted by the guards and the field foreman got on this horse and gave an order, "Walk it out."

The field is backbreaking work. Every day we would walk for miles in excessively hot weather, and work sometimes bent over, on our knees, without breaks for hours. We would go in to eat, then out again until the day was finished.

Working in the fields, I was forced to goose pick, that's picking grass with your hands. I was forced to dig ditches. I was forced to cut the levy with a hoe while officers on horses looked over us holding rifles. There were a few occasions when the field warden decided to bring the line in early from work. Those rare occasions happened when one of the horses would fall due to the oppressive heat.

If a man fell over, we kept working. If you got injured, you kept working. Nothing took precedence over going to work. I witnessed tool fights that led to the death of a man and kept working. I suffered back a back injury at the age of 25, an injury I live with today, and I was forced to work until I got so tired of suffering that I chose to be sent to the hole. That's the dungeon or administrative segregation.

I spent 30 years of at Angola. Twenty-five of those years I spent was spent working in the field. I received 75 disciplinary writeups for aggravated work offense. This means in layman terms, refusing to work. I mostly refused to work because of the physical pain, more so than out of a rebellious nature.

I admit though, every time I was told to pick cotton, I refused to do it. Every time, I chose to go to the dungeon. \$0.02 cents an hour, 8 hours a day, 5 days a week. That is the pay that decided that makes us human and not slaves.

Those \$0.02 cents never made me feel better than how I know my ancestors felt. I felt humiliated every time I had to use the restroom in the field, every time a horse defecated in my path as I walked to a work site, every time a guard refused to let me use the restroom with threats to write me up, every time a white field foreman called the whole line “Ns” or “Boys,” and every time a guard took their anger out on me while I worked.

Was the modern version of slavery better than better for me than it was for my ancestors? \$0.02 cents is what separates 17th century slavery and 21st century slavery. The dungeon replaces the whip as punishment. The dungeon is a place of humiliation where you are stripped of all your possessions and placed in a jump jumpsuit. You can only have a toothbrush and toothpaste, nothing else. Just you and your thoughts, and the sounds of people losing their minds, or fighting, or being beaten to death.

After 25 years being forced to work in fields, I was assigned to a tier walker. A job that forces you to be an inmate guard. The job requires me to walk up and down the extended lockdown tiers for hours, making sure that no one was trying to commit suicide. You become a security guard and a mental health worker, while being labeled as a rat.

I also attended the culinary school of arts in Angola, and once I completed the course, I became a kitchen worker. My last job was a nurse’s aide, a job that changed my life forever, taking care of people who were dying and could no longer take care of themselves. Showing care and compassion for guys in their final days. That truly changed me.

Thirty years of incarceration at hard labor. I never made more than \$0.16 cents an hour. It would’ve been easy to come home and never look back, but when I was released, I found my old neighborhood plagued with violence and a lack of resources.

So, I immediately knew what I needed to do. I founded my organization, PIPE, Priorities, Intentions, And Practical Exchanges. Our mission was and remains today to make life better for our community members, especially our youth, while working with former incarcerated people in their reentry process.

Post-incarceration syndrome is real and our people need support. I still think about my family all those years serving time with me. I think about the families of people who are incarcerated today. All of them directly impacted as well. My goal during the work I do is to keep our communities safe and thriving. I believe we can create a system that does not simply punish perpetrators, but works with them while investing in our community and taking care of victims.

Thank you.

[The prepared statement of Mr. Winn appears as a submission for the record.]

Chair BOOKER. Thank you, Mr. Winn. Ms. Turner.

**STATEMENT OF JENNIFER TURNER, PRINCIPAL HUMAN
RIGHTS RESEARCHER, AMERICAN
CIVIL LIBERTIES UNION, NEW YORK, NEW YORK**

Ms. TURNER. Chairman Booker, Ranking Member Cotton, and distinguished Members of the Subcommittee, on behalf of the

American Civil Liberties Union, I thank you for the privilege of testifying before this Subcommittee today.

Incarcerated labor has a long and problematic history in the United States rooted in racial oppression. The roots of modern day prison labor programs can be traced to the end of the Civil War and the passage of the 13th Amendment to the Constitution, which outlawed slavery and involuntary servitude except as punishment for a crime.

Given this gaping loophole, States turn to incarcerated labor as a means of partially replacing chattel slavery in the free labor force provided. Today, our Nation incarcerates over 1.2 million people in State and federal prisons, and two out of three of these incarcerated people are also workers.

In most instances, the jobs these people in prisons have look similar to those of millions of people working on the outside. They work as cooks, janitors, and groundskeepers, or in laundries and factories.

Outside the prison walls, incarcerated people provide vital public services such as repairing roads, fighting wildfires, or clearing debris after hurricanes. They cultivate and harvest crops, some on penal plantations situated on land that was originally the site of slave plantations.

But there are two crucial differences. Incarcerated workers are under the complete control of their employers, and they've been stripped of even the most minimal protections against labor exploitation and abuse. From the moment they enter the prison gates, they can be forced to work.

More than 76 percent of incarcerated workers report that they're required to work or face additional punishment, such as solitary confinement, denial of opportunities to reduce their sentence and loss of family visitation. Illness, injury, disability, or physical inability to work often does not relieve them of work duties.

U.S. law explicitly excludes incarcerated workers from the most universally recognized workplace protections, including health and safety laws. Incarcerated people sometimes work in dangerous industrial settings or hazardous conditions that would be closely regulated and monitored if they were not incarcerated.

Workers are assigned work in unsafe conditions without the standard training or protective gear provided in workplaces, outside prisons. In numerous cases, we documented nationwide serious injuries and deaths could have been prevented with proper training, machine guarding mechanisms, or personal protective equipment.

Incarcerated workers are not covered by minimum wage laws and are paid on average \$0.13 cents to \$0.52 cents per hour in non-industry jobs. More than 80 percent have maintenance jobs that support the operation of the prison facilities and are compensated at the lower end of prison pay scales. In seven States, incarcerated people are paid nothing at all for most jobs.

Even if an incarcerated worker earns pennies, these low wages are not theirs to keep. Across the country, prisons deduct as much as 80 percent from incarcerated people's paychecks for room, and board, and legal financial obligations.

In the federal prison system, 59 percent of the wages earned by incarcerated workers employed in the Federal Prison Industries Program was deducted by the Federal Government. Prison systems charge incarcerated people, exorbitant costs for basic necessities like phone calls home, decent food, hygiene products, and medical care.

Families, many of whom are impoverished themselves, spend an estimated \$2.9 billion a year on commissary accounts and phone calls. Over half of these families are forced to go into debt to afford the cost of a relative's conviction and subsequent incarceration.

However, someone is profiting in the American prison system. Incarcerated workers produce real profits for State prisons and State governments, the primary beneficiaries of forced prison labor. Nationally incarcerated workers produce more than \$2 billion a year in goods and commodities, and over \$9 billion a year in services for the maintenance of the prisons where they're warehoused.

The captive labor system of American prisons hides the staggering cost of our country's bloated prison system. The promise of providing incarcerated people with transferrable skills and work experience for their eventual reentry into society often proves illusory.

In reality, the vast majority of work programs in prisons involve menial and repetitive tasks that provide workers with no marketable skills or training. Prison industries jobs, and vocational training programs are declining.

Studies show that people who had some savings when they leave prison and got jobs after their release were less likely to recidivate than those who did not. We all have an interest in prison work being something beyond pure punitive exploitation. Yet, despite the potential for prison labor to facilitate rehabilitation, the existing system very often offers nothing beyond exploitation.

It does not have to be this way. Work in prisons could be truly voluntary, conditions could be safe, jobs could provide incarcerated people with marketable skills and vocational training that will help them to find employment after release. Incarcerated workers should be paid a fair wage that enables them to save for the future, support their families, and sets them up for successful reentry.

To move in this direction, we first must end forced labor without exception by repealing Federal and State Constitutional exception clauses, and guarantee incarcerated workers the standard labor protections available to other workers in the United States, including minimum wages, overtime pay, health and safety standards, unionization and collective bargaining, and protection from discrimination and retaliation.

These recommendations are incorporated into the legislation led by Senator Booker and the ACLU has endorsed each of these bills.

Thank you for the opportunity to testify today, and provide background and context for the Subcommittee's important work.

[The prepared statement of Ms. Turner appears as a submission for the record.]

Chair BOOKER. Thank you very much, Ms. Turner. Mr. Lehman.

**STATEMENT OF CHARLES LEHMAN,
FELLOW, MANHATTAN INSTITUTE, WASHINGTON, DC**

Mr. LEHMAN. Thank you, Senator, and thank you to the Committee for the opportunity to address you.

As you're aware, there are some 1.2 million people in American prisons today. Ninety-five percent will eventually return home. A key question for today's hearing is whether their work in prison will prepare them for that return.

I am an analyst to public policy. I am not here to speak to the legal or normative merits of prison labor. Rather, I want to make a simple argument. Prison labor makes offenders more employable post-release and thus less likely to re-offend. Consequently, prison labor should be viewed as part of rehabilitation, not an impediment to it.

Many criminals re-offend. Among a cohort of prisoners released in 2008, two-thirds were rearrested within 3 years. Reducing recidivism benefits offenders, taxpayers, and society at large.

The relationship between crime and employment is not straightforward. Nonetheless, some evidence indicates that employment conditions affect recidivism risk. One study of 4 million prisoners found that those released into worse labor market conditions are more likely to re-offend all else equal.

Data on 1.7 million California releasees repeats this finding, specifically showing employment in construction and manufacturing reduced recidivism. Why might employment reduce recidivism? Most obvious reason is that licit wages discourage criminal employment. Research finds that more money reduces risk of property but not violent crime, consistent with a model in which property crime and work substitute.

Beyond the simple relationship, employment might impose pro-social norms, relieve social pressures, or simply limit opportunities for offending. The employment-recidivism relationship is particularly important in the context of incarceration. Incarceration's effect on recidivism is complex. Nonetheless, when incarceration causes recidivism, it is likely by making the offender less employable.

One widely set analysis of Texas data found that incarceration caused significant increases in re-offending, reduced subsequent employment and earnings, and increased dependence on public welfare. Analysis of a cohort of Hungarian offenders provide similar evidence on prison's effect on employment.

Why does incarceration reduce employment? Most obviously, a criminal record scares off employers. In one recent survey of nearly 1,000 U.S. businesses, less than 40 percent were willing to hire someone with a criminal record. If employment prevents recidivism, and if prison can increase recidivism by reducing employment, crime control policy must help those returning from prison to get jobs.

How can we do this? One populous solution is to make it harder for employers to discriminate against offenders. Many States have implanted policies that automatically expunge records and prohibit asking applicants of their criminal background. Unfortunately, these policies do not have their intended effects and could harm otherwise disadvantage non-offenders.

Research on Massachusetts “Ban the Box” law found that it actually decreased ex-offenders employment. The laws also increased discrimination against Black men. Our research has further found that “Ban the Box” reduced young Black men’s employment by 3 percentage points, and increased the employment gap between white and Black applicants. The evidence is similarly pessimistic for “clean slate” laws.

Our recent comprehensive analysis examining three different clean slate initiatives finds that expungement has essentially no effect on employment on average. Policymakers therefore shouldn’t prioritize making offenders employable.

Few interventions are as obvious for this purpose as giving people jobs in prison. Evidence supports this approach. One analysis of 77,000 Indiana and Tennessee prisoners employed by private firms found that participation in prison work is associated with significant reductions in recidivism at the one and two year marks compared to a matched control group.

Another following a cohort of 6,000 offenders released in Minnesota found that those who worked were 24 percent more likely than controls to find a job, worked more hours, and had higher total wages, and the number of hours working was significantly associated with lower recidivism rates.

There’s also benefit to prisoners working outside the prison walls. Evidence suggests that work-release prisoners being moved to low security facilities and being allowed out to work during the day improves employment outcomes and reduces recidivism for property, but not violent offenders or finding consistent with literature previously discussed.

Other evidence comes from abroad. Research on Italian offenders found that among those serving more than 6 months, additional unskilled work reduced the reincarceration rate by between 3 and 10 percentage points.

Another analysis found that incarceration in Norwegian prisons caused a steep reduction in re-offense, about 29 percentage points, driven entirely by those who did not work prior to their incarceration. That group also saw an increase in future employment and earnings. To this last, some objected Norwegian prisons are not like American prisons. The former generally regarded as unusually humane. The latter is unusually inhumane.

Bracket the fact that evidence from other nations and from U.S. States indicates that prison labor reduces recidivism. The basic problem of this view is that it assumes the quality of U.S. prisons cannot be affected by policy. There’s much we don’t know about what works in prison employment. This is a general problem. Most federal rehabilitation programming is not evidence-based.

Any reforms to federal prison labor practices should incorporate a commitment to research on what works. That said, the evidence suggests that having incarcerated people work makes them more employable and less likely to re-offend. On this basis alone, we ought see prison labor as part of the rehabilitation equation.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Lehman appears as a submission for the record.]

Chair BOOKER. Thank you, Mr. Lehman. Helpful testimony. Professor Armstrong.

**STATEMENT OF DR. ANDREA ARMSTRONG,
DR. NORMAN C. FRANCIS
DISTINGUISHED PROFESSOR OF LAW, LOYOLA UNIVERSITY
COLLEGE OF LAW, NEW ORLEANS, LOUISIANA**

Professor ARMSTRONG. Good afternoon, Chairman Booker, Ranking Member Cotton, Members of the Subcommittee, and Senator Kennedy. Thank you.

I want to thank you for the opportunity to testify today. And as Senator Booker mentioned, I teach in the areas of constitutional law and criminal law. I also research incarceration, law and policy. I have also visited and audited prisons and jails across the country.

In March, 2024, Mr. Farrell Scarborough, an incarcerated worker at Louisiana State Penitentiary, died after falling from a flatbed truck and being crushed by heavy lockers. According to the incarcerated witnesses, there were no guard rails or safety straps on that truck.

And unfortunately, Mr. Scarborough is not the only preventable death that has occurred in the incarcerated workplace. The Associated Press has documented deaths and significant injuries, including amputations of incarcerated workers across the Nation.

In a 2021 law review article, "Beyond the 13th," I discussed four key features of the American incarcerated labor system. Incarcerated people are forced to work for little, or even no pay, in some States, in dangerous working conditions with little value for themselves, their communities, or in fact, public safety.

Today though, I just want to highlight two features of that system. One, the coercive context in which incarcerated labor occurs, and two, the lack of legal protection for incarcerated work conditions.

So let's go to the first. When you are in the 24 hour a day, 7 days a week custody of your employer, employee discipline looks different. It can be much more severe. If your supervisor, who is also a prison guard, is not pleased by your work or your job performance, he can send you to solitary confinement. He can deny you visits with your children or with your spouse. These prison guard decisions are really difficult to challenge after the fact.

The Prison Litigation Reform Act makes it hard to access federal courts, and even if you make it to court, legal doctrines defer to prison guard decisionmaking. The possibility of severe punishment can also deter incarcerated workers from advocating for their own safety.

Refusing to work in dangerous conditions could even lead to new criminal charges and new sentences in some States. And we, the general public, have no idea because this forced labor occurs in spaces that lack independent oversight, transparency, and accountability.

The second point I want to emphasize is that incarcerated workers are generally unprotected by existing employment and workplace law. Incarcerated workers, especially those who are working for the prison itself on prison grounds, are often not considered

“employees” by federal agencies or by courts. This is in part because Congress has been silent on the matter.

The lack of workplace protection is compounded by the lack of remedies for job-related injuries. This coercive context of incarcerated labor, combined with the lack of protection or remedies, makes incarcerated labor exploitative and dangerous.

Working conditions behind bars can kill and injure incarcerated workers. It burdens families, it stretches staff and resources, and can undermine essential purpose of incarceration, namely, to ensure that crimes do not reoccur.

But we can choose a different path. If the goal is better public safety through reducing recidivism, we can make incarcerated labor look like free labor, and that will better prepare incarcerated workers for future freedom. This could include measures to protect incarcerated workers and workplaces, easing access to courts and enhancing transparency, including data on work-related injuries and discipline.

In conclusion, incarceration law and incarceration labor touches us all. Some of us send money to support a loved one behind bars because they only earn pennies a day. This hurts rural, poor, and minority communities in particular.

Some of us buy goods from private corporations that were produced with prison labor. And prisons are also our institutions. They operate in our name with our tax dollars, and when incarcerated labor is exploitative, it undermines public trust and legitimacy of our criminal justice system. I urge this Subcommittee to treat these issues with the urgent attention that they deserve.

Thank you for the opportunity to share my research, and thank you for holding this hearing.

[The prepared statement of Professor Armstrong appears as a submission for the record.]

Chair BOOKER. Thank you, Professor Armstrong.

I’m going to defer to my colleagues who, I think, may have other places to go. And we’ll start with Senator Padilla.

Senator PADILLA. Thank you, Senator Booker.

Yes, indeed. We are excited about an—I’m not going to preempt the announcement, but some good news coming out of the Bureau of Reclamation at Department of Interior this afternoon for California water users. Okay, I’ll leave it at that for now, but appreciate the flexibility here. And thank you to all the witnesses for participating today.

You know, to help address the growing wildfire threat facing California, we have long relied on the Conservation Camp Program, which is our State Department of Corrections volunteer firefighting program. The incarcerated individuals who volunteer to join the conservation camp program have, at times, comprised of to 40 percent of the State’s total firefighting force. So it’s not insignificant.

And I do want to make it a point to emphasize the voluntary nature of this program. It’s voluntary, but so attractive that we’ve often see waiting lists for incarcerated individuals who want to participate in the program.

Now, many participants in California’s firefighting program have described the experience as valuable for building real life skills.

And more than 300 formerly incarcerated firefighters have used these qualifications and actual certifications—it's not just the skills, the training and the experience, but certification—to go on to earn a job with Cal Fire, the State's firefighting force.

I think this program can serve as a model for how we help incarcerated individuals develop useful skills and the necessary certifications to help them find meaningful well-paying work post-release.

My first question is for Ms. Armstrong. How can we build on this model in California to help establish clear links between prison labor work and opportunities for employment post-release?

Professor ARMSTRONG. One of the most significant features, I believe, of the California system is the fact that legal roadblocks to people serving as firefighters upon release were removed, right?

And so when we think about what happens behind bars, the things that people are trained for, it is also just as important to look at; are there barriers to them assuming those professions and vocations after the fact?

The second thing that I would mention about the California program is something that I hear from other programs, and I believe Mr. Winn also mentioned today, which is being trained in the helping professions; teaching, tutoring, nursing. Those professions that help others can be life-changing in terms of the rehabilitative potential of prisons. Thank you.

Senator PADILLA. Thank you. And sort of a follow up question for Ms. Turner, can you speak to the issue of helping incarcerated individuals obtain the necessary certifications themselves to actually utilize the skills they're developing in post-release work?

Ms. TURNER. Yes. Thank you for your question, Senator. Yes, this is an important feature of vocational programs that will be successful and set people up for success upon release. But the reality is that more than 80 percent of incarcerated workers are engaged in maintenance work. That isn't setting them up for those jobs.

But, certainly, the path forward requires us to expand these vocational programs, to expand job opportunities that can directly lead to work opportunities after release, including direct lines to employment, letters of recommendation, skills training in industries that are projected to increase in the workforce.

The reality is that many, even of our vocational programs, are in areas of work that are declining. Legislative oversight of prison industries programs in Texas and Mississippi, for instance, found that they were training people in jobs that are little to no job prospects such as garment industry, manufacturing, or farm work. But there are examples of programs and opportunities here to provide people with the training that will set them up for gaining stable employment after they're released from prison.

Senator PADILLA. So I know there's different types of vocational programs. You see examples—

Ms. TURNER. Absolutely.

Senator PADILLA [continuing]. In States across the country. Coming back to California for a second. Now, California takes steps to ensure that the wildfire work which comes with risks, it's not easy, it can be dangerous, so it's important to make sure that the pro-

gram is truly voluntary. We're not forcing inmates to perform this work.

But how often are incarcerated individuals recruited to work jobs, and how do we make sure that they are not being forced to work? Can you comment on what policies and safeguards should be in place to ensure that it's truly voluntary and not forced labor?

Ms. TURNER. Sure. So currently nearly all States in the federal prison have compulsory work programs and there are clear punishments levied against people who are unwilling or unable to perform the job assigned to them, including solitary confinement, denial of good time credits, or opportunities to reduce their sentence, and denial of access to call home or have family visitation. We need to end these punishments.

We also need to amend the 13th Amendment and State exclusion clauses that permit forced labor and slavery for people convicted of a crime. But the implementation is important as well, ending punishments that are levied against people for inability or refusal to work, and ensuring that when people are unable to work because of a disability, infirmity, age, will receive permission not to perform the job assigned to them, including people with disabilities.

And we need to comply with existing federal disability laws, which most prisons are not doing so with respect to job assignments for people with disabilities.

Senator PADILLA. Okay. Thank you.

Ms. TURNER. And I just wanted to add, California is not alone in using incarcerated workers to fight wildfires. It's one of at least 14 States that does so. And not all these programs are fully voluntary, and we have seen serious injuries and deaths result from this work, both for non-incarcerated and incarcerated workers.

But when people are desperate to support themselves and need to support themselves while incarcerated and facing legal and financial obligations—that \$1 an hour, for instance, in California is a very powerful incentive. And we see some States truly rely on incarcerated workers to perform this work.

Including for instance, Georgia, one-third of counties rely on incarcerated firefighters to respond to motor vehicle accidents, wildfires, and house fires, and these workers are not paid a cent for their work.

Senator PADILLA. Thank you.

Thank you, Mr. Chair. Again, I appreciate the accommodation.

Chair BOOKER. Thank you very much. Senator Cotton.

Senator COTTON. Ms. Turner, in your opening statement you called the so-called Exception Clause of the 13th Amendment, “a gaping loophole.” Do you believe that is a loophole?

Ms. TURNER. I do. I do. It is the foundation of prison labor programs today, and it led to the labor programs we have today that we have truly have forced labor.

Senator COTTON. So you think loophole implies it was unintended, or accidental, or omission. You think the people who drafted the 13th Amendment and ratified it didn't know what they were doing?

Ms. TURNER. Oh, I think it was absolutely intentional, and it allowed for the use of incarcerated people to replace this free slave force provided by chattel slavery. And we saw in some States, for

instance, in Texas, following the passage of 13th Amendment, the State of Texas purchased 10 plantations and began running them as prisons, some of which still run today.

Senator COTTON. Did prisons use labor before the 13th Amendment was passed?

Ms. TURNER. Yes. So it was just continuing a longstanding practice. It wasn't replacing anything.

Ms. TURNER. It expanded. It expanded. It allowed for the expansion of prison labor programs, and in fact, became so lucrative that it led to passage of laws such as the Black Codes that encouraged the reincarceration of Black men on specialist charges to continue to work in prisons and to provide profit for prisons both in the North and in the South.

Senator COTTON. So, and it's your testimony that we need to have a constitutional amendment to repeal that clause?

Ms. TURNER. Yes—

Senator COTTON. Okay okay.

Ms. TURNER [continuing]. There's no place for forced labor in the United States.

Senator COTTON. Mr. Lehman, as I already mentioned in my opening remarks, in 1930, this Committee, "unanimously conceded that idleness in prison breeds disorder and that prison jobs help maintain orders in prison by reducing idle time." Does modern day research back up that assertion from almost 100 years ago?

Mr. LEHMAN. In generally, yes. Although I think it's an undervalued question. The Minnesota study, I said it earlier, finds that there's a strong association between the fraction of time that's spent working and the level of misconduct declining.

That study cites prior research including, I believe, a study of the federal prison employment system, then called UNICOR, which finds that compared to matched controls, people who work are less likely to engage in misconduct in prisons. And the causal story is pretty straightforward. If you're working, it's hard to engage in misconduct.

Senator COTTON. Okay. And the Committee back then also found that prison jobs help inmates acquire, "the habits of industry." Is that still the case today?

Mr. LEHMAN. Yes. And I think the strongest finding in the evidence is that prison labor, even unskilled prison labor—and this goes back to the study of Italian workers—even unskilled prison labor increases labor force involvement, increases wages, increases earnings following incarceration. That to me says if it does nothing else, prison labor is a way to improve people's labor market outcomes after they leave prison.

Senator COTTON. Okay. Senator Booker has a bill that would require prisons to pay inmates the same federal minimum wage that law abiding American workers outside prison are entitled to receive. I want to explore the financial pressures that Americans face today, thanks to Joe Biden's inflationary economy. Do prison inmates have to pay for rent or mortgage?

Mr. LEHMAN. Not to the best of my knowledge, Senator.

Senator COTTON. Pay for grocery bills?

Mr. LEHMAN. I don't believe so, Senator.

Senator COTTON. Car payments?

Mr. LEHMAN. No, sir.

Senator COTTON. Insurance payments?

Mr. LEHMAN. No, sir.

Senator COTTON. Gas to drive to work?

Mr. LEHMAN. Not to the best of my knowledge.

Senator COTTON. Any other daily expenses that most law abiding American citizens have to worry about?

Mr. LEHMAN. With certain conspicuous exemptions in some States in general, no, prisoners are not responsible for those.

Senator COTTON. Okay. If prisoners were forced to pay inmates those higher wages, probably a lot higher than what the current minimum wage is, given other democratic proposals, who is ultimately going to be paying for those higher wages?

Mr. LEHMAN. In context where they're employed by the State or other public entities. The taxpayer ultimately funds those public entities. If they're employed by, indirectly, by private employers, then the people who are paying for those private employers. But that makes their labor much less competitive in that context.

Senator COTTON. Thank you. I yield back.

Chair BOOKER. Mr. Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Ms. TURNER, I want to be sure I understand your testimony. You think prison labor should be voluntary? Is that the ACLU position?

Ms. TURNER. Yes. The majority of workers—

Senator KENNEDY. Okay. And do you think—

Ms. TURNER. I'm sorry, my microphone was off. If I may answer on my—

Senator KENNEDY. Yes, ma'am. Did you answer yes?

Ms. TURNER. My answer is that the majority of incarcerated workers wish to work, but it is vital that that work be truly voluntary, and that there is no place to force labor in the United States.

Senator KENNEDY. So that's yes?

Ms. TURNER. Yes.

Senator KENNEDY. Okay. And you think that prisoners who do work are underpaid? Is that the ACLU position?

Ms. TURNER. They are underpaid or unpaid. In your State many of those workers are unpaid.

Senator KENNEDY. Okay. Let's take a maintenance worker, which I assume includes people working in the kitchen. What do you think the starting pay ought to be, in my State for a prisoner?

Ms. TURNER. Workers should be paid the minimum wage of the State where they live. And there are true fiscal arguments in favor—

Senator KENNEDY. Minimum wage?

Ms. TURNER. Minimum wage, yes.

Senator KENNEDY. Do you think prisoners should have a 401(k)?

Ms. TURNER. My opinion is not what we're asking about. I'm here to provide information and context for the Committee.

Senator KENNEDY. Ma'am, do you think prisoners should be provided with a 401(k)?

Ms. TURNER. If I may answer, the reality is that if we paid incarcerated workers a minimum wage, it would have net fiscal benefits for the United States.

Senator KENNEDY. Yes, ma'am, I'm trying to ask you about benefits.

Ms. TURNER. Yes.

Senator KENNEDY. Do you think they should be provided with a 401(k)?

Ms. TURNER. Workers should be eligible to earn into the social safety net. If they're paid minimum wage, workers will be able to earn into Social Security benefits to support themselves.

Senator KENNEDY. Is that a yes or no?

Ms. TURNER. That does not include a 401(k), but I'm talking about basic social safety net.

Senator KENNEDY. You think prisoners should be entitled to paid vacation?

Ms. TURNER. Workers should be entitled to workers' compensation when they're injured or maimed on the job, which happens all too often.

Senator KENNEDY. So they should be covered under our workers' comp law?

Ms. TURNER. Yes, absolutely. Prisoners—

Senator KENNEDY. Should prisoners—

Ms. TURNER [continuing]. Are working in dangerous conditions.

Senator KENNEDY [continuing]. Be allowed to unionize?

Ms. TURNER. Yes.

Senator KENNEDY. You believe that too? Okay.

Ms. TURNER. It's vital that workers be able—

Senator KENNEDY. Should prisoners be provided with health insurance matched by their employer?

Ms. TURNER. Workers should be covered by workplace health and safety guarantees.

Senator KENNEDY. Yes, ma'am, what about health insurance?

Ms. TURNER. Incarcerated people are already guaranteed a basic standard of healthcare, so they don't—that is already guaranteed by U.S. law.

Senator KENNEDY. So they don't have health insurance?

Ms. TURNER. They're already guaranteed that even though the medical care they receive is usually substandard and when they're injured on the job, they often receive substandard care. They are already guaranteed by law, basic healthcare protections while incarcerated.

Senator KENNEDY. Mr. Winn, just to when what crime did you commit?

Mr. WINN. Second degree murder and attempted second degree murder.

Senator KENNEDY. Okay. Who did you murder?

Mr. WINN. Jeffrey Owens.

Senator KENNEDY. Jeffrey Owens?

Mr. WINN. Yes, sir.

Senator KENNEDY. Why did you murder him?

Mr. WINN. I was a 16-year-old kid. Me and Dejuan had a confrontation, and Jeffrey was an innocent bystander.

Senator KENNEDY. Okay. So you shot Jeffrey by accident?

Mr. WINN. Yes, sir.

Senator KENNEDY. You intended to murder somebody else?

Mr. WINN. I was defending myself against Dejuan Lewis.

Senator KENNEDY. Okay. You shot at Mr. Lewis?

Mr. WINN. Yes.

Senator KENNEDY. And you missed?

Mr. WINN. Yes, sir.

Senator KENNEDY. And you hit Mr.—what was his name?

Mr. WINN. Mr. Jeffrey Owens.

Senator KENNEDY. Mr. Owens? Okay.

Mr. WINN. Yes, sir.

Senator KENNEDY. Did Mr. Owens have a mother?

Mr. WINN. I think everybody born in the world has a mother.

Senator KENNEDY. Yes. But was his mother alive——

Mr. WINN. Yes.

Senator KENNEDY [continuing]. When you killed him?

Mr. WINN. She's still alive.

Senator KENNEDY. Okay. Did Mr. Owens have a father?

Mr. WINN. Yes, sir.

Senator KENNEDY. He was alive when you killed him?

Mr. WINN. I don't know about his father's——

Senator KENNEDY. You never checked?

Mr. WINN. I mean, as a prisoner in Louisiana, you cannot check on those type of things.

Senator KENNEDY. Did Mr. Owens have any brothers or sisters?

Mr. WINN. Yes, he did.

Senator KENNEDY. Okay. How many?

Mr. WINN. I don't know.

Senator KENNEDY. Okay. You mentioned that your mother cried when you were sent to Angola. Do you know how Mr. Owen's mother felt? Have you ever reached out to them?

Mr. WINN. May I ask you a question, Senator?

Senator KENNEDY. Well, answer mine first.

Mr. WINN. I would answer yours.

Senator KENNEDY. Okay.

Mr. WINN. And you're asking me questions that an incarcerated person cannot answer. I don't know what Jeffrey Owen's mother did, but human anatomy tells me that yes, his mother had to cry because she lost a son that she brought into the world. His father, if he was living, he should have cried. His brother cried.

Senator KENNEDY. Did you ever reach out to Mr. Owens' family?

Mr. WINN. Sir, you're a Senator from Louisiana? If a person like me that was incarcerated reached out to any person that's a victim, that's a sentence. You go to prison for that. And I was already in prison, so that's a different sentence.

Senator KENNEDY. So you couldn't——

Mr. WINN. No.

Senator KENNEDY [continuing]. Even write?

Mr. WINN. By law, you cannot reach out to the victim or the victim's family.

Senator KENNEDY. Well, I will tell you. I came today because I thought we were going to have a—and I hoped we were going to have a rational discussion based on empirical evidence on a very complex, nuanced subject. And frankly, I'm disappointed, you know, Ms. Turner, Professor. I just don't think these emotional arguments are at all productive in us trying to solve a problem.

You know, people are in prison for a reason. I believe in free will. I get the impression that the ACLU position and the professor's position, I don't know about Mr. Winn's position, is that you feel sorry for these folks who are in prison. I wish they weren't there too, but they're there for a reason that really hurt somebody.

In Mr. Winn's case, he murdered somebody. He actually killed somebody by accident. He meant to kill this person, and he shot this other person. He could have killed two. And I'm kind of disappointed in—we're going to solve this problem with emotional arguments from people who don't believe in free will and responsibility. That's just my point of view.

But I thank you for being here, and I'll say this Professor. I was struck, Professor Armstrong, you keep talking about coercive context. That the prisoners are working in a coercive context. It's prison. Prison is a coercive context, and people are there for a reason. And I think you're in la-la land if you don't recognize that.

Professor ARMSTRONG. May I respond to that?

Senator KENNEDY. Sure, you can respond.

Professor ARMSTRONG. Thank you so much. So I think the point is in fact that it is prison, but it is when prison is combined with being forced to work in certain environments that it can lead to dangerous conditions. And so I think about—

Senator KENNEDY. But you have no empirical evidence of that.

Professor ARMSTRONG. Actually, I think that I do. So another life of mine is—

Senator KENNEDY. We can all cherry pick—I mean, people who work get hurt sometimes—

Professor ARMSTRONG. Yes.

Senator KENNEDY [continuing]. Whether you're in prison or you're out.

Professor ARMSTRONG. Yes.

Senator KENNEDY. Okay.

Professor ARMSTRONG. So I agree. What I'm talking about, and I think is really important to remember, is that our incredible system of justice will sentence somebody to a certain number of years. But what they're not sentenced to is to lose a limb or to lose a finger because they're working on defective equipment. Equipment that isn't subject to the same rules, simply the location of a printing press, whether it's behind the wall or something that is out in the free world. Its location should not determine to what extent it is a regulated piece of equipment.

Senator KENNEDY. And you make a valid point. But I've read some of your writings and some of your work, and I just get the impression that that that you almost think we shouldn't have prisons. That people there is no free will that that people don't choose to commit crimes. And then if they do, they shouldn't be held responsible for them. And I just don't think that's—you're entitled to that opinion. It's America.

Professor ARMSTRONG. I don't think I've written that anywhere.

Senator KENNEDY. Your entitled to teach your kids that. But I don't think most fair-minded Americans agree with you, and that's just my opinion. I'm happy to have this discussion. I thank my friend, Senator Booker for calling it. But you all seem to forget the fact that we're talking about prison folks, and people are in prison

for a reason, and they're there—no ma'am, Ms. Turner, I'm going to have my say. I understand the ACLU position. I'm glad you're not in charge because we'd have a lot more people hurt in this country.

Professor ARMSTRONG. I'd love to continue the conversation with you, Senator Kennedy.

Chair BOOKER. You can continue the conversation with me. I'm grateful for my friend and his sincere questioning. I want to just jump right in on some of the things that he brought up. And let's just talk about the workers' safety rules that we've done for Americans. It's called OSHA.

And there are certain things we've done that we think it's horrific if we don't do them to protect people from everything, from the off-gassing of chemicals, to as you said, a printing press that might have unsafe safety features. When you go into prison, those basic worker standards that protect people from all kind of injury, do they apply in prison, Professor Armstrong?

Professor ARMSTRONG. So the general rule is we don't expect them to apply, especially for things that are happening behind the wire. Now, there are limited circumstances where a State which has adopted its own OSHA Act can in fact choose to cover.

But even then, we see according to research by the National Employment Labor Project, that those States have also made a choice not to cover incarcerated workplaces. And so, it really does lead to this anomaly where the same activity, the same equipment, is regulated when it's outside, but not inside.

Chair BOOKER. So what statutory protections in general are there for people that are behind bars when they're working?

Professor ARMSTRONG. Well, I don't think that we have a specific statutory protection, federal or State, for people who were working behind bars.

Chair BOOKER. And so, again, I agree with some of the general statements from my colleagues that if you have done a crime, there should be a related punishment. But work in some environments, like Mr. Winn was describing, where there's no regulation for heat exhaustion, for access to water, or access to facilities, things that we would consider putting workers out in those conditions almost torturous to just a human being.

That's why the advocacy that we're hearing is that there should be some kind of protections against that kind of extreme punishment. Is that right?

Professor ARMSTRONG. That's correct. And I would just mention two additional things. One, is thinking about the provision of safety gear, right? And so, for example, there are cases where people have fallen off of roofs because they didn't have safety belts, or toe holds, or knee pads. And so thinking about not just what rules govern the equipment, but also are they being provided with safety glasses and safety gear?

I think the other part of it is really thinking about the ways in which what we sentence people to, we sentence them to years, not particular injuries, and certainly not to amputations.

Chair BOOKER. Okay. And Ms. Turner, I just want to say that you tried to say a few things. I just want to give you an opportunity to more fully respond just for the record—

Ms. TURNER. Oh, thank you.

Chair BOOKER [continuing]. To some of those issues.

Ms. TURNER. Yes. Thank you. Well, Senator Kennedy raised the issue of wages. He also raised the issue of victims of crime. And there's a true fiscal argument for paying incarcerated workers minimum wage. To pay them a fair wage would actually generate revenue over the long term, and it would benefit victims of crime who would be paid victim restitution.

Currently, incarcerated people are saddled with debts for victim restitution. They're unable to pay back when they're released from prison, maintain those debts, and struggle to pay them back. If incarcerated workers are paid a minimum wage, they'll be able to pay restitution that will put money in the hands of victims of crime.

It will also allow them to pay child support and support their families who are currently going into debt to support their loved one while they're incarcerated. It will allow incarcerated people to become self-sufficient and to have some savings to set them up for success upon release. Studies do show that some savings upon release sets people up for success and reduces recidivism. It allows them to gain stable housing, stable employment that in addition, generates tax revenue when this income is taxed.

Chair BOOKER. And Senator Cotton came off very common sense. Well, we make a minimum wage for law abiding citizens, and they have to pay rent, they have to pay this. How do you respond to that? Really what sounded very logical.

Ms. TURNER. The reality is incarcerated workers are currently paid pennies per hour, and they don't even see that much. As much as 80 percent are deducted. And in the majority of States, room and board is one of those deductions.

In the Federal PIECP Program, in which incarcerated workers are employed directly by private corporations and are paid a prevailing wage by law—it's a very small number of workers—but over two-thirds of their wages are deducted for room and board.

The reality, too, is that incarcerated people are forced to pay incredibly extortion sums to stay in contact with loved ones, to buy warm clothing, medication, medical copays. And these fees buildup. And their family members who are already impoverished or struggling from the loss of the income from their loved one who's incarcerated, have to step into the breach. And more than half of them go into debt to support their loved ones in incarceration.

Chair BOOKER. Right. And that's what I wanted to clarify. I want to shift to Senator Durbin in a second, but that incarcerated people actually do pay, are charged for rent.

Ms. TURNER. Absolutely.

Chair BOOKER. They actually are charged for numerous things on top of that. And should they be making a minimum wage, those charges now seem much more rational. Yet, at the same time, from sanitary napkins to telephone calls. I've been stunned on my visits to prisons how much it costs to buy a tampon in prison, a bar of soap, or to call a child. It's, as you said, usury rates.

And so this idea that paying minimum wage would be, in some way, giving them lavish resources is just not true. In addition to the fact that you are citing the evidence that from victim restitu-

tion, child support payments, and more, how many times—and I know this—where a man goes to prison and has children from a divorced or separated mother who has no help whatsoever and raises that child in poverty.

I'm very grateful that I'm going to go back to—I will resume because I really—Mr. Winn, I thank you for enduring that. I want to give you some more chance to talk. But I do want take a break for the Chairman of the entire Judiciary Committee. And I'm grateful that he's here, and I want to let him have his questioning.

Chair DURBIN. Thanks, Senator Booker, for this hearing. And thank all of you for attending. I apologize. I was down one floor with the Secretary of State, Blinken, talking about the situation in our foreign policy and these conflicts are maddening because I wanted to be here, too. And it's difficult challenge.

I've tried in my time on the Judiciary Committee in the few years that I've been Chairman to have a focus on incarceration. Much of it stems from an article, which I read many years ago by a man named at Atul Gawande, a medical doctor who now is working in the administration.

He wrote about the impact of incarceration and particularly solitary confinement on prisoners, what impact it has on them as human beings. Who have on many people. And I've kind of taken up that cause with some success, limited success. I wish I would've been more. But Mr. Winn, as I read your life story and what you've been through; 30 years of incarceration, is that right?

Mr. WINN. Yes, sir.

Chair DURBIN. Starting at the age of 16?

Mr. WINN. Yes, sir.

Chair DURBIN. And now, how long have you been out of jail?

Mr. WINN. July the 1st, it'll be 4 years.

Chair DURBIN. Four?

Mr. WINN: Yes, sir.

Chair DURBIN. And I see that you're actively involved in a project to try to help others that face that challenge?

Mr. WINN. Yes, sir.

Chair DURBIN. Tell me about that.

Mr. WINN. Oh, I have an organization called PIPE, which stands for Priorities, Intentions and Practical Exchanges. And we do wrap-around services for guys that's incarcerated coming home. We also speak on parole board hearings. We assist in filing risks for guys, and we do letter writing campaigns.

We do prayer vigils, and we also mentor kids that's facing incarceration or are on the trajectory of going to prison. And we try to correct the way that they're thinking so that they don't make the bad decisions that we made to go to prison. So we just offer them programming so that they could be better human beings and more productive human beings.

Chair DURBIN. What is the highest priority for the ex-offender? What are they looking for when they're finally released?

Mr. WINN. Mostly a job. Nothing else really matters because you playing catch up. So the average person—no, everybody just coming home, they're trying to take care of themselves. They come home, a lot of them come home, if you're coming home on parole, you're

coming home with a debt, a debt that never stopped. So you've got to pay parole fees.

So you need employment to pay those fees so that you don't go back to jail. So then you need transportation. You need a phone for communication, to see that whether or not you have a job. And it's hard, especially where I'm from in Shreveport, where second chances are really not fitted for you. It's like if you've got that ex-offender on your back, you don't really get a job. So a lot of times we have to make our own jobs.

Chair DURBIN. Ex-offenders in Chicago have some helping hands. We have a Congressman Danny Davis, who's one of the best in terms of finding ways to give incarcerated people a second chance. Many of them flock to the neighborhoods around where he lives. Many of the churches there are dedicated to it, organizations as well.

Some of these people basically need identification cards so they can prove who they are because they've been gone for so long, they don't have a driver's license, they don't have anything they turn to in that regard.

And I think we ought to go out of our way, if they want it, to give high praise to those employers who employ the ex-offenders.

Mr. WINN. Yes

Chair DURBIN. I've got some friends of mine who are real estate developers in Chicago who look like high rollers, who could care less about the little guy. And they're the first to offer jobs for these people. And I think they deserve recognition. Many of them probably don't want to advertise it. They just want to do it, and that's the most important part.

Have you seen that kind of cooperation from businesses?

Mr. WINN. It's certain businesses that does the same thing. You know, you really have to just put them a part of your network so that they could give them. But a lot of times, the job industry, I could speak specifically for Shreveport because New Orleans is—it's much better in New Orleans because New Orleans is more of a city of a second chance. But in Shreveport it's just becoming a part of understanding the needs of guys that's coming home.

So most people get a yard mowing yards or a lawn service job. It's easier for you to get, or the trucking industry opens its arms to people. So guys will go try to get their CDLs if they can pass that test, because that test in Louisiana is kind of hard. But guys will go out their way to try to get a trucking job.

Chair DURBIN. Let me just say—my time is finished here and I want to wrap up—I've kind of had this position for many years, and I stated every chance I get. I believe that every Member of Congress every 2 years should do two things. Visit a foreign country.

Mr. WINN. Yes, sir.

Chair DURBIN. Because I don't believe you come to appreciate your home until you leave it. And second, visit a prison.

Mr. WINN. Yes, sir.

Chair DURBIN. Visit a prison. We make so many decisions, particularly in the Judiciary Committee about crime and enforcement of crime, enforcement of law, and that sort of thing, and how we're going to teach somebody a lesson or make our country more safer.

And we're doing it based on an image we saw in a movie somewhere instead of actually visiting a prison, and sitting down, and talking to the women and men who are there. It'll change your attitude instantly.

I'm glad I had a chance to have a conversation with you today. Thanks, Mr. Winn.

Thanks, Senator Booker.

Chair BOOKER. Mr. Chairman. Before you leave, I just want to share something for the record, and I just give you so much credit for it. I came here a decade ago and the Chairman generously put me under his arm, and let me work with him on criminal justice.

Chair DURBIN. That's a lot to put under your arms.

Chair BOOKER. Yes, it's a lot.

[Laughter.]

Chair BOOKER. Brought me to the White House in the first weeks I was here to sit around a table with then President Obama. So from its peak, just over a decade ago when I walked in to the Senate, over the last 10 years, our prison population is now down in America, 20 percent, representing 40 million fewer people who've experienced prisons or jails annually. The Black incarceration rate has been halved in those 10 years, and Black men now are more likely to graduate college than go to prison, which is a reversal from a decade ago.

And this, which again, I want to say for my Republican colleagues, often, you know, correlation, causation, who knows. But during that same time, crime rates fell farther in the States that experienced the deepest declines in incarceration.

Your leadership has been extraordinary on that; the fact that amidst a busy day with a lot of significant things going on. Thank you for taking the time.

Chair DURBIN. Thank you.

Chair BOOKER. Thank you, sir. Thank you.

I want to jump back in, Mr. Winn, with you because I just didn't feel that your voice was coming through in the previous questioning about your experiences. And I appreciate that you sort of enduring that questioning, and with good nature.

You clearly know that you committed an awful violent crime at 16 years old. You were not tried as a 16-year-old. You were tried as an adult, and you got sentenced. Not for 30 years, you got sentenced to life until a supreme court advocated by Republicans and Democrats changed this idea that children should not have a lifetime imprisonment. And so you walked out after spending—coming in at 16, and then spending almost twice that time of your life behind bars.

And you've dedicated your life, as many people I know in Newark, and he knows in Chicago, some of my most effective people in helping to lower recidivism rates are people who are like you, who come back with a determination to serve the lessons you learned, the struggles, the pain, the hardship, the shame that you went through.

You are doing everything you can through your organization to try to make sure that others don't walk the same path as you. Is that correct, sir?

Mr. WINN. Yes, sir.

Chair BOOKER. Thank you. Now, there's one thing that's very clear to me, and I'm going to ask my colleagues about this as well, is that we, unlike prisons that we imagine in countries that we demonize sometimes, we don't believe in torturing prisoners. Is that correct, Mr. Winn? I said believe, not in actuality. We can discuss this in a second.

Mr. WINN. Yes, sir. That's true.

Chair BOOKER. No. Because I know that a lot of our peer nations call solitary confinement for juveniles torture because it is proven to have very negative effects on brain development. The majority of children like you were when you entered who commit suicide in prison, are those who have served time in solitary confinement. Our own psychological associations call it torture.

And so for you to spend this time that you were, iterated to me, in the whole, as you called it, that I imagine as you said, hearing those screams and the challenges, I imagine that that was to you a very unbearable existence.

Mr. WINN. Yes, sir. Oh, it was very unbearable. It makes you question yourself. Because the first time I was in the hole, which was for a work-related offense, and I was thinking, "Man, how am I going to survive this?" Because it was real dangerous at that time. But just those cells and people don't realize that being in solitary confinement, your mind tends to eat off itself because it's nothing to do. There's no one with you, you're by yourself.

And so as a 17-year-old kid, you got to understand how to live with yourself because you really don't know yourself as 17. So you're looking at walls, and these walls starting to close in, but you know, these walls aren't closing in, but they are closing in on you and you losing your breath and you have to call for help.

And when security comes, it's like, "What's wrong?" You are like, "Man, these walls are closing in." He's like, "Man, you're losing your mind." And you know that you're—you don't think you're losing your mind, but in actuality, you are losing your mind because those walls aren't closing in, but they are closing in.

Chair BOOKER. So this is a hearing on work. And, and I guess the reason why I'm asking you that is because this idea of the line between work, building skills, creating soft skills, and habits, all of the things I often know working with young people, that if they don't develop the grit, the determination, wake up at a certain hour, go to work. Those are very valuable skills. I think the other three folks have said that, and it prepares you for life.

I guess I brought up the issue of solitary confinement because it seems like you're making a choice between two tortures is standing out in the heat without the proper rest or the proper hydration. Did you see visibly people pass out? Was it on a regular basis or every so often?

Mr. WINN. Oh, this was like daily. The heat and the exhaustion, it's going to do something to you.

Chair BOOKER. So you witnessed people, regularly, through the heat and the exhaustion passing out. They wouldn't stop the line. They would keep working. Only when a horse would pass out, they'd realize at that point, when that beast did that, this was a time to stop?

Mr. WINN. Yes. And so in your calculation, because you went into solitary confinement because you refused to pick cotton in those conditions, am I right, that you felt like this was inhumane treatment and you are trying to decide what is worse; the hole or those work conditions?

Mr. WINN. Yes, sir. Yes.

Chair BOOKER. So then, so I will say, Mr. Lehman, again, your testimony, I was like cheering parts of it because I think you and I would agree. And again, you work for an organization that I've had a lot of agreement with at times, and your data is unassailable, that in the sense that and, I love that you pulled in Italy, and I think it was Norway.

The Avera Institute takes groups over to visit some of these prisons to look at why they might have better recidivism rates than us and why they might have better—you weren't affirming here on the record that that kind of work versus—as I visit prisons, again, my faith is a foundation of who I am. So I think of the prodigal son, I think of in Matthew 25.

So, I visit prisons all the time, and I see oversubscribed people trying to get into some of these work programs that are connected to it. I interview prisoners. What do you think about these works? But, but there must be for you a line between what's constructive, and what's dehumanizing, degrading, and potentially dangerous to your health.

Mr. LEHMAN. I mean, almost certainly I would be sort of hard pressed to draw your bright line, Senator, but that seems reasonable.

Chair BOOKER. Yes. And so I would imagine if I put you in charge—and God, you're thinking to myself, thank God you're not the President of the United States and didn't call me up to do this job. But if I put you in charge of the Bureau of Prisons, I imagine from the research that you've done, you would try to design programs—like we did in a bipartisan way in the First Step Act—that really are connected to the best evidence of what lowers recidivism rates.

Mr. LEHMAN. Yes. And, you know, I'd underscore the First Step Act when it was passed, there was a review of literature commissioned by the criminologist James Byrne, by that I cite in here, to figure out which federal prison rehabilitation programs are evidence-based. And his answer was essentially none of them.

Chair BOOKER. Right.

Mr. LEHMAN. I agree. You want to pick—and, you know, I'm potentially more sympathetic than other people in the panel to the idea that menial labor, that helping to keep the prison clean has a rehabilitative function. I'm less persuaded by the importance of high wages.

That said, yes, you want to order prison labor toward those benefits. There's a lot that we don't know. And I think there's a lot of space for bipartisan collaboration on the question of what can we know? Because in principle, Senator, left and right should be able to agree that work is a thing that makes people better, if it's good work.

Chair BOOKER. Right. And I wonder, Professor Armstrong, do you sort of agree with what Mr. Lehman's saying? Where would you

draw the lines? He doesn't want to draw any bright lines, but I imagine you would?

Professor ARMSTRONG. I think there's a lot of scenarios in which work can actually be something that is valuable and also can help create order and security within a facility.

I think what's really interesting is in my audits and visits behind the wire, people actually do not want to sit in their cell for 23 hours a day by themselves. That is not what they want to do. Instead, the program that is the most oversubscribed at Angola is the one where they are training dogs to be helping dogs to assist folks with disabilities who might need additional work and assistance.

So I think when we think about labor behind bars, one line that I would draw is, is there the possibility of that person being able to apply for a job to be able to have some agency or choice in which job they are training for or learning. And then, thinking about the connections between that and the market outside, as Mr. Lehman talked about.

Chair BOOKER. And, Ms. Turner, I just want to get to this issue of recidivism, which you've studied, and want to give you an opportunity from your data when you look at educational and training programs, that they're one way to set people up for success.

But I don't think we're considering how earning a wage and saving money while incarcerated is also a part of that in lowering recidivism rates. Can you talk about that combination between constructive work and actually making some of a wage as well?

Ms. TURNER. Yes, absolutely. And I do want to say that the studies on recidivism largely focus on the very narrowest category of workers; people employed in prison industries, jobs who account for only 6.5 percent of incarcerated workers nationwide. There really aren't studies showing reduced recidivism rates for the types of maintenance work, janitorial work, kitchen work, laundry work that the great majority, more than 80 percent of incarcerated workers are engaged in.

Many workers are tasked with tasks like digging ditches and cutting grass, and that's not necessarily going to help them get employment after they're released in prison. And so it's important to distinguish the data here. And in fact, when we talk about forced prison labor, a great majority of this is not helping people. And people are earning very little, very little money. Pennies per hour, in 7 States, no money at all.

But studies do show that gate money or some savings when people are released from prison, will improve outcomes for people. If people are paid minimum wage, not only are they able to support their families and be self-sufficient while incarcerated and their families won't be resulting in going into debt as more than half of families with a loved one do.

But instead, we'll have some savings to pay first and last month's rent and have stable housing, be able to potentially start a business support themselves while they seek out employment and higher paid jobs that provide meaningful skills. Vocational training will lead to better employment. This is a reality. This is what the study shows. This is at least what we know so far. But both are vitally important.

As it is now, workers not only cannot support themselves while they're incarcerated, but they leave prison saddled with debts that attach to their criminal conviction, legal, financial obligations that they can't pay while they're incarcerated, and struggle to obtain employment after the release.

I also want to mention, we talked about licensing restrictions that bar people from employment. And California is one example where people working battling wildfires were initially barred because of their criminal conviction from working as firefighters.

But the reality is that State licensing restrictions bar many formerly incarcerated people from engaging in work directly related to the work that they learned and took on while incarcerated. And these State licensing restrictions often aren't related to their crime of conviction.

It's one thing to say you can't be involved as an accountant if you have a white collar embezzling conviction, for instance. But someone who's worked as a hospice aide in prison who's learned, who's worked for years tending to dying and sick incarcerated people may be barred in many States from achievement, from obtaining work as home healthcare aides or hospice nurses. And that's a problem as well.

And while we look to the solutions that ensure people can succeed when they reintegrate into their families and their communities, we also have to consider ending these barriers to employment for people after they're released.

Chair BOOKER. That's excellent.

And Mr. Winn, you can give firsthand insights of distinguishing between work. You had said, I think very compellingly in your testimony, that your experience, you had working your fears, but you worked other jobs including a tier walker, a culinary school, and a nurse's aide.

And you said something really profound in your testimony about the nurse's aide position. You said, I think you used words, had a transformative impact on your life. Can you explain that differentiation and the value of working jobs that have an impact on people after prison?

Mr. WINN. When you working in the field, you don't feel like that has any value. You don't feel like you're going to get out. You know that you don't want to get out and do that anymore. When you working in culinary, you know that you're setting yourself up to get a good job after incarceration. When you get a nurse's aide, you would like for that—if you have a compassion for it, you would like for that to open up the doors.

But like Ms. Turner said, in Louisiana being an ex-offender, you really can't get a job in that field even though you have the skills to do it. That door isn't open for you. But people in prison work, they try to get the skills that'll get them a good job when they come back into society.

Chair BOOKER. And what do you say to Senator Cotton who said that cleaning toilets and mopping floors, that it seemed like he was trying to indicate that there's some kind of dignity in that, or it's important to do. And maybe we as Americas have no problem with thinking people who've committed heinous crimes would have to do that stuff. How do you speak to that?

Mr. WINN. It's kind of hard to speak to it because he has a fixed mindset. But anybody that's open-minded know that that's kind of like a degrading job, but it's a job that people need. And so, you know, when you go in a hotel, you want to walk into a clean hotel room. So we know that someone that cleans toilets, cleans rooms, that's a job for them.

But when you're coming from incarceration for doing for committing crime, right, that's not a job that you have asked. You have aspirations to come home and you want to do something more worthwhile?

Chair BOOKER. And I imagine the sense of I am paying my victim compensation, I am paying for my children's well-being.

Mr. WINN. Yes.

Chair BOOKER. So if those were attached to a salary that was more commensurate with the work, I would imagine people would want to find that pathway to redemption through that work. Is that correct?

Mr. WINN. Oh, yes. Because the average person does work working in Angola, that I can speak specifically about, because I did 30 years of my life there, when a guy moves from making \$0.02 cents an hour to making, let's say, \$0.16 cents an hour, a lot of those guys be saying, man, I'm going to save this little money to send my daughter something. I'm going to save this to buy my kids some tennis man. So don't ask me to buy you nothing from canteen because I'm not buying you anything. I want to send my mama something.

So they'll save, save, save, save. It might take them a month to buy whatever it is, 2 months, 3 months to do it, but they feel a sense of being a man because now I can provide something to my kid or I can provide something to my mother. And that's big for a person in prison.

Chair BOOKER. Thank you.

Professor Armstrong, as we get ready to close, I just want to ask is there some points that you came here to make that you weren't able to make yet?

Professor ARMSTRONG. Thank you for that opportunity. So I think one thing that's really important is to understand the ways in which we kind of harm our own goals and our own intentions, right? So if the idea is that a person by the end of their sentence has paid their debt because that is what they are sentenced to, then when they leave the prison, they should be able to earn a living and return as someone's neighbor.

So there was a reference, I believe, to programs in Norway. And what I think is remarkable about those programs is that they are really looking at who comes back to us as a neighbor, right? And so we can have debates about, you know, what an appropriate sentence is, but in no democratic and transparent society, do we sentence people to a term of years and then say, yes, but it's okay to kill them or to injure them, or for them to have amputated limbs, right? That can't be a part of our judicial sentence. And any sentence that would include that we would say is barbaric.

And so it's worth thinking about the ways in which we can make incarcerated labor look as close as possible to free labor, and that

will serve all of the goals and purposes that have been mentioned today. Thank you.

Chair BOOKER. Mr. Lehman, I'm grateful for you taking time. I know this is not easy to come here but do you have any final words to say?

Turn on your microphone.

Mr. LEHMAN. Thank you, Senator. I appreciate the opportunity. You know, I think that the reality that we have to deal with is that it is easy to wish that people can reintegrate into society. It's much harder to accomplish that.

I talked about, in my testimony briefly, "Ban the Box" laws or "Clean Slate" laws, and the surprising non-effect on employment following release. And a straightforward explanation for that is that it is not necessarily the criminal record alone that makes it harder for people to get jobs afterwards, that employers are seeing something different in ex-offenders. Similarly, it's great when vocational-led works. On average, vocational-led doesn't work. It's very hard to get vocational-led right in an incarcerated context.

That doesn't mean that there aren't strategies. One strategy, you know, if I have 20 seconds for your attention, Senator, the thing I would recommend you think about is employment insurance for ex-offenders which in surveys increase willingness to hire them by 25 percent.

And I think it's a totally underexplored policy idea. There are options on the table. They all start with admitting that the problem is a lot harder than removing impediments. It's about taking people who are often profoundly dysfunctional and trying to get them into a position where they're less dysfunctional. That's an extremely challenging problem. To be honest about that, there's really no room for success.

Chair BOOKER. Thank you, Mr. Lehman. Ms. Turner.

Ms. TURNER. Thank you. I just want to underscore that prison labor is a unique arrangement. The employer is the jailer. The employer has complete control over incarcerated workers, and incarcerated workers are uniquely vulnerable workforce.

They've been stripped of basic workplace protections. They have no say in the work assigned to them, and there's no oversight or regulation over workplace conditions. And this leads to predictably awful outcomes, including permanent disability and deaths.

And we also have a tremendous lack of information and data. I spent years researching this, and we filed for Freedom of Information requests with every State Department of Corrections and the Federal Bureau of Prisons. And only about half of the States responded.

The Federal Bureau of Prisons could not even refuse to tell us the number of incarcerated workers in federal prisons who are working maintenance jobs. We know a lot about prison industries programs, which as I've mentioned before, is about 6½ percent of incarcerated workers job assignments. We know very little about how many people are working.

We are extrapolating from surveys conducted by the Bureau of Justice Statistics. But there's really a need for more information about injuries workers sustain. For instance, AP filed FOIA requests for California Prison Industry Authority.

We know that 600 injuries were reported over a 4-year period, but most of those records are redacted. We know a fair amount. We know a lot of people were injured suffered eye injuries because they weren't provided safety goggles. But we don't really know about everything that's happening in prison.

We need both legal protections work, standard workplace protections, wage and hour protections, the right to unionize, and the end of forced labor. We need to end forced labor, and we need to protect these workers because what is happening today is for many workers, purely exploitative and violates our human rights commitments.

Chair BOOKER: Thank you very much.

So, Mr. Winn, this is how we're going to do this. You're going to say your final words. I'm going to say my final words, and then I'm going to submit for the record, unless there's an objection, and I don't see any of my colleagues objecting, a section of a documentary that I think will give more color to your words, frankly, and then, I'm going to gavel out.

Chair BOOKER. Does that sound good, Mr. Winn? You, me, video, we're done.

Go ahead, Mr. Winn.

Mr. WINN. Okay. We need to separate punishment from exploitation because to sentence a person to life that's punishment. You exploit a person by sending them in the fields for no money because there are people behind those walls that are mothers and fathers. We understand it. Victims have been left, but those people behind those walls could work, pay the victims.

That's paying the debt to society because we never factored that in. It's all about punishing, punishing, punishing, punishing. And it's all about let these big businesses get free labor from these guys in prison. But that's exploitation.

But just look at it from a different angle. That the guys and the women in prison work, and they can pay the victims back. Let them and they can take care of their families. We need to understand that those are humans.

But a lot of people don't look at it as those guys and women being humans. They're prisoners. So we dehumanize them in ways by just saying prisoner, instead of saying, Senator Cory Booker is now incarcerated. No. 413, whatever his number is, that's who it is so now don't have any emotional attachments to him. He's no longer a part of the human race.

But we'll put a dog behind a cage. If we leave a dog in our car and go in the grocery store and come back with the windows up, we're going to incarcerate the person that left that dog. So we give more care and concern about that dog than we do that human being that's trapped inside of a cell when the temperatures are 110 degrees, and that tier doesn't get any ventilation, and he's falling out or he dies behind those bars because he committed a crime.

So the crime takes more precedence over the human. So there's no human decency when you become a convicted felon. So we need to just start separating that punishment and that exploitation. And we need to start understanding, and realizing, and not forgetting the fact that those are human beings.

Like Senator Kennedy was asking me about, do I think about the mother of the victim? Of course. So that's a punishment that I live with every day of my life that he would never understand. Because when you commit a crime, and you really change, and you're really remorseful for it, that's a punishment that you would never, ever overcome. So I live with a daily punishment that no one can see, that no one can understand, but a person that did it. So should I be punished for the rest of my life by society, also? Thank you.

Chair BOOKER. You know, Mr. Winn, I felt uncomfortable when he was questioning you. And I think it's because exactly what you're saying. I've watched so many young men, young Black men at these terribly young ages get engaged in a world that just has them end up dead or has them end up in prison.

And we deny them, as you said, it almost sounds like a—just their number. We deny them their humanity, and we reduce them to the lowest, worst day of their lives. That's their entire definition. That one moment that he replayed with you, that becomes the totality of their being. And we don't see the full human being.

There's not a person in this vaunted Senate Chamber right now who hasn't desperately needed grace in their lives. And grace, by its very definition, is unmerited love and kindness. You didn't deserve this. And the quality of our grace in this country worries me sometimes because we don't extend it to even an individual like you who spent decade after decade after decade in prison for a heinous act you did when you were 16. The sum total of who you are is not that crime. You are every day working to define the totality of who you are and these ideals of redemption, these ideals of grace and rehabilitation.

And ultimately, the quality that we manifest in our society is as much of a reflection of the people who are incarcerated as those who are doing the incarcerating us. What story are we telling about ourselves?

And so, I just want to say in particular to you today, your voice here mattered. Your voice added a lot of clarity. You are a first-hand person to experience this at a time, as my colleague said, where most Americans do not go into prisons to see what's really going on, don't sit down to listen to people we incarcerate. Well, I don't believe there are any throwaway people.

So I'm grateful for your presence here as I am for all three of the—all four of the witnesses. It is a very important conversation. And evidence suggests we could do a lot better toward empowering people to recidivate—excuse me, to return home and not recidivate. And that we could have a prison system that does not torture people, harm people, injure people, make them more likely to be sexually assaulted or discriminated against.

That's what we're striving for. And anyone who looks at American prisons and jails today, and says this reflects the best of who we are and doesn't need any improvement, is just wrong, deeply wrong, and is implicated, in my opinion, as a barrier to trying to create more substantive evidence-based reforms.

I want to play the video, please.

[Video is shown.]

Chair BOOKER. I want to thank the Ranking Member, Senator Cotton. I want to thank each of our Subcommittee Members who

came today. I want to thank our Subcommittee Members that may be submitting questions for the record. I want to thank the witnesses for testifying today.

I want to remind Members of the Subcommittee that questions for the record are due a week from today, Tuesday, May 28, at 5 p.m. And I ask the witnesses, I know this is a burden with all that you-all do, but I ask the witnesses to respond to those questions. Not just in a timely manner, what it says here, but as thorough as possible.

Chair BOOKER. All of you are extraordinary in your capacity to illuminate this situation. I ask you to do that.

I want to again thank you for this hearing. I thought the conversation was constructive and meaningful.

With that, I gavel out. This hearing is adjourned.

[Whereupon, at 4:20 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Submitted by Senator Booker:

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Testimony of Andrea Armstrong^{*}
Dr. Norman C. Francis Distinguished Professor of Law
Loyola University New Orleans, College of Law

Before the U.S. Senate Committee on the Judiciary's
Subcommittee on Criminal Justice and Counterterrorism

Hearing on
"An Examination of Prison Labor in America"
May 21, 2024

Chairman Senator Booker, Ranking Member Senator Cotton, and Members of the Subcommittee:

Thank you for holding this hearing and for the opportunity to share my research on incarcerated labor with you. My name is Andrea Armstrong. I am a law professor at Loyola University New Orleans in the College of Law. I teach in the areas of constitutional and criminal law and research incarceration law and policy. I have visited prisons and jails across the country, including participating in audits of detention facility operations. Through those visits, I have seen a variety of programs and work environments for incarcerated workers that have helped me better understand carceral work environments and the laws and policies that govern them.

In March 2024, Farrell Scarborough, an incarcerated worker at Louisiana State Penitentiary, died after falling from the bed of a flatbed truck and being crushed by heavy lockers. According to incarcerated witnesses, there were no guard rails or safety straps on the truck and neither he nor the lockers were strapped down. The driver, in a rush to get back, turned too hard and too fast. Mr. Scarborough was 53 years old when he died and had been ordered to unload the lockers after arrival. And Mr. Scarborough is not the only preventable death that occurred in an incarcerated workplace. The Associated Press conducted a two-year investigation into incarcerated labor and documented significant injuries and deaths of incarcerated workers in Alabama, Arizona, California, Colorado, Georgia, and Pennsylvania, among others.¹

Incarcerated people are forced to work, for little or even no pay in some states, in dangerous conditions, with little value for themselves, their communities, or public safety. This is true not

^{*} Lillian McLemore and Caroline Raymond, law students at Loyola University New Orleans, College of Law, provided invaluable assistance in preparing this testimony. The author's institutional affiliation is provided for identification purposes only.

¹ Robin McDowell & Margie Mason, *US prisoners are being assigned dangerous jobs. But what happens if they are hurt or killed?*, THE ASSOCIATED PRESS (May 16, 2024) <https://apnews.com/article/prison-to-plate-inmate-labor-investigation-injuries-deaths-0ff52ff1735d7e9f858248177a2a60c3>.

just in Louisiana, which is my home state, but also nationwide in local, state, federal, and privately operated facilities.

I'd like to emphasize two key points in my testimony today. First, the incarcerated labor market is a uniquely coercive work environment. Not only can incarcerated workers be disciplined more severely than free workers, their forced labor also occurs within opaque institutions that enjoy high degrees of deference from federal courts. Second, courts and agencies, in the absence of clear federal legislative intent, have generally interpreted existing federal worker protection laws to exclude incarcerated workers, leaving incarcerated workers with little recourse or remedy.

The Coercive Aspects of Incarcerated Labor

Incarcerated labor discussions often start with the text of the Thirteenth Amendment to the U.S. Constitution, which allows for involuntary servitude as a punishment for being convicted of a crime.² This exception, which is also in state constitutions,³ provides the legal foundation for our modern carceral labor practices. But it is also important to recognize the limitations of this controversial exception to involuntary servitude. All that the exception states is that a person may be forced to work as punishment for their conviction of a crime. The text does not say, for example, that the working conditions must be unsafe.

Mr. Scarborough was crushed by heavy lockers.⁴ Mr. Andrew Vargas drowned in the Mississippi River while working on a tug boat.⁵ Mr. Bobby Earl also drowned when the boat he worked on collapsed.⁶ Mr. Kenneth George died of a brain injury after falling off the back of truck while checking water meters.⁷ None of these incarcerated workers were judicially sentenced to death, but all died while working a prison-assigned job.

Incarcerated workers also suffer significant and life-long injuries as a result of their prison labor. Ms. Kelly Jane Rhodes “suffered traumatic brain injury, a fractured skull, internal cranial bleeding, fractured nasal bones, and lacerations to her face and scalp” when an industrial laundry cart fell on her.⁸ Mr. Michael Travis Buckley is now a paraplegic due to a back injury sustained while

² U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

³ See e.g., LA. CONST. art. 1, § 3(B)(1); VT. CONST. ch. II, § 64 ; but see COLO. CONST. art. II, § 26 (amended via ballot initiative to remove exception).

⁴ Statement from Ricky Davis (Mar. 21, 2024) (on file with author).

⁵ Michelle Hunter, *Body of missing inmate recovered in Mississippi River near Belle Chasse*, TIMES-PICAYUNE (May 20, 2017), https://www.nola.com/news/traffic/body-of-missing-inmate-recovered-in-mississippi-river-near-belle-chasse/article_329be0dc-9247-5891-834c-f0ce68a6287b.html.

⁶ TANGIPAHOA SHERIFF’S OFF., LOCAL JAIL INMATE DEATH REP.: BOBBY EARL (2015),

<https://www.incarcerationtransparency.org/wp-content/uploads/2021/02/Earl-Bobby-Tangipahoa-2015-CJ9.pdf>.

⁷ LOCAL JAIL INMATE DEATH REP.: KENNETH J. GEORGE (2018), <https://www.incarcerationtransparency.org/wp-content/uploads/2023/03/Kenneth-George-Webster-Bayou-Dorcheat-2018.pdf>.

⁸ Rhodes v. Michigan, No. 2:17-CV-12416-TGB, 2020 WL 978296, at *2 (E.D. Mich. Feb. 28, 2020), *aff’d in part, rev’d in part*, 10 F.4th 665 (6th Cir. 2021) (reversing district court grant of qualified immunity to prison defendant officials).

clearing trees.⁹ Mr. Clyde Isom filed a lawsuit to recover damages for chemical burns on his back he argued were caused by a defective “backpack spray gun.”¹⁰ Similarly, none of these incarcerated workers were judicially sentenced to suffer painful and lifelong injuries.

In a 2021 law review article, *Beyond the 13th Amendment—Captive Labor*, I discussed four key features of our current system of incarcerated labor.¹¹ Forced labor in prisons is involuntary, unfairly compensated, unsafe, and detrimental. Forced prison labor also fails to achieve the rehabilitative goals of incarceration since it often fails to provide vocational or monetary support for a person’s release.¹² But to meaningfully address forced labor, it is critical that policy makers appreciate a key defining difference between incarcerated labor and free world labor, namely the coercive aspect of being in the custody of your employer.

Prisons are “closed institutions holding an ever-growing disempowered population.”¹³ Prison administrators have broad authority over every detail of the lives of incarcerated people, including determining a person’s access to safe housing or their loved ones. Prison administrators are simultaneously often an incarcerated person’s employer and therefore are also empowered to assess (and potentially sanction) an incarcerated laborer’s job performance.¹⁴ In the free world, an employer unsatisfied with your job performance may dock your pay, demote you or even fire you. But for incarcerated workers, your supervisor can send you to solitary confinement or deny you visits with your children or spouse solely based on the guard’s perception of your job performance.

Prison decisions are difficult to challenge. The Prison Litigation Reform Act has substantially limited the ability of federal courts to hear and intervene in litigation challenging conditions of confinement.¹⁵ Even when federal courts are available, judges apply deferential standards to prison decisions in a wide range of contexts including discipline, housing assignments, and work

⁹ Buckley v. Barbour County, Alabama, No. 2:07-CV-1119-WKW [WO], 2010 WL 1993066, at *1 (M.D. Ala. May 17, 2010).

¹⁰ Isom v. Geo Grp. Inc., 335 F. App’x 362, 362 (5th Cir. 2009).

¹¹ Andrea C. Armstrong, *Beyond the 13th Amendment – Captive Labor*, 82 OHIO ST. L.J. 1039 (2021).

¹² See LA. LEGIS. AUDITOR, PRISON ENTERPRISES – EVALUATION OF OPERATIONS 3 (May 2019) (finding that within the state prison enterprises division, approximately one third of incarcerated workers are assigned jobs that “the Louisiana Workforce Commission (LWC) has projected to have a decrease in future employment.”); Wendy Sawyer, *How much do incarcerated people earn in each state?*, PRISON POLICY INITIATIVE (April 10, 2017) <https://www.prisonpolicy.org/blog/2017/04/10/wages/> (finding that some states pay nothing at all and of those states that do pay, incarcerated people earned between 86 cents to \$3.45 a day in 2017). While some forms of incarcerated labor pay equivalent free world wages, such as certified Prison Industry Enhancement Certification Programs (PIECP) or transitional work programs, the number of people participating in those programs is relatively small and the agency clawback of earnings is relatively large. See e.g., NAT’L CORR. INDUS. ASS’N, PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM CERTIFICATION & COST ACCOUNTING CENTER LISTING (statistics ending Dec. 31, 2023)(noting 5,742 total incarcerated participants for the fourth quarter of 2023); 18 U.S.C. § 1761(c)(3)(allowing for up to 80% earnings deductions for room & board, taxes, family support, crime victim support (capped at 5-20%) for PIECP).

¹³ Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America’s Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PA. J. CONST. L. 139, 139–140 (2008).

¹⁴ See E. ANN CARSON, BUREAU OF JUST. STATISTICS, U.S. DEP’T OF JUST., NCJ 254268, DATA COLLECTED UNDER THE FIRST STEP ACT, 2019 11–12 (Mar. 2020).

¹⁵ See generally Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 U.C. IRVINE L. REV. 153 (2015) (also noting that due to the PLRA, “[l]itigation has receded as an oversight method in American corrections.”) *Id.* at 171.

supervision.¹⁶ Collateral judicial doctrines, such as qualified immunity, further insulate prison decision making.¹⁷ Incarcerated workers also have limited due process rights when they seek review of disciplinary sanctions.¹⁸

This possibility of severe and unchallengeable punishment may have a chilling effect on the ability of incarcerated workers to refuse to work in unsafe work environments. Simultaneous with the broad authority of prison officials, courts have upheld substantial limits on the rights of incarcerated people, including those associated with the workplace. Incarcerated laborers are prohibited from advocating for their own safety through circulating petitions or engaging in work stoppages or slowdowns.¹⁹ In some cases, they can face new criminal charges.²⁰ In federal prisons, “failure to perform work as instructed” can result in a monetary fine, being fired, solitary confinement for up to three months, or losing earned “good time,” effectively extending your incarceration.²¹ State prisons have similar provisions.²²

Moreover, that “power to control millions of people’s lives...is exercised in spaces from which the rest of the U.S. population is barred.”²³ Independent prison oversight entities – which could monitor and report on dangerous working conditions – only exist in a minority of states.²⁴ We only have limited data on job assignments in prisons²⁵ and no annual data on injuries sustained in the workplace. Our traditional democratic tools of transparency and accountability to monitor government agencies are severely limited within the context of prisons.

The coercive aspect of incarcerated labor is not just implicit; it can be explicit as well. Mr. Neil Ambrose, an incarcerated worker, was instructed by staff to stomp out a fire near a downed power line and died of electrocution.²⁶ Another incarcerated worker, Mr. Michael Buckley, is a paraplegic after he was pinned by a tree that he and another worker had been ordered to remove from the

¹⁶ See generally Sharon Dolovich, *Forms of Deference in Prison Law*, 24 FED. SENT’G REP. 245 (Apr. 2012).

¹⁷ *Wilson v. Cain*, No. 10-114-JVP-CN, 2010 WL 3717306, at *1 (M.D. La. Sept. 13, 2010) (“There are numerous reported decisions which reflect that, absent a showing that prison officials have intentionally exposed an inmate to work conditions which create a substantial risk of serious harm, prison officials are not liable for a failure to provide safety equipment.”).

¹⁸ *Wolff v. McDonnell*, 418 U.S. 539 (1974).

¹⁹ Andrea C. Armstrong, *Racial Origins of Doctrines Limiting Prisoner Protest Speech*, 60 HOW. L.J. 221, 232–35 (2016).

²⁰ *Id.* at 232.

²¹ 28 C.F.R. § 541.3, tbl.1: 311 (2024).

²² See N.Y. COMP. CODES R. & REGS. tit. 7, § 270.2(B)(5)(iii) (2022); GA. COMP. R. & REGS. 125-3-2.04(c) (2024); WASH. ADMIN. CODE § 137-25-30 (2023).

²³ Michele Deitch, *But Who Oversees the Overseers?: The Status of Prison and Jail Oversight in the United States*, 47 AM. J. CRIM. L. 207, 218 (2020).

²⁴ See *id.* at 272–73.

²⁵ The last annual survey of prison work assignments by state was published over 20 years ago. CRIM. JUST. INST., INC., NCJ 207918, THE CORRECTIONS YEARBOOK: ADULT CORRECTIONS 2002 118–27 (2003). In April 2023, the Bureau of Justice Statistics published a brief analysis of prison work assignments in 2016, but did not provide data by state. LAUREN G. BEATTY & TRACY L. SNELL, BUREAU OF JUST. STATISTICS, U.S. DEP’T OF JUST., NCJ 306021, SURVEY OF PRISON INMATES: WORK ASSIGNMENTS REPORTED BY PRISONERS, 2016 (Apr. 2023) <https://bjs.ojp.gov/document/warp16.pdf>.

²⁶ *Ambrose v. Young*, No. Civ. 04-4068-KES, 2005 WL 3370555, at *1 (D.S.D. Dec. 12, 2005), *aff’d in part, rev’d in part*, 474 F.3d 1070, 1081 (8th Cir. 2007).

road.²⁷ And Mr. Steven Morgan, an incarcerated worker who informed his supervisor that the printing press was dangerously defective, lost his right thumb after he says he was told there was no time to stop the press for repairs and to continue working.²⁸

Failure to Protect and Provide Remedies for Incarcerated Workers

It is precisely this type of asymmetry in power that prompted federal laws to safeguard free workers from exploitation by their employers during the 1930s. Current federal law protects free workers through legislative enactments including: the National Labor Relations Act (collective action and bargaining for private employers)²⁹; the Fair Labor Standards Act (minimum wage, overtime)³⁰; Title VII of the Civil Rights Act of 1964 (job-based discrimination)³¹; and the Occupational Safety and Hazards Act (OSH Act) (regulating minimum workplace safety conditions)³². However, these laws often fail to generally protect incarcerated workers due to judicial or agency interpretation and the absence of a clear federal legislative intent.

Incarcerated workers, especially those working for the prison itself on prison grounds, are not generally considered protected “employees” under federal labor laws.³³ For example, incarcerated individuals are not explicitly listed as an “employee” or as an exception to the definition of “employee” for the Fair Labor Standards Act (FLSA).³⁴ As a result, different courts have created their own tests for determining when an incarcerated worker can be considered an employee, including looking to the purpose of FLSA and congressional intent or looking to the “economic reality” of the relationship between the worker and the supervising entity.³⁵ The Equal Employment Opportunity Commission (EEOC) has explicitly found that incarcerated workers for a prison are not considered employees for purposes of Title VII.³⁶ Similarly, the U.S. Department of Labor concluded that incarcerated workers in federal prisons are not considered “employees” as defined in the OSH Act, though the relevant protections “should apply” when incarcerated people perform work similar to work outside of prisons.³⁷

Workplace safety protections for incarcerated workers in state prisons are particularly confusing and complex. First, the federal OSH Act does not apply to state and local government employees unless the state has adopted an OSHA-approved state plan.³⁸ Twenty-three states and DC do not

²⁷ Buckley v. Barbour Cnty., Ala., 624 F. Supp. 2d 1335, 1341 (M.D. Ala. 2008).

²⁸ Morgan v. Morgensen, 465 F.3d 1041, 1044 (9th Cir. 2006), *opinion amended on reh'g*, No. 04-35608, 2006 WL 3437344 (9th Cir. Nov. 30, 2006).

²⁹ 29 U.S.C. §§ 151–169.

³⁰ 29 U.S.C. §§ 201–219.

³¹ 42 U.S.C. § 2000e *et seq.*

³² 29 U.S.C. §§ 651–678.

³³ See Noah D. Zatz, *Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships*, 61 VAND. L. REV. 857, 874 (2008) (describing the evolution of court jurisprudence on the applicability of FLSA to incarcerated workers).

³⁴ 29 U.S.C. §§ 203(d)–(e)(1) and 203(e)(4)–(5).

³⁵ Andrea C. Armstrong, *Beyond the 13th Amendment – Captive Labor*, 82 OHIO ST. L.J. 1039, 1055 (2021).

³⁶ E.E.O.C. Dec. No: 86–7 (1986), 1986 WL 38836.

³⁷ U.S. DEP’T OF LAB., “Federal Agency Safety and Health Programs With the Bureau of Prisons,” OSHA Instruction, FAP 01-00-002 (Apr. 10, 1995).

³⁸ State Plans: FAQ: “What is an OSHA-Approved State Plan,” U.S. Dep’t of Lab., OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,

have OSH-approved state plans, even if incarcerated workers would be considered qualifying “employees.”³⁹ Second, even where there is a state plan, the National Employment Law Project found that most state OSH Acts do not protect incarcerated workers.⁴⁰ Third, while a few states do provide protection under specific circumstances, several states explicitly exclude coverage for incarcerated workers.⁴¹ Thus, as a practical matter, federal OSH Act minimum workplace standards for protection from falls on construction sites, for example, may or may not be required depending on a person’s incarceration status, whether or not the state has an approved plan, whether the job site is located on prison grounds, and various other factors.⁴² Last, even in those rare circumstances where incarcerated workers are in protected workspaces under state law, enforcement may not be sufficiently independent.⁴³

Incarcerated workers can also be forced to work in uniquely dangerous environments and may have distinct workplace needs. According to analysis by Prof. Carlee Purdum, thirty of forty-seven states specifically authorize the use of incarcerated labor in disaster and emergency clean-up.⁴⁴ While some jobs may seem mundane, such as filling sandbags, others require specialized training⁴⁵ and can lead to significant injuries and health complications. In addition, “[p]eople with disabilities are disproportionately overrepresented in the criminal legal system”⁴⁶ and people in state and federal prisons are two and a half times more likely to report having a disability than non-incarcerated people.⁴⁷ The unstable or emergency nature of the work may complicate providing appropriate accommodations for incarcerated workers with disabilities.

The lack of workplace protection is exacerbated by the lack of remedies for job-related injuries suffered by incarcerated workers in state prisons.⁴⁸ Prisons are obligated to provide constitutionally adequate healthcare for incarcerated people, including treatment for work-related injuries.⁴⁹

<https://www.osha.gov/stateplans/faqs#:~:text=Workers%20at%20state%20and%20local.and%20local%20governme nt%20workers%20only.>

³⁹ *Id.*

⁴⁰ Anastasia Christman & Han Lu, *Workers Doing Time Must Be Protected by Job Safety Laws*, NATIONAL EMPLOYMENT LAW PROJECT, at *19 (Apr. 2024).

https://www.nelp.org/app/uploads/2024/04/Report_Incarcerated_Workers_Disasters_v2.pdf.

⁴¹ *Id.* at *19–21.

⁴² *See id.*

⁴³ *See* Megan Hauptman, *The Health and Safety of Incarcerated Workers: Osha’s Applicability in the Prison Context*, 37 ABA J. LAB. & EMP. L. 71, 87 (2023) (noting that the Indiana Department of Corrections, instead of the relevant state health and safety agency, is responsible for enforcement).

⁴⁴ J. Carlee Purdum & Michelle A. Meyer, *Prisoner Labor Throughout the Life Cycle of Disasters*, 11 RISK HAZARDS & CRISIS PUB. POL’Y 296, 308 (2020).

⁴⁵ J. Carlee Purdum, *Disaster Work Is Often Carried Out by Prisoners—Who Get Paid as Little as 14 Cents an Hour Despite Dangers*, CORR. MANAGERS’ REP., Oct.–Nov. 2020, at 37, 37.

⁴⁶ Jamelia N. Morgan, *Reflections on Representing Incarcerated People with Disabilities: Ableism in Prison Reform Litigation*, 96 DENVER L. REV. 973, 979 (2019).

⁴⁷ LAURA M. MARUSCHAK & JENNIFER BRONSON, BUREAU OF JUST. STATISTICS, U.S. DEP’T OF JUST., NCJ 252642, SURVEY OF PRISON INMATES: DISABILITIES REPORTED BY PRISONERS, 2016, 2 (Mar. 2021)

<https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>.

⁴⁸ Incarcerated workers in federal prisons can file for compensation under the Inmate Accident Compensation Act for job-related injuries. 18 U.S.C. § 4126. Payment is for the degree of impairment at the time of release and is not paid while a person is incarcerated. 28 C.F.R. § 301.314(a).

⁴⁹ The U.S. Supreme Court decision in *Estelle v. Gamble*, which established that prisons have a constitutional obligation to provide medical care to people in custody, concerned a back injury sustained while working when a

However, an injured incarcerated worker, unlike eligible free workers, often cannot recover for temporary or permanent disabilities through workers' compensation. Several states statutorily exclude incarcerated workers from eligibility for workers' compensation programs.⁵⁰

Without an explicit statutory framework or clear legislative intent, incarcerated workers in federal court must rely on constitutional claims to pursue injunctive and/or monetary relief for their injuries. Federal courts have generally rejected constitutionalizing workplace negligence claims for incarcerated workers. Instead, courts have required that an injured incarcerated worker demonstrate that a prison official was "deliberately indifferent" to violate the Eighth Amendment's prohibition of "cruel and unusual punishment."⁵¹ "In the prison work assignment context, prison officials are deliberately indifferent when they knowingly compel an inmate to perform labor that is beyond the inmate's strength, dangerous to his or her life or health, or unduly painful."⁵² Proving negligence is not sufficient to establish deliberate indifference.⁵³

Potential Reforms to Enhance Fairness

The coercive context of incarcerated labor combined with the lack of affirmative protection or remedies makes incarcerated labor exploitative and dangerous. Working conditions behind bars injures and kills incarcerated workers, burdens families, stretches staff and resources in these facilities, and undermines a central purpose of incarceration, namely, to ensure that crimes do not re-occur. These harms, however, are not essential to incarceration.

We can choose a different path. In 2022, approximately 450,000 people returned home from state and federal prisons to their communities and the workforce.⁵⁴ Education and vocational training that assist people in successfully landing employment post-incarceration is a critical part of re-entry and of protecting community safety. If the goal is increased safety through reduced recidivism, prison policies that mimic and mirror free world labor are more likely to better prepare incarcerated workers for future freedom. When labor behind bars looks like free world labor, its value is clearer and can support institutional goals of security, order, and efficiency.

Over the last few years, Congress has considered proposals to amend the U.S. Constitution to eliminate the convict labor exception.⁵⁵ At both the state and federal level, advocates have urged legislative bodies and the general public to affirm the shared humanity of incarcerated people by eliminating the exception for convicted labor.⁵⁶ There are also targeted approaches Congress could

600-pound bale of cotton fell on Mr. Gamble as he was unloading it from a truck. *Estelle v. Gamble*, 429 U.S. 97, 99 (1976).

⁵⁰ See e.g., ARK. CODE ANN. § 11-9-102(9)(B)(iii) (Supp. 2019); TEX. LAB. CODE ANN. § 501.024(3) (West 2015); VT. STAT. ANN. tit. 21, §§ 601(12)(O)(iii), 616(a) (2016).

⁵¹ See *Rhodes v. Michigan*, 10 F.4th 665, 674 (6th Cir. 2021).

⁵² *Ambrose v. Young*, 474 F.3d 1070, 1076–77 (8th Cir. 2007).

⁵³ *Farmer v. Brennan*, 511 U.S. 825, 835–36 (1994) (defining deliberate indifference standard for Eighth Amendment purposes).

⁵⁴ E. Ann Carson & Rich Kluckow, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., PRISONERS IN 2022 – STATISTICAL TABLES, 19 (Nov. 2023).

⁵⁵ See e.g., S.J. Res. 81, 116th Cong. (2020); H.J. Res. 53, 117th Cong. (2021); H.J. Res. 72, 118th Cong. (2023); S.J. Res. 33 118th Cong. (2023).

⁵⁶ See e.g., Abolish Slavery National Network, <https://abolishslavery.us>; Worth Rises, <https://endtheexception.com>.

take to reduce the coercive context of incarcerated labor and ensure that work behind bars is safe, fair, paid, and beneficial, including enacting laws that:

- Apply existing worker and workplace safety protections, including remedies, to incarcerated workers and workspaces;
- Protect incarcerated workers' ability to advocate for fair and safe working conditions;
- Amend the Prison Litigation Reform Act by, for example, exempting work-related claims from exhaustion and three-strikes limits; and
- Enhance transparency of incarcerated workspaces by requiring data collection, analysis, and public dissemination of data on incarcerated labor, including injuries, deaths, and discipline.

Conclusion

Incarcerated labor touches us all. Some of us have to financially support a loved one behind bars because they only earn pennies a day, imposing extra financial burdens on rural, poor, and minority communities. Sometimes, as documented by the Associated Press, private corporations profit from selling goods originating in prisons to the general public at free world prices.⁵⁷ At their core, prisons are public institutions providing public services in our names and with our tax dollars.⁵⁸ And when incarcerated labor is exploitative, it undermines public trust and legitimacy of the entire criminal justice system. I urge this Subcommittee to treat these issues with the urgent attention they deserve. Thank you for the invitation to share my research on these important issues.

⁵⁷ Robin McDowell & Margie Mason, *Prisoners in the US are part of a hidden workforce linked to hundreds of popular food brands*, THE ASSOCIATED PRESS (Jan. 29, 2024) <https://apnews.com/article/prison-to-plate-inmate-labor-investigation-c6f0eb4747963283316e494eadf08c4e>.

⁵⁸ Some forced labor programs actually lose taxpayer money when expenses outstrip revenue. For example, the Louisiana Legislative Auditor found that from 2016 to 2018, the state lost \$4.7 million dollars from losses incurred in the following Prison Enterprises programs: chair manufacturing, printing, corn, and cotton. LA. LEGIS. AUDITOR, PRISON ENTERPRISES – EVALUATION OF OPERATIONS 15 (May 2019).

**Statement before the U.S. Senate Committee on the Judiciary, Subcommittee on
Criminal Justice and Counterterrorism**

A Hearing on "An Examination of Prison Labor in America"

May 21, 2024, 2:30 PM ET
Dirksen Senate Office Building Room 226

Statement by

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The Manhattan Institute does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my research as an Institute scholar, the views represented today are solely my own, not my employer's.

Thank you to the Committee for the opportunity to address you. As you are well aware, there are some 1.2 million people in American prisons today, including over 150,000 in federal custody.¹ 95 percent of these will eventually return home. A key question for today's hearing, then, is whether those men and women's experience of work in prison will prepare them for the world outside.

I am a public-policy analyst; my professional interest is in assessing the relationship between policy and social outcomes. I am not here to make a judgement on the legal or normative merits of prison labor. Rather, I aim to advance a simple argument: having prisoners work improves their employability post-release, and consequently reduces their recidivism risk. While the specifics matter, prison labor should be viewed as a key part of rehabilitation, not an impediment to it.

Incarceration, Employment, and Recidivism

Many criminals reoffend. Among a cohort of prisoners released in 2008, two-thirds were rearrested within 3 years, and four-fifths rearrested within 10 years.² Reducing recidivism benefits offenders (who spend less time in prison), society (which faces less crime) and the taxpayer (who spends less money on incarceration).

The relationship between employment and crime is far from straightforward; the common belief that "nothing stops a bullet like a job" is at best an oversimplification.³ Nonetheless, some evidence indicates that employment conditions affect recidivism risk. Using data on four million offenders across 43 states, one study found that prisoners released into worse labor-market conditions are more likely to reoffend than those released into better conditions.⁴ Data on 1.7 million offenders released from the California prison system repeats this finding, specifically showing that employment opportunities in construction and manufacturing are associated with significantly lower recidivism rates.⁵

Why might employment reduce recidivism? The most obvious reason is that licit wages discourage criminal employment. The high-quality evidence generally indicates that all else equal, more money reduces risk of property, but not violent, crime, consistent with a model in which property crime and work substitute.⁶ Beyond this simple relationship, employment might control criminal behavior through the imposition of pro-social norms, by relieving social pressures ("strain theory"), or by creating an environment of informal social control that limits opportunities for offending.

The employment/recidivism relationship is particularly important in the context of incarceration. Whether incarceration increases, decreases, or has no effect on recidivism risk is highly contingent on the kind of incarceration (pre-trial versus post-trial), the nature of the offender, and the counterfactual situation against which incarceration is compared.⁷ Nonetheless, where incarceration *causes* recidivism, it is likely through its effects on the offender's employability. One widely cited working paper based on Texas data found that incarceration causes significant increases in reoffending, reduces subsequent employment and earnings, and increases dependence

on public benefits.⁸ Analysis of a cohort of Hungarian offenders—although less applicable to the U.S. context—provides similar evidence on prison’s effects on labor market participation.^{9,10}

Again, the reasons why incarceration might reduce employment—and therefore increase offending—are straightforward. Most obviously, any criminal record “scars” the recipient, discouraging employers from hiring them. In one recent survey of nearly a thousand U.S. businesses, less than four in ten were willing to hire someone with a criminal record.¹¹ In addition, cohort evidence suggests that any interaction with the criminal justice system significantly reduces an individual’s propensity to even look for work.¹²

If employment prevents recidivism, and if prison can increase recidivism by reducing employment, then policy concerned with reducing recidivism must grapple seriously with how to get those returning from prison into the labor force.

Policies Meant to Reduce This Effect by Hiding Criminal History Do Not Work

The problem of employers being unwilling to hire returning citizens—sometimes framed as discrimination—has received a great deal of attention in recent years. Broadly speaking, there are two solutions to this problem. The hard one—improving criminal offenders’ marketability—I will discuss momentarily. The easy one is to make it harder for employers to know that someone has a criminal record.

To do so, many states have implemented policies that automatically expunge records (“clean slate” laws) or prohibit asking applicants about their criminal background (“ban the box” laws). Unfortunately, the best evidence indicates that these policies do not have their intended effects and may, in some cases, worsen employment outcomes for otherwise-disadvantaged non-offenders.

Take “ban the box” laws. Research on Massachusetts’s implementation found that it actually decreased ex-offenders’ employment, possibly by making them more choosy about what jobs they take.¹³ Paradoxically, banning “discrimination” against former offenders may also lead to increased discrimination against black men, whose race and sex employers use as a proxy. Research exploiting the staggered roll-out of these laws at the state level finds that “banning the box” reduces young, black men’s employment by 3 percentage points.¹⁴ A study that used 15,000 fictitious job applications in New York and New Jersey before and after implementation found that ban the box led to an increase in the employment gap between white and black applicants.¹⁵

The evidence is similarly pessimistic for “clean slate”/automatic expungement laws. A recent comprehensive analysis, examining three different “clean slate” initiatives, finds that expungement has essentially no effect on employment, on average.¹⁶

It’s possible that more aggressive efforts to remove the “stigma” of a criminal record might be more successful. But if employers cannot learn about an applicant’s criminal

history, the ban-the-box evidence suggests, they may use other, more unseemly proxies for criminal behavior—to the detriment of the law-abiding population.

Prison Work Can Increase Employment, Reduce Recidivism Risk

Policymakers, therefore, should prioritize interventions which actually improve labor-market performance of offenders. Few interventions are as obvious, for this purpose, as giving people jobs in prison. Such an approach, moreover, has some evidence to support its efficacy.

The most persuasive evidence comes from assessments of state prison labor programs. One analysis of employment of 77,000 Indiana and Tennessee prisoners by private firms found that participation in prison work is associated with significant reductions in recidivism at the one- and two-year marks, compared to a matched control group.¹⁷

Another, following a cohort of 6,000 offenders released from Minnesota prison between 2007 and 2011, found that those who worked were 24 percent more likely than matched controls to find a job, worked more hours, and had higher total wages, and that the number of hours working was significantly associated with lower recidivism rates.¹⁸

There is also benefit to prisoners working outside of the prison walls. Econometric evidence suggests that work-release—prisoners being moved to low-security facilities and being allowed out to work during the day—improves employment outcomes and reduces recidivism for property, but not violent, offenders, a finding consistent with the literature discussed above.¹⁹

Other evidence comes from abroad. Research on Italian offenders found that among those serving a sentence longer than six months, an additional two days of unskilled work per month reduces the reincarceration rate by between 3 and 10 percentage points—an effect the author attributes to skill-upkeep.²⁰

Another analysis found that incarceration in Norwegian prisons caused a steep reduction in reoffense—29 percentage points—driven entirely by those who did not work prior to their incarceration. That group also saw an increase in future employment and earnings.²¹

Effective Prison Labor is Possible

To this last, some might object that Norwegian prisons are not *like* American prisons. The former is generally regarded as unusually humane, the latter as unusually inhumane.

Bracket the fact that evidence from other nations, and from U.S. states, indicates that prison can improve employability and therefore reduce recidivism. The basic problem with this view is that it assumes the quality of U.S. prisons cannot be affected by policy.

Yet there is no law of man or nature that prohibits us from designing prison programming—including work—so as to maximize its long-run benefits.

There is much we do not know about what works in prison employment. This is a general problem: most federal rehabilitation programming is not evidence-based.²² Any reforms to federal prison-labor practices should incorporate a commitment to research on what programs work and do not work.

That said, the evidence suggests that providing incarcerated people with opportunities to work is an effective way to improve their labor-market outcomes on release and, thereby, reduce their risk of re-offense. On this basis alone, we ought to take seriously the role that prison labor plays in a comprehensive account of prison-based rehabilitation.

Notes

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- ¹⁰ The evidence, as previously mentioned, does not uniformly indicate that post-trial detention (i.e. prison) is criminogenic. The research reviewed by Loeffler and Nagin (cited above) counts three measured outcomes where prison is criminogenic, four where it is preventative, and six where it neither increases nor decreases reoffense risk. In general, whether or not prison is criminogenic is probably a function of the characteristics of both the offender and the prison in which he is incarcerated.
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STATEMENT OF

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For a Hearing on

An Examination of Prison Labor in America

Before the

United States Senate

Committee on the Judiciary

Subcommittee on Criminal Justice and Counterterrorism

May 21, 2024

Chairman Booker, Ranking Member Cotton, and distinguished members of the Subcommittee on Criminal Justice and Counterterrorism, on behalf of the American Civil Liberties Union (ACLU),¹ our more than four million members and supporters, and affiliate organizations, I thank you for the privilege of testifying before your Subcommittee today.

Our nation incarcerates over 1.2 million people in state and federal prisons, and two out of three of these incarcerated people are also workers. In most instances, the jobs these people in prisons have look similar to those of millions of people working on the outside: They work as cooks, dishwashers, janitors, groundskeepers, barbers, painters, or plumbers; in laundries, kitchens, factories, and hospitals. Outside the prison walls, these incarcerated individuals are employed by private and public sector entities to provide vital public services such as repairing roads, fighting wildfires, or clearing debris after hurricanes. During the height of the COVID-19 pandemic incarcerated individuals washed hospital laundry and worked in mortuary services. They manufacture products that find their way into our homes and workplaces like office furniture, mattresses, license plates, dentures, glasses, traffic signs, athletic equipment, and uniforms. They cultivate and harvest crops, work as welders and carpenters, and work in meat and poultry processing plants.

But there are two crucial differences: Incarcerated workers are under the complete control of their employers, and they have been stripped of even the most minimal protections against labor exploitation and abuse. Their wages enrich others, while they exist on substandard meals and many of their families and children live in poverty.

From the moment they enter the prison gates, they lose the right to refuse to work. This is because the 13th Amendment to the United States Constitution, which generally protects against slavery and involuntary servitude, explicitly excludes from its reach those held in confinement due to a criminal conviction.² More than 76 percent of incarcerated workers report that they are required to work or face additional punishment such as solitary confinement, denial of opportunities to reduce their sentence, and loss of family visitation, or the inability to pay for basic life necessities like bath soap.³ They have no right to choose what type of work they do and are subject to arbitrary, discriminatory, and punitive decisions by the prison administrators who select their work assignments.⁴

U.S. law also explicitly excludes incarcerated workers from the most universally recognized workplace protections. Incarcerated workers are not covered by minimum wage laws or overtime protection, are not afforded the right to unionize, and are denied workplace safety guarantees. Workers are assigned hazardous work in unsafe conditions without the standard training or protective gear provided in workplaces outside prisons.

Incarcerated workers typically earn little to no pay at all, with many making just pennies an hour. It is rare that a job pays more than a dollar an hour—even the incarcerated firefighters braving the flames that rage across California's forests and hillsides year after year are compensated at \$1 an hour.⁵ Even so, many consider themselves lucky to receive these low wages. That is because, in seven states, incarcerated individuals are forced to work but are paid nothing at all for most jobs.

At the same time, incarcerated workers produce real profits for state prisons and state governments, the system's primary beneficiaries of forced prison labor. Nationally, incarcerated workers produce more than \$2 billion a year in goods and commodities and over \$9 billion a year in services for the maintenance of the prisons where they are warehoused. The captive labor system of American prisons hides the staggering costs of our country's bloated prison system.

The majority of incarcerated people wish to be productive while in prison. They want, and often need, to earn money to send home to loved ones and pay for basic necessities while incarcerated. They want to acquire skills useful for employment after their release. Studies show that people who had some savings when they leave prison and got jobs after their release were less likely to recidivate than those who did not. We all have an interest in prison work being something beyond pure punitive exploitation. Yet despite the potential for prison labor to facilitate rehabilitation, the existing system very often offers nothing beyond exploitation.

Drawing from primary research I conducted for the ACLU together with the University of Chicago Law School's Global Human Rights Clinic and detailed in greater length in our 2022 report, *Captive Labor: Exploitation of Incarcerated Workers*,⁶ this testimony provides information concerning the history of incarcerated labor and the exploitation and abuse of incarcerated workers subject to forced labor today, and offers recommendations to address these serious human rights violations.

The ACLU's research is drawn from responses to open records requests, analysis of state and federal laws and regulations, interviews, and written questionnaires completed by incarcerated workers, and discusses at length the features of state and federal prison labor systems that result in systemic exploitation and abuse. The ACLU also recommends concrete steps to make prison systems treat incarcerated workers with dignity and respect for their human rights. While the ACLU's research is focused on gratuitously harsh conditions of contemporary prison labor, it is embedded in larger conversations about racism, sexism, the U.S. criminal legal system, the 13th Amendment, and the ultimate morality of this country's vast network of prisons, jails, and detention facilities.

History of Incarcerated Labor in the United States

Incarcerated labor has a long and problematic history in the United States, rooted in racial oppression. The roots of modern-day labor programs can be traced to the end of the Civil War and the passage of the 13th Amendment to the Constitution in 1865. The 13th Amendment outlawed slavery and involuntary servitude, "except as a punishment for crime whereof the party shall have been duly convicted."⁷ Given this gaping loophole, states turned to incarcerated labor as a means of partially replacing chattel slavery and the free labor force slavery provided.

In the North, incarcerated people were contracted out to private individuals and entities to perform labor in industrial factories.⁸ Under this contract system, incarcerated laborers were often forced to work 14 to 16 hours a day and were brutally punished for not working fast enough, for accidentally damaging equipment, and sometimes for no reason at all.⁹ These severe punishments, which included hoisting incarcerated individuals "up by the thumbs with fishing line and a pulley mechanism attached to the ceiling,"¹⁰ allowed Northern states to produce in one year alone what, in today's dollars, amounts to over \$30 billion worth of prison-made goods.¹¹ By the late 1800s,

over 75 percent of the North's incarcerated population worked in these factories. This economic exploitation fell largely upon impoverished, immigrant, and African American communities who made up the majority of the incarcerated population in the North.¹²

In the South, conditions for incarcerated people were just as brutal, with incarcerated workers being forced to labor for up to 17 hours each day, building factories, laying railroads, and mining coal.¹³ Under the convict leasing system, this work was conducted under the supervision of private employers who could bid on and "lease" incarcerated people for days, months, or years to work on plantations and at coal mines, turpentine farms, sawmills, phosphate pits, railways, and brickyards.¹⁴ These private employers had unfettered control over unpaid, predominantly Black workers and subjected them to brutal punishments such as whipping and branding and, in many cases, worked incarcerated people to death.¹⁵ In Mississippi, not a single leased convict lived long enough to serve a 10-year sentence.¹⁶ Because the leasing system was so profitable for Southern states and lessees alike, new laws known as Black Codes were passed which permitted sheriffs to arrest Black men on specious charges and indirectly allowed states to expand their convict leasing programs.¹⁷

Organized free labor, disgruntled by having to compete with incarcerated labor, was the driving force behind the fall of the contract system in the North and the convict leasing programs in the South.¹⁸ By the 1890s, 35 states capitulated to rising union pressure to scale back incarcerated labor programs as a way to reduce competition in the labor market. The result of this concession was the implementation of the "state-use system,"¹⁹ in which the state became the only lawful purchaser of incarcerated labor and goods.²⁰ When Congress established the first federal prisons in 1891, a similar system was adopted in which incarcerated people could be forced to work and produce certain commodities, provided that these workers were "employed exclusively in the manufacture of such supplies for the Government."²¹

As state corrections systems expanded, so too did the number of state-sponsored incarcerated labor programs. Work crews, commonly known as chain gangs, were first established in the 1890s in Georgia and spread throughout the South as states began to phase out the convict lease system.²² These chain gangs consisted of prisoners, the vast majority of whom were Black men, shackled together with chains wrapped around their ankles, day and night, even while working, sleeping, or eating. They were forced to engage in unpaid labor in brutal conditions outside of the prison, such as road construction, ditch digging, rock breaking, highway maintenance, and farming, under the supervision of correctional officers armed with shotguns and whips. Chain gangs became more prevalent in the early 20th century as states gradually abolished the convict leasing system, as Georgia did in 1908 and later Alabama in 1928. By 1923 every state except for Rhode Island had used chain gangs to build and repair roads, but the practice was most widely used in the South.²³

In 1913, Wisconsin established the first work-release program in the United States.²⁴ This program allowed those convicted of misdemeanors to leave jail during the day for the limited purpose of attending work (and sometimes school, community service, or other activities).²⁵ Since the workers' wages were collected directly by the jail, which also profited from reduced supervisions costs, the model proved to be quite cost-effective.²⁶ Several states were quick to adopt near-identical versions of the Wisconsin program, while others sought to further reduce the costs

associated with incarcerating large swaths of their population by expanding the program to prisons and allowing those convicted of minor felonies to participate as well.²⁷

A similar growth in incarcerated labor programs occurred within the federal system as well. In 1934, four years after the Federal Bureau of Prisons was first established, Congress authorized the creation of the Federal Prison Industries program (later rebranded as “UNICOR” in 1977). This program allowed federal prisons to employ incarcerated individuals “in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision of the State in which they are imprisoned.”²⁸ The initial aim of this program, like many of those discussed above, was to offset the costs of incarceration by allowing state governments to profit from prison labor.²⁹

Like the state-use system, this program drew intense criticism from powerful union groups who were concerned that prison labor would displace “free labor.”³⁰ The American Federation of Labor’s executive council said in 1928, “The manufacture and sale of commodities produced by convict labor in competition with free labor is a menace to working men and women.”³¹ In response, Congress passed several pieces of legislation that outlawed the use of prison labor to maintain federal highways and prohibited the interstate sale of prison-made goods, but made certain exceptions which allowed states and the federal government to continue benefitting from prison labor. The 1935 Ashurst-Sumners Act, for example, made it a federal crime to transport prison-made goods into or out of states which had outlawed this practice, but made an exception for “commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State.”³²

These legislative reforms were short-lived. Beginning in the 1970s, Congress and individual states increasingly allowed private entities and state governments to benefit from incarcerated labor.³³ For example, in 1972, Minnesota established America’s first “restitution centers” in which low-level offenders were “paroled” out of jail only to be sent to a lower-security confinement facility where they were required to secure employment to pay off any victim restitution which they owed, or otherwise participate in community service.³⁴ Similar to work-release programs, these so-called restitution centers proved incredibly cost-effective and, in the years that immediately followed, were rapidly adopted by other states.³⁵ Like the first restitution center in Minnesota,³⁶ however, many of these programs ceased to exist only a few years following their creation, although they continue to remain on the books in some states.³⁷

Changes also occurred at the federal level. In 1979, Congress amended the Ashurst-Sumners Act to allow for the creation of “prison work pilot projects,” whereby prison workers could be employed under joint ventures between private companies and state correctional facilities to produce goods authorized for sale in interstate commerce. Under this program, the PIECP, prison laborers were to receive prevailing wages—that is, market wages³⁸—subject to certain enumerated deductions. In this way, it was thought, private companies using prison labor would not displace companies that employed free workers, as both would be providing market wages to their workers.

Understanding Prison Labor

Under today's system of mass incarceration, nearly 2 million people are held in prisons and jails across the United States.³⁹ Almost all U.S. prisons have work programs that employ incarcerated workers: Nearly 99 percent of public adult prisons and nearly 90 percent of private adult prisons have such programs.⁴⁰ Of the more than 1.2 million people incarcerated in state and federal prisons,⁴¹ over 65 percent work.⁴²

Based on our analysis of data from the Department of Justice Bureau of Justice Statistics survey of people in prisons conducted in 2016 and census of people in prisons at yearend 2020—both of which were published in late 2021 and are the most recent available data—we estimate that at least 791,500 people incarcerated in U.S. prisons perform work as part of their incarceration.⁴³ Because of a lack of available data, our estimate excludes people confined in local jails or detention centers, juvenile correctional facilities, and immigration detention facilities.

Although the Federal Bureau of Prisons and nearly all state departments of corrections refused to provide data on the number and race of people in prisons with work assignments, the incarcerated labor force is undoubtedly disproportionately made up of people who are Black, relative to their overall representation in the general population in the community. Black Americans are incarcerated in state prisons at nearly five times the rate of whites, and in 12 states, more than half the prison population is Black, despite constituting 13 percent of the nationwide general population.⁴⁴

The vast majority of incarcerated workers perform **maintenance work**, keeping the facilities that confine them running. More than 80 percent of incarcerated workers in state and federal prisons who were surveyed by the Bureau of Justice Statistics reported working in jobs that served to maintain the prisons where they are incarcerated.⁴⁵ About 30 percent of all incarcerated workers perform general janitorial duties, nearly 20 percent work in food preparation or carry out other kitchen duties, 8.5 percent provide grounds maintenance, 6.6 percent work in maintenance or repair, 4.5 percent work in laundry, and 14.1 percent perform essential services by working in prison hospitals or infirmaries, libraries, stockrooms, stores, and barber shops.⁴⁶

State prison industries, also called “correctional industries,” constitute a second type of prison labor program that accounts for about 6.5 percent of prison jobs. The number of incarcerated workers employed in state prison industries programs has been dropping in recent years, from 91,043 in 2008⁴⁷ to 51,569 in 2021.⁴⁸ These are jobs in state-owned corporations that produce goods, services, and commodities sold to other government agencies. Many states require all state agencies, political units, and public institutions to purchase manufactured goods, including furniture, cleaning supplies, printed materials, and uniforms, from their state correctional industries.⁴⁹ Correctional industries programs are not limited to manufacturing, as states rely on incarcerated workers to provide a variety of services, such as data entry, repairing state-owned vehicles, and washing laundry for public hospitals and universities. For example, people incarcerated in New York and Oregon help staff the states' Department of Motor Vehicles (DMV) call centers, fielding questions directed towards the department.⁵⁰

A third category of prison labor is **public works assignments**, sometimes referred to as “community work crews,” for the benefit of state, municipal, and local government agencies and occasionally nonprofit organizations. States and municipalities contract with state departments of

corrections to use the labor of incarcerated workers for a variety of public works projects, mostly off prison grounds. Incarcerated workers maintain cemeteries, school grounds, fairgrounds, and public parks; do road work; construct buildings; clean government offices; clean up landfills and hazardous spills; undertake forestry work in state-owned forests; and treat sewage.

Our research found that at least 41 state departments of correction have public works programs that employ incarcerated workers.⁵¹ About 44 percent of public prisons nationwide assign incarcerated workers to work on public works assignments outside the prison.⁵² Public works constituted 8 percent of all state prisoners' work assignments at the time of the previous Bureau of Justice Statistics survey in 2004 (the most recent survey does not include disaggregated data on incarcerated workers assigned to public works).⁵³

In Florida, for instance, about 3,500 unpaid incarcerated workers work on state road crews and "community work squads," required to provide labor for hundreds of state and municipal agencies and dozens of state colleges and nonprofits.⁵⁴ In North Carolina, nearly 1,000 incarcerated workers work on the state's roads for the state Department of Transportation and on manual labor jobs for other state and local government agencies.⁵⁵ In Arizona, 1,083 incarcerated people work on public works crews for the Department of Transportation and other state, local, and county entities through intergovernmental agreements with the corrections department.⁵⁶ These workers logged more than 1.8 million hours of work for the community during fiscal year 2020.⁵⁷ In Washington state, about 1,000 people work in similar community work programs through which incarcerated workers work on stream clean-up, land clearance, farming, and development of parks and recreation areas.⁵⁸ In Mississippi, each state prison provides incarcerated workers' labor for free to local towns and municipalities.⁵⁹ In Arkansas, incarcerated people on "inmate work crews" logged nearly half a million hours in regional maintenance alone in 2020.⁶⁰

Through such programs, incarcerated workers also perform critical work preparing for and responding to natural disasters, including sandbagging, supporting evacuations, clearing debris, and assisting with recovery and reconstruction after hurricanes, tornadoes, mudslides, or floods.⁶¹ For example, in Florida, hundreds of unpaid incarcerated workers were tasked with picking up fallen trees and other debris after Hurricane Irma, and in Texas hundreds of unpaid incarcerated workers filled sandbags in preparation for Hurricane Harvey, forced to work in the storm's path while people outside prisons were evacuated.⁶² Incarcerated firefighters also fight wildfires in Arizona, California, Colorado, Georgia, Idaho, Montana, Nevada, New Mexico, North Carolina, Oregon, South Dakota, Tennessee, Washington, and Wyoming. For instance, Georgia's incarcerated firefighter unit responds to over 3,000 calls annually, assisting with wildfires, structural fires, and motor vehicle accidents—for zero pay.⁶³

A fourth category of prison labor is **work for private industries** through the Prison Industry Enhancement Certification Program (PIECP), which allows private companies to produce goods and services using prison labor.⁶⁴ There are several employment models within this category. Some incarcerated people work directly for the private company while others are employed by the prison and are essentially contracted out to the company.⁶⁵ PIECP employs the smallest number—only 4,860 workers, or less than 1 percent—of incarcerated people of any prison labor program.⁶⁶

Agricultural work fits within multiple categories of prison labor. Some incarcerated workers engage in field labor for the maintenance of the prison, cultivating and harvesting crops to be eaten by the people incarcerated there. Others engage in farming or ranching work for prison industries programs or for private corporations through PIECP programs to produce livestock, crops, and other agricultural products for sale. Twenty-seven percent of public prisons have work programs in farming and agriculture.⁶⁷ Although only 2.2 percent of incarcerated workers are engaged in agricultural work in prisons nationwide, in some states, agricultural work constitutes a greater percentage of work assignments, such as in Arkansas, where 17 percent of job assignments for incarcerated people were in agricultural work in 2021.⁶⁸ Some of this agricultural work takes place outside prison walls, while in states including Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, and Texas, incarcerated workers work on penal plantations or prison farms, some of which are situated on land that was originally the site of slave plantations.

Analysis using data sets from 2004 and 2005 and multilevel modeling to examine the nature of work assignments in state prisons found that race significantly impacted work assignments. The study, published in 2016, found that Black men represent the highest percentage of men assigned to agriculture and maintenance or other facilities services jobs—typically lower-paying or unpaid jobs—while a higher percentage of white men were assigned to public works jobs and more sought-after and higher-paying prison industries jobs.⁶⁹

Paid in Pennies

Incarcerated workers in U.S. prisons are often working for paltry wages or no wages at all. Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and Texas pay zero compensation to incarcerated people for the vast majority of work assignments. For instance, in Texas, only the approximately 80 workers employed by private companies through the PIECP program are paid a wage,⁷⁰ while the rest of the state's incarcerated workers—121,167 workers as of April 2019—labor unpaid.⁷¹ In South Carolina, more than 90 percent of the state's incarcerated workers are not paid for their work.⁷²

Our research found that the average minimum hourly wage paid to workers for non-industry jobs is 13 cents, and the average maximum hourly wage is 52 cents.⁷³ The overwhelming majority of workers have jobs that support the operation of the prison facilities and are compensated at the lower end of prison pay scales. Prison maintenance jobs pay anywhere from nothing to pennies per hour. Several prisons in Maine do not pay at all for laundry, kitchen, cleaning, and grounds-keeping work.⁷⁴ The state of Connecticut pays incarcerated workers employed in maintenance jobs 75 cents a day.⁷⁵ And in Kansas, maintenance workers make just over five cents an hour.⁷⁶

The about 6.5 percent of workers with jobs in higher-paying state prison industries are paid 30 cents to \$1.30 per hour on average. State-owned prison industries programs employ incarcerated people nationwide at a small fraction of the wages they would pay a regular employee. Oregon's DMV center pays its incarcerated workers \$4 to \$6 a day,⁷⁷ compared to the average pay of \$80 a day for non-incarcerated employees doing the same job. An incarcerated worker in Louisiana making mattresses earns about 20 cents an hour,⁷⁸ and another making dorm furniture in Arkansas is paid nothing at all.⁷⁹

Incarcerated workers' wages remain stagnant for years, even decades. Incarcerated workers in New York state last received a pay increase in 1993.⁸⁰ Workers in South Dakota have been paid \$0.25 per hour for non-industry jobs for more than 20 years.⁸¹ In Vermont, most incarcerated workers have been paid \$0.25 per hour since 1988, when the pay scale for non-industry jobs was last revised.⁸² Workers in Illinois received a pay raise in 2021 for the first time in 11 years, an increase of merely 14 cents per day for general laborers, who are now paid \$0.85 to \$1.10 per day.⁸³

Even these low wages are not theirs to keep. Across the country, prisons deduct as much as 80 percent from incarcerated people's paychecks for court-imposed fines, taxes, family support, restitution, and room and board, among other fees. These wage deductions often leave incarcerated workers with less than half of their gross pay. For instance, in the first half of 2021, 59 percent of the wages earned by incarcerated workers employed in the Federal Prison Industries program, known as UNICOR, was deducted by the federal government.⁸⁴

In many states a majority of these wage deductions are for room and board. In a single year, over \$22.5 million was deducted from the wages of incarcerated workers employed by private corporations through the PIECP program nationwide, more than 60 percent of which went to room and board.⁸⁵ In Minnesota, 77 percent (\$3.48 million) of wages earned by incarcerated workers was deducted in fiscal year 2021, about two-thirds of which went to "cost of confinement."⁸⁶ At the state level, wage deductions have also been used to sustain and expand incarceration. For example, Florida has created a Prison Industries Trust Fund to collect and administer funds for the "construction or renovation of its facilities or for the expansion or establishment of correctional work programs."⁸⁷

Workers are left with even less disposable income because prison systems bleed incarcerated people dry by charging them exorbitant costs for basic necessities, like phone calls to loved ones, decent food, hygiene products, warm clothing, medications, and medical care. Almost 70 percent of the incarcerated workers surveyed for this report said that they were not able to afford basic necessities with their prison wages.⁸⁸ Most cannot pay these costs themselves and must rely on family and friends, placing tremendous financial strain on families and exposing the wider community to financial insecurity.

Because incarcerated workers' wages are so low, families already struggling from the loss of income when a family member is incarcerated and removed from household wage earning must step in to financially support an incarcerated loved one. Families with an incarcerated loved one, many of whom are impoverished themselves, spend an estimated \$2.9 billion a year on commissary accounts and phone calls.⁸⁹ Over half of these families are forced to go into debt to afford the costs of a relative's conviction and subsequent incarceration.⁹⁰

Excluded from Basic Workplace Protections

Prison labor is a unique labor arrangement. The employer—usually the prison and sometimes a public agency or private corporation contracting with the prison—exercises complete control over the worker. Given the vast power disparity between prisoners and their employers, incarcerated workers are an exceptionally vulnerable labor force. And workers' testimonies indicate that this

vulnerability is too often abused and exploited by the facilities and their staff. Incarcerated workers report being assigned jobs and subjected to punishment in an arbitrary and discriminatory manner. They also report laboring in dangerous conditions and without proper training or protective equipment, exposing them to serious injuries and health-related harms that are wholly preventable.

Yet despite overwhelming evidence of exploitation and negligence in prisons, little has been done to protect these workers. The vast majority of incarcerated workers are excluded from federal statutes such as the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and the National Labor Relations Act, that provide for minimum wage, overtime pay, protection from discrimination, and the right to collectively bargain for improved work conditions.⁹¹ Incarcerated workers also are excluded from the right to earn into the social safety net afforded to other workers. Because the work performed by incarcerated workers is excluded as covered employment eligible for Social Security, Medicare, disability insurance, and unemployment insurance benefits, the time people spend working while in prison generally does not contribute toward earning future benefits.⁹² Incarcerated workers' earnings also are excluded from refundable income tax credits.⁹³

The main U.S. federal statute that sets minimum standards and safeguards for health and safety in the workplace, the Occupational Safety and Health Act (OSHA), excludes most incarcerated workers from its coverage.⁹⁴ Many health and safety workplace statutes at the state level do the same, resulting in gaps in protections for most incarcerated workers.⁹⁵

Nor are incarcerated workers in most states covered by workers' compensation if they are injured or killed on the job. And when workers attempt to access remedies for injuries, they are met with grievance systems inside prisons that are cumbersome, opaque, and ineffective. Meanwhile, laws and judicial doctrine increasingly create obstacles for prison workers who seek legal redress. Among these is the Prison Litigation Reform Act of 1996, which erected nearly insurmountable barriers to prisoners who seek to enforce their rights in federal courts.⁹⁶

Dangerous Work Conditions and Preventable Injuries

Incarcerated people sometimes work in dangerous industrial settings or other hazardous conditions that would be closely regulated by federal workplace health and safety regulations if they were not incarcerated. Sixty-four percent of incarcerated workers surveyed for this report said they felt concerned about their safety while working.⁹⁷ Our research found that incarcerated workers with minimal experience or training are assigned work in unsafe conditions and without protective gear that would be standard in workplaces outside prisons.

Unsurprisingly, this leads to injuries. Incarcerated workers have been burned with chemicals, maimed, or killed on the job. Although lack of data related to workplace conditions and injuries in prisons makes it difficult to know the full extent of injuries and deaths, injury logs generated by the California Prison Industry Authority show that incarcerated workers reported more than 600 injuries over a four-year period, including body parts strained, crushed, lacerated, or amputated.⁹⁸

In numerous cases we documented nationwide, injuries could have been prevented with proper training, machine guarding mechanisms, or personal protective equipment. Incarcerated workers report receiving inadequate training on how to handle hazardous chemicals,⁹⁹ operate dangerous

equipment with cutting blades, clean biohazardous materials like excrement and blood,¹⁰⁰ and use dangerous kitchen equipment.¹⁰¹ In fact, almost 70 percent of currently incarcerated workers who participated in the survey circulated for this report indicated that they received *no* formal job training.¹⁰²

The systematic failure to adequately train incarcerated workers has resulted in serious injuries and deaths. For example:

- An incarcerated worker assigned to an industrial workshop in a Minnesota state prison suffered mutilation of his hand and loss of three fingers while operating a beam saw to slice pieces of wood. He had never seen a beam saw in his life and never received official safety training from a prison official. Instead, he was taught on the job by another incarcerated worker who had been operating the saw without the plastic safety guards meant to protect the operator from the blades.¹⁰³
- A man incarcerated in an Illinois state prison assigned to work in a prison food facility lost several of his fingers on a deli slicer.¹⁰⁴ At a trial concerning the incident, he explained that he never received an orientation session or even an explanation of the facility's rules or safety precautions.¹⁰⁵
- On her second day of work on laundry porter duty at a Michigan state prison, an incarcerated woman suffered a traumatic brain injury, fractured skull and nasal bones, and internal cranial bleeding after a 400-pound laundry cart fell on her while she was unloading carts from a truck with a hydraulic lift. A federal court found that despite the dangerous work, prison officials provided "only limited, on-the-job training" and that the laundry truck lacked a stopper device to prevent the laundry carts from tipping.¹⁰⁶
- An incarcerated woman employed at a private egg factory in Arizona was forced to rip her own finger off rather than lose her whole hand to a piece of machinery she had never been trained on.¹⁰⁷
- A man who was incarcerated in a state prison in Alabama and sent to work a sanitation job at a private poultry processing plant was killed when a machine caught his arm and pulled him inside.¹⁰⁸ When OSHA later investigated the incident, it found that employees at the plant might not have known how to correctly turn off the machine that killed him.¹⁰⁹
- An incarcerated worker in Alabama tasked with clearing dead pine trees from near a county road while on a community work crew was struck by a large fallen branch, suffering a broken back and rendered a paraplegic.¹¹⁰ He remembers telling his work supervisor he did not feel qualified to use the chainsaw and that he feared for his safety because of the tree's precarious position. Still, he was ordered to cut the tree. He complied with the order because otherwise he would have received a written reprimand that would affect his parole eligibility. A federal court found that no one had provided the incarcerated workers with any orientation or training about the use of chainsaws, concluding that assigning incarcerated workers to use chainsaws without safety training raised a substantial and obvious risk.¹¹¹

Workers report injuries that would have been prevented had they been provided standard protective equipment. An incarcerated worker tasked with repairing a damaged sewage line after thousands of pounds of sewage flooded a Michigan state prison said he had to wade through excrement without adequate protective gear such as a respirator or protective suit.¹¹² As he opened and cleaned backed up vents, sewage shot out, and he subsequently tested positive for hepatitis C.¹¹³

An incarcerated worker tasked with removing asbestos from a hot steam pipe in a New York state prison sustained a first degree burn because he was not provided with a high temperature glove.¹¹⁴ Repeated injuries caused by objects becoming lodged in incarcerated workers' eyes while using industrial grinders in California could have been prevented if they had proper safety goggles or visors.¹¹⁵

The conditions of work can be inherently dangerous. Incarcerated workers are employed at dangerous meat, poultry, and egg processing plants, where lack of adequate training or safety procedures has led to dozens of documented injuries and at least one death of incarcerated workers.¹¹⁶ Incarcerated workers have suffered injuries and amputations from sewing and cutting machinery while working in garment factories.¹¹⁷ Incarcerated workers have been severely injured—even paralyzed and killed—by falling trees and tree limbs while cutting down trees on community work crews and in forestry and firefighting jobs.¹¹⁸ In California, where research has shown that incarcerated workers were more likely to be injured than professional firefighters, at least four incarcerated firefighters have been killed while fighting wildfires, and more than 1,000 required hospital care during a five-year period.¹¹⁹ Even work in industrial-scale prison kitchens and laundries can be dangerous because it involves huge industrial equipment that carries mechanical and electrical safety risks as well as risk of burns, lacerations, and exposure to hazardous chemicals.

Incarcerated workers endure brutal temperatures with inadequate water or breaks, while working outdoors and inside facilities without air conditioning. Incarcerated firefighters have been sickened and killed by heat exposure during routine training exercises in California.¹²⁰ Formerly incarcerated agricultural workers at Louisiana's Angola prison report witnessing other farm workers collapse from exhaustion or dehydration while working in the fields on hot days.¹²¹ In Texas, an incarcerated man working as a dog trainer died of severe hyperthermia; he had been wearing a 75-pound fight suit on a hot day and collapsed while training attack dogs to catch escaped prisoners.¹²²

Workers have also been exposed to dangerous toxins on the job. Incarcerated workers perform asbestos abatement in New York, Pennsylvania, Ohio, and Utah through each state's correctional industries program. An incarcerated man working at the electrical shop of a federal prison in Illinois filed suit after his supervisor ordered him to crush fluorescent bulbs containing mercury in an unventilated room. When he asked for a face mask, he was told that he was "shit out of luck."¹²³ Incarcerated workers employed at a battery manufacturing factory in Georgia were exposed to dangerous levels of lead,¹²⁴ and incarcerated workers employed in the federal prisons' UNICOR electronics-waste recycling program who disassembled and recycled computer parts were exposed to poisonous metals, causing serious health problems.¹²⁵

When incarcerated workers are hurt on the job, they may be denied medical care or receive substandard care. In North Carolina, four incarcerated workers with severe chemical burns received nothing more than diaper rash ointment for their injuries.¹²⁶ In Georgia, a kitchen worker had his leg amputated due to improper medical care of a wound he sustained from slipping and falling while working in the prison kitchen.¹²⁷ In Colorado, an incarcerated worker assigned to a sawmill was told by a supervisor to reach into a conveyor belt area to dislodge a piece of wood. A blade sliced through her helmet and straight into her skull, nearly decapitating her.¹²⁸ Instead of

being rushed to the emergency room, a shift commander ordered her back to the prison infirmary with two feminine hygiene pads on her wound because the sawmill had no first aid kit. She later developed an antibiotic-resistant staph infection.¹²⁹

Prison Labor During the Pandemic

Incarcerated people, recognized as one of the populations most vulnerable to the COVID-19 virus, were on the front line of the pandemic response. Nearly every state in the country reported that incarcerated workers contributed labor to the pandemic response. Incarcerated workforces were widely used to meet the demands of protective equipment production early in the pandemic.¹³⁰ Incarcerated workers were tasked with manufacturing hand sanitizer, masks, medical gowns, face shields, and other personal protective equipment that they were then prohibited from using to protect themselves.¹³¹ Incarcerated people also worked in morgues, transported dead bodies, dug mass graves, and built coffins. They washed soiled hospital laundry, disinfected supplies, and cleaned medical units.

At times, incarcerated workers had to perform work that put them at the highest level of exposure to the virus. In at least five states (Michigan, Missouri, New York, Oregon, and Texas), incarcerated workers participated in frontline health roles that put them at high risk of contracting COVID-19.¹³² Incarcerated people working in prison laundries in Oregon and Missouri were tasked with cleaning bedsheets, towels, and gowns from hospitals treating COVID-19 patients.¹³³ In Texas, previously unpaid incarcerated workers were paid \$2 an hour to work in mobile morgues and transport bodies from the Medical Examiner's Office in El Paso.¹³⁴ In New York, workers who were tasked with digging mass graves were transitioned from an hourly wage of \$0.65 to \$6. The Rikers Island jail offered personal protective equipment as a "privilege" to any incarcerated worker tasked with digging mass graves.¹³⁵

Our research identified at least 40 state departments of correction and state prison industries programs that pivoted to manufacture personal protective equipment and hand sanitizer for healthcare workers and other state employees. Incarcerated workers performed this work at the height of early pandemic lockdowns, often without personal protective equipment or the recommended social distancing, putting their health and lives at risk. Incarcerated workers at Great Meadow Correctional Facility in New York were working around the clock in eight-hour shifts to bottle 100,000 gallons of hand sanitizer every week for 65 cents an hour.¹³⁶ Incarcerated workers at Green Haven Correctional Facility in New York built 1,400 coffins per week in April 2020 as COVID-19 spread through the prison.¹³⁷ California prisons halted most programming in an effort to slow down the spread of COVID-19, while keeping open its state prison factories as incarcerated women worked seven days a week to produce masks and hand sanitizer.¹³⁸ In Pennsylvania, while the state prison system was under quarantine, some incarcerated workers worked 12 hours a day, six days a week to manufacture masks, medical gowns, antibacterial soap, and disinfectant.¹³⁹ Incarcerated workers in at least 15 federal prisons around the country manufactured masks, gowns, and sanitizer for \$0.23 an hour.¹⁴⁰ Workers in Texas were not paid at all for their work manufacturing face masks and medical gowns for first responders.¹⁴¹

In every state in the country, incarcerated workers whose job assignments are considered essential were required to continue working during COVID-19 lockdowns, including jobs in manufacturing,

agriculture, firefighting, meat processing, food services, and construction.¹⁴² Although these incarcerated essential workers later met the Centers for Disease Control and Prevention's priority categories 1a and 1b for COVID-19 vaccine rollout, 16 states left incarcerated people out of their phase 1 vaccine distribution entirely.¹⁴³

As COVID-19 spread in March and April 2020, in some prisons, incarcerated workers were required to continue even work that was nonessential, such as making office furniture or stamping license plates.¹⁴⁴ For instance, in April 2020, Florida suspended family visits in the interest of safety while continuing to force incarcerated people to do "road maintenance, sewage treatment, and moving services for governmental buildings."¹⁴⁵

Incarcerated workers labored during the pandemic under the threat of punishment if they refused their work assignments. For instance, incarcerated workers in Colorado who opted out of kitchen work assignments in 2020 due to health concerns lost "earned time," meaning their parole eligibility dates were pushed later.¹⁴⁶ Workers who subsequently returned to their job assignments because of the threats of having to serve more time in prison, being placed in more restrictive housing units, and losing phone calls and family visits recently filed a class-action lawsuit alleging that state prison authorities violated the state ban on slavery and involuntary servitude by forcing them to work.¹⁴⁷ DG Foods, a poultry processing plant in Bastrop, Louisiana, avoided shutting down operations at the height of COVID-19 by relying on incarcerated laborers who similarly faced loss of their earned-time credits should they refuse to work.¹⁴⁸

Dead-End Jobs

Despite all this, state governments describe their prison labor programs as rehabilitative.¹⁴⁹ Incarcerated workers are eager to learn new job skills: More than 70 percent of incarcerated workers rank skills-learning as a very important reason for working.¹⁵⁰ However, the promise of providing incarcerated people with transferable skills and work experience for their eventual reentry into society often proves illusory. In reality, the vast majority of work programs in prisons involve menial and repetitive tasks that provide workers with no marketable skills or training.¹⁵¹

Our research shows that better-paid prison industries jobs are declining, while maintenance jobs increasingly represent a larger share of work assignments. Vocational training programs are declining in prisons across the country, cut from state correctional budgets. The rate of participation in job training programs has fallen nationwide among people incarcerated in state prisons, according to analysis of the Bureau of Justice Statistics surveys of people in prisons conducted periodically between 1986 and 2016.¹⁵²

Even vocational programs often fail to meet their full potential. Incarcerated workers report that vocational programs often involve training on outdated equipment no longer used outside of prison walls,¹⁵³ described by one formerly incarcerated worker as "stuff from the dinosaur era."¹⁵⁴ A state legislative audit of the Louisiana Prison Enterprises program found that one-third of incarcerated people working in the state prison industries program are trained for jobs that are projected to decrease in the labor market, such as garment factory work and agriculture, finding that "many... may not be learning job skills that could help them after they are released."¹⁵⁵ A state legislative audit of Mississippi's correctional industries program likewise found it is providing

“work skills in occupations for which there were expected to be few to no job prospects in Mississippi.”¹⁵⁶

Moreover, when people leave prison, they face state-imposed barriers to finding employment, such as laws that explicitly authorize discrimination against formerly incarcerated individuals in housing, employment, and other areas of life.¹⁵⁷ State occupational licensing restrictions often bar people with conviction records from work in the very fields they trained in while incarcerated.¹⁵⁸

Who Benefits from Prison Labor?

This system serves a purpose, but not one consistent with basic human rights. Prison labor is designed to benefit primarily public entities that capitalize on a vulnerable population that is, at once, a captive labor force¹⁵⁹ and a captive consumer base.¹⁶⁰

Although some private companies contract with corrections departments to use prison labor in their production or services—and this report identifies some of the corporations that currently employ incarcerated workers—work for private companies accounts for less than 1 percent of work assignments in prison labor programs. Private companies do profit from incarcerated individuals’ need to provide for their basic needs while in prison, including food, health, and communications,¹⁶¹ but they are not the primary beneficiaries of prison labor.¹⁶²

The primary beneficiaries of the labor of incarcerated workers are federal, state, and local governments. Federal and state governments offset budget shortfalls by forcing incarcerated laborers to work to maintain the very prisons that confine them.¹⁶³ State and local governments also rely on unpaid and low-paid incarcerated workers for a variety of public works projects. For instance, the Florida Department of Corrections estimates the value of the labor of the 3,500 unpaid incarcerated workers working on state road crews and community work squads to be about \$147.5 million over a five-year period.¹⁶⁴ “There’s no way we can take care of our facilities, our roads, our ditches, if we didn’t have inmate labor,” Warren Yeager, a former Gulf County, Florida, commissioner told the *Florida Times-Union*.¹⁶⁵ State governments also rely on incarcerated workers as a low-wage labor force to respond to a variety of disasters and emergencies throughout the country.¹⁶⁶ At least 30 states explicitly include incarcerated workers as a labor resource in their state-level emergency operations plans.¹⁶⁷

Prisons also provide a cheap and compliant labor force through correctional industries, the state-owned businesses that produce goods and services sold to other state entities. In fiscal year 2021, the federal government’s UNICOR prison industries program reported \$404 million in net sales of goods and services produced by the 16,315 federally incarcerated workers who are employed in the program.¹⁶⁸ In fiscal year 2020, Illinois’ correctional industries program sold over \$33.5 million worth of goods and services from incarcerated workers to its own state agencies, state universities, and local governments,¹⁶⁹ while California’s correctional industries program sold over \$191 million in manufactured goods, services, and agricultural products produced by incarcerated workers in fiscal year 2020–21.¹⁷⁰

In 2021, the value of goods, services, and commodities produced by the incarcerated workers employed in state prison industries programs nationwide—who represent only about

6.5 percent of all incarcerated workers—totaled over \$2 billion.¹⁷¹ The precise value of incarcerated workers' labor to maintain the very prisons that confine them—work such as food preparation, maintenance, laundry, and cleaning—is unknown but totals vastly more. In 2004, the value of services provided by incarcerated workers laboring to maintain and operate the prisons that confine them was conservatively estimated to be \$9 billion.¹⁷²

Prison Labor Masks the True Costs of Mass Incarceration

According to the Bureau of Justice Statistics, state governments spend nearly \$50 billion a year to keep over 1 million people in prisons (the United States spends over \$81 billion to run its corrections system—including prisons, jails, parole, and probation—that keeps nearly 2 million people behind bars).¹⁷³ While less than 1 percent of state correctional budgets goes to wages for incarcerated workers,¹⁷⁴ more than two-thirds (68 percent) of state prison expenditures is spent on wages and benefits for the public sector staff who operate prisons and jails.¹⁷⁵ Payroll for state correctional staff alone totals over \$2 billion each month.¹⁷⁶

The true costs to operate our prisons are much higher. Incarcerated workers' labor partially offsets the staggering costs of our country's bloated prison system. The cost-savings of unpaid and grossly underpaid prison maintenance labor and the revenues from commodities and services generated by imprisoned laborers prevent policy makers and the public from reckoning with the true fiscal costs of mass incarceration.

Some government officials have even voiced opposition to efforts to reduce prison and jail populations precisely because it would reduce the incarcerated workforce. In 2017, Steven Prator, a Louisiana sheriff opposing new sentencing and parole laws, made the operating logic clear: Incarcerated laborers are a “necessary evil to keep the [prison] doors open.”¹⁷⁷ He added,

“We need to keep some out there, that's the ones that you can work, that pick up trash, the work release program, but guess what? Those are the ones that they are releasing... the good ones, that we use every day to wash cars, change oil in our cars, to cook in the kitchen, to do all that where we save money... well, they are gonna let them out.”¹⁷⁸

Similarly, the *Los Angeles Times* reported that lawyers with the office of the then-Attorney General of California, Kamala Harris, argued in court that a parole program to increase earned sentence reductions for eligible incarcerated people would cause the state to lose an important labor pool: incarcerated people working as firefighters. In a September 2014 filing in the case, signed by Deputy Attorney General Patrick McKinney but under Harris' name, the state argued, “Extending 2-for-1 credits to all minimum custody inmates at this time would severely impact fire camp participation—a dangerous outcome while California is in the middle of a difficult fire season and severe drought.”¹⁷⁹

But we should not have prison policy driven by a desire for cheap labor. Even though prison labor is not what is driving mass incarceration in the United States, when incarcerated people are used for cheap labor, there is a risk that our criminal justice policy will be hijacked by the desire to grow or maintain this literally captive labor force.

The Path Forward

It does not have to be this way. Work in prisons could be truly voluntary. Conditions could be safe. Jobs could provide incarcerated people with real wages and opportunities in vocational training and skills development that meaningfully prepare them for success upon release. Work in prisons could help incarcerated workers build self-esteem and provide a break from the crushing monotony of prison life.

To move in this direction, incarcerated workers should be paid a fair wage that enables them to save for the future, support their families, and sets them up for a successful reentry—97 percent of people in prison will return to their communities, and studies show that recidivism is reduced when returning citizens have savings¹⁸⁰ and stable employment.¹⁸¹

Prison work programs that provide vocational training should be expanded to provide incarcerated workers with marketable skills and training that will help them to find employment after release. Research has found that joblessness is the single most important predictor of recidivism.¹⁸² Vocational programs can boost formerly incarcerated individuals' job prospects by almost 30 percent.¹⁸³ A November 2021 study of California's prison industry program found that "participants were significantly less likely to be arrested at one, two and three years post release" than incarcerated people who were waitlisted for the program.¹⁸⁴ The federal government's UNICOR prison industries program has been shown to reduce recidivism by 24 percent and participants in the program are more likely to be employed after release from prison than similarly situated individuals, yet the program has a 25,000-person waitlist and employs only 8 percent of workers incarcerated in federal prisons.¹⁸⁵ Expanding these programs makes good economic sense: Money spent on vocational programs in the short term translates into long-term gains through reduced recidivism rates.¹⁸⁶

Even those who run our prisons agree it is time to raise incarcerated workers' wages and provide more job training opportunities in prisons. The American Correctional Association—the trade association that has served as the voice of the U.S. corrections profession since 1870—called for incarcerated workers to have decent work, pay, and working conditions in a 2016 resolution calling for the repeal of the 13th Amendment clause that excludes incarcerated people from its protection against slavery and involuntary servitude.¹⁸⁷

In the face of extreme obstacles—the Supreme Court has held that incarcerated people do not have a First Amendment right to form a union¹⁸⁸—incarcerated workers have organized to demand improved pay and conditions. Incarcerated workers have formed the Incarcerated Workers Organizing Committee, a prisoner-led local of the Industrial Workers of the World that organized two national prison strikes in 2016 and 2018.¹⁸⁹ Incarcerated people in 17 states went on strike in August 2018 to call attention to various issues, including low wages, and called for work stoppages and an end to what the organizers call "prison slavery."¹⁹⁰ Strike organizers demanded that incarcerated workers be paid the prevailing wage for their labor, among other demands.

The best way to protect incarcerated workers is to treat them as much as possible like non-incarcerated employees. Incarcerated workers must receive the basic protections guaranteed in nonexploitative workplaces. They should be protected by occupational health and safety laws and

compensated for injuries on the job. Basic labor protections and meaningful access to redress when their rights are violated should be the minimum standard.

International human rights law can guide reform efforts. Core human rights treaties ratified by the United States, as well as other authoritative documents at the international level, provide a basic standard that prohibits dehumanizing and exploitative treatment undermining incarcerated people's human dignity. Last year, following an official visit to the United States, the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement declared its astonishment that "forced prison labour exists to this day in the United States, constituting a contemporary form of slavery," and recommended that the United States "eliminate the free or poorly paid prison forced labour" and "ensure that incarcerated workers have their labour rights assimilated to the rights of all other non-incarcerated workers, including the payment of the local minimum wage."¹⁹¹

The following key recommendations, if enacted, would help ameliorate the exploitative conditions of work experienced by workers incarcerated in U.S. correctional institutions. These recommendations were developed in consultation with advocates and incarcerated workers interviewed for this report. A more comprehensive set of recommendations is provided at the end of this report.

Key Recommendations

End forced labor, without exceptions.

- Repeal federal and state constitutional exception clauses allowing slavery and involuntary servitude to be used as punishment for a criminal conviction.
- Ensure that all work in prisons is fully voluntary by eliminating any laws and policies that require forced labor or impose adverse consequences on incarcerated workers who are unable or unwilling to work.
- Prison authorities should ensure incarcerated workers who seek exemptions from work duties are granted such exemptions when they are unable to carry out their assigned jobs due to illness, injury, disability, or other physical or mental limitations.

End arbitrary and discriminatory allocation of jobs.

- Adopt laws and policies to ensure work assignments are not allocated or taken away in an arbitrary or discriminatory manner, including on the basis of race, gender, and disability.
- Take incarcerated people's preferences into account when selecting job assignments.
- Comply with federal disability rights laws, which require prisons to provide reasonable accommodations to incarcerated people with disabilities who wish to work, to allow them to fully and equally participate in work and vocational programs.

Guarantee incarcerated workers the standard labor protections available to other workers in the United States.

- Amend federal and state laws to ensure that incarcerated workers enjoy the standard labor protections available to other workers in the United States with regard to minimum wages, overtime pay, health and safety standards, unionization and collective bargaining, and protection from discrimination and retaliation, among other protections.

Raise incarcerated workers' wages and eliminate or limit wage deductions.

- Ensure incarcerated workers are paid prevailing wages no less than the minimum wage of the state where they work and limit wage deductions.
- Adopt policies eliminating or limiting wage deductions to no more than 20 percent of incarcerated workers' wages, solely to be used to cover legal obligations such as child support. Cease all deductions for costs of incarceration or prison capital improvement funds.
- Include work performed by incarcerated workers under covered employment eligible for Social Security, Medicare, disability, unemployment insurance, Earned Income Tax Credit, and Child Tax Credit benefits, making it possible for incarcerated workers to earn toward and receive future benefits.

Protect incarcerated workers from injuries and hazards.

- Amend occupational health and safety and workers' compensation laws that exclude most incarcerated workers from their coverage, and ensure federal and state occupational health and safety administrations monitor conditions in all workplaces inside prisons.
- Provide adequate personal protective and safety equipment to incarcerated workers.
- Institute mandatory safety standards and comprehensive safety training programs for all work assignments in correctional institutions.

Permit incarcerated workers to join labor unions.

- Recognize incarcerated people's right to associate and permit incarcerated workers to form labor unions and bargain collectively so that workers can negotiate improved working conditions for themselves.

Ensure incarcerated workers have access to redress when their rights are violated.**Provide incarcerated workers with marketable skills and training and eliminate barriers to securing employment after release.**

- Invest in valuable work and education programs designed to enhance incarcerated individuals' prospects of securing employment and becoming self-sufficient upon release.
- Eliminate occupational licensing restrictions, adopt comprehensive fair-chance hiring policies, and pass ban-the-box statutes to reduce discrimination against formerly incarcerated people and remove barriers to securing employment after release.

Appendix

American Civil Liberties Union and University of Chicago Global Human Rights Clinic, *Captive Labor: Exploitation of Incarcerated Workers* (June 2022), https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf.

- ¹ With more than 4 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in 50 states, Puerto Rico, and Washington, D.C., to safeguard everyone's rights.
- ² U.S. CONST. amend. XIII ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction").
- ³ U.S. Dep't of Justice, Bureau of Justice Statistics, Survey of Prison Inmates, United States, 2016. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. This figure is based on the American Civil Liberties Union's (ACLU) analysis of the published raw survey data.
- ⁴ See, e.g., *Wallace v. Robinson*, 940 F.2d 243, 246-7 (7th Cir. 1991); *Williams v. Meese*, 926 F.2d 994, 998 (10th Cir. 1991).
- ⁵ California Department of Corrections and Rehabilitation (CDCR), *Conservation (Fire) Camps*, <https://www.cdcr.ca.gov/conservation-camps/>.
- ⁶ American Civil Liberties Union and University of Chicago Global Human Rights Clinic, *Captive Labor: Exploitation of Incarcerated Workers*, June 2022, https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf.
- ⁷ U.S. CONST. amend. XIII ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction").
- ⁸ Genevieve LeBaron, *Rethinking Prison Labor: Social Discipline and the State in Historical Perspective*, 15 J. OF LAB. AND SOC'Y 327, 333 (2012).
- ⁹ *Id.* at 334-35.
- ¹⁰ *Id.* at 335.
- ¹¹ *Id.* at 334.
- ¹² *Id.* at 327.
- ¹³ *Id.* at 338; Christopher R. Adamson, *Punishment after Slavery: Southern State Penal Systems, 1865-1890*, 30 SOC. PROBS. 555, 556 (1983).
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- ¹⁵ DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME 8, 56, 67 (New York: Anchor Books, 2008); Genevieve LeBaron, *Rethinking Prison Labor: Social Discipline and the State in Historical Perspective*, 15 J. OF LAB. AND SOC'Y 327, 337 (2012).
- ¹⁶ *Id.* at 339.
- ¹⁷ Heather Ann Thompson, *Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards*, 8 LAB.: STUD. IN WORKING-CLASS HIST. 15, 16 (2011); DAVID M. OSHINSKY, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (New York, Free Press, 1997).
- ¹⁸ Stephen P. Garvey, *Freeing Prisoners' Labor*, 50 STAN. L. REV. 339, 361-62 (1998).
- ¹⁹ *Id.*
- ²⁰ *Id.*
- ²¹ Three Prisons Act, ch. 529, sec. 2, 26 Stat. 839 (1891).
- ²² ALEX LICHTENSTEIN, TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH (New York: Verso, 1996).
- ²³ MITCHEL P. ROTH, PRISONS AND PRISON SYSTEMS: A GLOBAL ENCYCLOPEDIA (Westport, CT: Greenwood Press, 2006).
- ²⁴ Stanley E. Grupp, *Work Release in the United States*, 54 J. CRIM. L. AND CRIMINOLOGY 267 (1963).
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ Act of May 14, 1930, ch. 274 § 3, 46 Stat. 325 (1930).
- ²⁹ Heather Ann Thompson, *Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards*, 8 LAB.: STUD. IN WORKING-CLASS HIST. 15, 20 (2011).
- ³⁰ *Id.*

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- ³² Ashurst-Summers Act (Shipment in Interstate Commerce of Convict Made Goods), Pub. L. No. 74-215, 49 Stat. 494 (1935) (codified at 18 U.S.C. § 1761).
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- ³⁴ Joe Hudson, *Contemporary Origins of Restorative Justice Programming: The Minnesota Restitution Center*, 76 FED. PROB.: J. OF CORR. PHIL. AND PRAC. (2012), https://www.uscourts.gov/sites/default/files/76_2_9_0.pdf.
- ³⁵ E.g., Nevada in 1979 (1979 Nev. Stat. 743), California in 1984 (Cal. Penal Code § 6220), Mississippi in 1978 (Miss. Code § 99-37-19).
- ³⁶ Joe Hudson, *Contemporary Origins of Restorative Justice Programming: The Minnesota Restitution Center*, 76 FED. PROB.: J. OF CORR. PHIL. AND PRAC. (2012), https://www.uscourts.gov/sites/default/files/76_2_9_0.pdf.
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- ³⁸ Under 18 U.S.C. § 1761(c), prevailing wages are defined as “wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed.”
- ³⁹ According to the Prison Policy Initiative in 2022, there are almost 2 million people held behind bars, including roughly 1,042,000 in state prisons, 547,000 in local jails, and 208,000 in federal prisons and jails. See, Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2022*, by Wendy Sawyer and Peter Wagner (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html>.
- ⁴⁰ According to the Bureau of Justice Statistics prison census, 98.7 percent of state and federal public adult correctional facilities offer work programs for people incarcerated in those facilities, while 89.7 percent of private facilities offered such programs as of midyear 2019. The work programs measured include facility support services to maintain the prisons where workers are confined; prison industries; public work assignments; and farming or agriculture. U.S. Dep’t of Justice, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables* (Nov. 2021) at 13, <https://bjs.ojp.gov/content/pub/pdf/csfac19st.pdf>.
- ⁴¹ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2020 – Statistical Tables* (Dec. 2021) at 7, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>. See also Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2022*, by Wendy Sawyer and Peter Wagner (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html>.
- ⁴² U.S. Dep’t of Justice, Bureau of Justice Statistics, *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. This estimate is based on ACLU analysis of the published raw survey data.
- ⁴³ *Id.* This estimate is based on ACLU analysis of the published raw survey data, which revealed that 65.1 percent of survey respondents reported having a work assignment. We applied this percentage to the most recently published data on the state and federal prison population, which totaled 1,215,821 at yearend 2020, according to data from the Bureau of Justice Statistics published in December 2021, arriving at an estimated 791,499 incarcerated workers. U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2020 – Statistical Tables* (Dec. 2021) at 7, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>.
- ⁴⁴ The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Oct. 13, 2021), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- ⁴⁵ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. This figure is based on ACLU analysis of the raw survey data.
- ⁴⁶ *Id.* These percentages are based on ACLU analysis of the raw survey data. Because some of these Bureau of Justice Statistics survey categories likely encompass a proportionately small percentage of workers engaged in work outside the prison on public works assignments, such as in forestry, groundskeeping, maintenance, or road maintenance, we estimate that the percentage of incarcerated people working to maintain the prisons is somewhat lower than their sum of 86.1 percent.
- ⁴⁷ Data is for fiscal year 2008. National Correctional Industries Association (NCIA), *2009 NCIA Directory* (Baltimore, MD: NCIA, 2009).

- ⁴⁸ Telephone interview with Wil Heslop, interim executive director, National Correctional Industries Association (NCIA), Nov. 18, 2021, citing 2021 NCIA Directory.
- ⁴⁹ Many states require their state agencies and entities to purchase goods and services from their correctional industry. See, e.g., Wis. Stat. § 303.01 Va. Code Ann. § 53.1-59; see also Ill. Comp. Stat. 5/3-12-7 (2010). See also Illinois Correctional Industries, *FAQ: Frequently Asked Questions (2015)* <http://www.icicatalog.illinois.gov/documents/faq.pdf>.
- ⁵⁰ *Otak, Coffee Creek Correctional Facility (2020)*, <https://www.otak.com/about/projects/coffee-creek-correctional-facility/>; Todd Clear, Michael Riesig, and George Cole, *American Corrections* (Boston: Cengage Learning, 2019).
- ⁵¹ These states are Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- ⁵² U.S. Dep't of Justice, Bureau of Justice Statistics, Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables (Nov. 2021) at 3, 13, <https://bjs.ojp.gov/content/pub/pdf/csfac19st.pdf>. In 2005, the last year for which such data was made public, over half of these prisons were located in the South. Of 798 correctional facilities with public works programs in 2005, 447 were located in the South, 98 in the Northeast, 133 in the Midwest, and 120 in the West. U.S. Dep't of Justice, Bureau of Justice Statistics, Census of State and Federal Correctional Facilities, 2005 (Oct. 2008) at Appendix Table 16, <https://bjs.ojp.gov/content/pub/pdf/csfcf05.pdf>.
- ⁵³ U.S. Dep't of Justice, Bureau of Justice Statistics, Survey of Inmates in State Correctional Facilities, 2004 (Feb. 2007), <https://bjs.ojp.gov/data-collection/survey-inmates-state-correctional-facilities-sisfc>.
- ⁵⁴ Ben Conark, *Work Forced: A Century Later, Unpaid Prison Labor Continues to Power Florida*, FLORIDA TIMES-UNION (May 26, 2019), <https://stories.usatodaynetwork.com/workforced/>.
- ⁵⁵ North Carolina Department of Public Safety, *Fiscal Year 2019-2020 Annual Statistical Report (2020)* at 16-17, <https://files.nc.gov/ncdps/FY-2019-20-Annual-Statistical-Report.pdf>.
- ⁵⁶ Arizona Department of Corrections Rehabilitation and Reentry, *Corrections at a Glance, February 2022* (Mar. 8, 2022), <https://corrections.az.gov/sites/default/files/REPORTS/CAG/2022/cagfeb-22.pdf>.
- ⁵⁷ Total hours logged by incarcerated workers on community labor through their work on fire crews, public sector work crews, and Arizona Department of Transportation work crews was 1,829,348 in FY 2020. Arizona Department of Corrections, *Corrections at a Glance, June 2020* <https://corrections.az.gov/sites/default/files/REPORTS/CAG/2020/cagjune-20.pdf>.
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- ⁵⁹ Mississippi Department of Corrections, *Inmate Work Crews*, <https://www.mdcc.ms.gov/Institutions/Pages/Inmate-Work-Crews.aspx>.
- ⁶⁰ Arkansas Division of Correction, *Annual Report Fiscal Year 2020 (2021)* at 21, <https://doc.arkansas.gov/wp-content/uploads/2021/03/Division-of-Correction-FY20-Annual-Report-Board-of-Corrections-Approved-March-19-2021.pdf>.
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- ⁶² Jessica Lipscomb, *Unpaid Florida Prisoners Being Used to Clean Up After Hurricane Irma*, MIAMI NEW TIMES (Sept. 28, 2017) <https://www.miaminewtimes.com/news/unpaid-florida-prison-inmates-being-used-on-hurricane-irma-cleanup-labor-crews-9701867>; Polly Mosendz, *When Do You Move Prisoners Out of a Storm's Path?*, BLOOMBERG (Sept. 8, 2017), <https://www.bloomberg.com/news/articles/2017-09-08/when-do-you-move-prisoners-out-of-a-hurricane-s-path>.
- ⁶³ Georgia Department of Corrections, *Fire Services and Life Safety*, <http://www.dcor.state.ga.us/Divisions/Facilities/FireServices>; Georgia Department of Corrections, *Fiscal Year 2020 Report* at 60, <http://www.dcor.state.ga.us/sites/default/files/sites/all/gdc/files/pdf/Research/Monthly/GDC%20FY2020%20Annual%20Report.pdf>; Georgia Department of Corrections, *2017 Fiscal Year Report* at 24, <http://www.dcor.state.ga.us/sites/default/files/sites/all/gdc/files/pdf/Research/Monthly/GDC%20FY2017%20Annual%20Report.pdf>; Erin Paige McGonigle, *First Responders, Second Priority: Georgia's Inmate Firefighter Program*

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- ⁶⁵ Alfred C. Aman Jr. and Carol J. Greenhouse, *Prison Privatization and Inmate Labor in the Global Economy: Reframing the Debate Over Private Prisons*, 42 *FORDHAM URB. L. J.* 355, 388 (2014).
- ⁶⁶ As of the third quarter of 2021 ending on September 30, 2021, 4,860 incarcerated workers were employed through the Prison Industry Enhancement Certification Program (PIECP). See, National Correctional Industries Association, *Prison Industry Enhancement Certification Program (PIECP) Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending September 30, 2021* (Baltimore, MD: NCIA, March 2022), https://www.nationalcia.org/files/ugd/569cf7_0ab8d011f21b4127b18d15c77d104f45.pdf.
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- ⁷² In South Carolina, incarcerated people working in all institutional jobs, some correctional industries jobs, and on community labor crews are not paid any wage. As of June 2018, the most recent available data, these unpaid job assignments constituted more than 90 percent of the state's 14,786 incarcerated workers. See South Carolina Department of Corrections, *Inmate Pay*, § 3 (2014), <http://www.doc.sc.gov/policy/ADM-15-13.htm.pdf>; South Carolina Department of Corrections Letter to South Carolina Legislative Oversight Committee, *Inmate Work: Earning and Supervision Details, Policies, and Statutes* (May 24, 2019), <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/Statistics%20by%20type%20of%20inmate%20work%20-%20qualifications,%20number%20working,%20costs,%20etc..pdf>.
- ⁷³ See Appendix B for the wages paid to incarcerated workers in each state and in federal prisons, and see Appendix C for calculated average and hourly wages paid to incarcerated workers.
- ⁷⁴ Maine Department of Corrections, FOIA response document (on file with authors).
- ⁷⁵ Connecticut Department of Correction, *Administrative Directive: Inmate Assignment and Pay Plan*, Directive 10.1 (effective Oct. 22, 2015), <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad1001pdf.pdf>.

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- ⁸¹ South Dakota Department of Corrections, *Inmate Work Assignments and Pay*, Policy 1.5.A.1 (effective Jan. 4, 2019), at 4 (Revision Log), <https://doc.sd.gov/documents/Inmate%20Work%20Assignments%20and%20Pay142019.pdf>.
- ⁸² Vermont Agency of Human Services, Department of Corrections, *Inmate Wage Plan*, Policy 394 (effective May 30, 1988), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/394-Inmate-Wage-Plan.pdf>.
- ⁸³ Illinois Department of Corrections, Administrative Directive 05.03.103, *Monetary Compensation for Assignments for Individuals in Custody* (July 1, 2021); Illinois Department of Corrections, Administrative Directive 05.03.103A, *Monetary Compensation for Inmate Assignments* (May 1, 1992, amended July 1, 2010).
- ⁸⁴ Nationally, incarcerated workers employed in the PIECP program earned \$10,034,501 in gross wages in the first quarter of 2021 and \$11,689,205 in the second quarter of 2021, of which \$5,947,107 and \$6,884,581 was deducted respectively. National Correctional Industry Association (NCIA), *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Quarterly Report, Statistics for the Quarter Ending June 30, 2021*, (Baltimore, MD: NCIA, Dec. 2, 2021), <https://www.nationalcia.org/statistical-reports>, https://4c99dc08-46a7-4bd9-b990-48103d668bb3.filesusr.com/ugd/569cf7_7722ec64545745f780ef9e63e75e7482.pdf; NCIA, *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Quarterly Report, Statistics for the Quarter Ending March 31, 2021*, (Baltimore, MD: NCIA, 2021), <https://www.nationalcia.org/statistical-reports>, https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e_e0d06d60f81e41cab23b5ec50294401b.pdf.
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- ⁸⁷ Fla. Stat. § 946.522-3 (“The trust fund shall consist of moneys authorized to be deducted pursuant to 18 U.S.C. § 1761(c) and the applicable federal guidelines, to be appropriated by the Legislature, and moneys deposited by the corporation authorized under this part to manage and operate correctional work programs. The appropriated funds shall be used by the corporation for purposes of construction or renovation of its facilities or for the expansion or establishment of correctional work programs as described in this part or for prison industries enhancement (PIE) programs as authorized under s. 946.523.”).

⁸⁸ Data is calculated from the three-state survey conducted by the ACLU and the Global Human Rights Clinic.

⁸⁹ Prison Policy Initiative, *Following the Money of Mass Incarceration*, by Peter Wagner and Bernadette Rabuy (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html>; Nicole Lewis and Beatrix Lockwood, *The Hidden Cost of Incarceration*, THE MARSHALL PROJECT (Dec. 17, 2019)

<https://www.themarshallproject.org/2019/12/17/the-hidden-cost-of-incarceration>.

⁹⁰ Ella Baker Center for Human Rights, *Who Pays: The True Costs of Incarceration on Families* (Sept. 2015), <http://whopaysreport.org/who-pays-full-report/>. See also Connecting Families New York, *Connecting Families Fact Sheet*, https://nyconnect.org/wp-content/uploads/2021/12/21-12_CJ_ConnectingFamilies_Factsheet_v5.pdf.

⁹¹ In the case of the Fair Labor Standards Act, there has been no specific guidance from Congress or the Supreme Court as to whether the language is meant to exclude incarcerated workers from its protections. However, most appellate courts have ruled that prison workers are excluded from the definition of “employee” in that Act, thereby excluding them from protection. Matthew J. Lang, *The Search for a Workable Standard for When Fair Labor Standards Act Coverage Should be Extended to Prisoner Workers*, 5 U. Pa. J. Bus. L. 19 (2002). See also Jackson Taylor Kirklín, *Title VII Protections for Inmates: A Model Approach for Safeguarding Civil Rights in America’s Prisons*, 111 Colum. L. Rev. 1048, 1048–1089 (2011); Andre Montoya-Barthelemy, Letter to the Editor, *The Occupational Health of Prison Inmates: An Ignored Population and an Opportunity*, 61 J. OF OCCUPATIONAL AND ENVIRONMENTAL. MED. e74-76 (2019). In the case of the National Labor Relations Act (NLRA), which protects the right of workers to engage in collective bargaining, there has also been little Congressional or Supreme Court guidance as to whether its protections include incarcerated workers. Given that the protections only apply to those who meet the specific legal definition of an “employee,” some lower courts have recognized incarcerated workers employed in private companies through work release as eligible for the NLRA’s protections. However, the vast majority of incarcerated workers who labor within prisons and jails are currently not covered given that federal and state governments, when acting as employers, are excluded from the NLRA. Kara Goad, *Columbia University and Incarcerated Worker Labor Unions under the National Labor Relations Act*, 103 Cornell L. Rev. 177 (2017).

⁹² Work performed while incarcerated does not earn toward benefits for two reasons. First, it is excluded from the Federal Insurance Contributions Act (FICA) statute defining covered employment. See Federal Insurance Contributions Act, I.R.C. § 3121(b)(6)(A), § 3121(b)(7)(F)(ii), § 3121(u)(3), (u)(2)(B)(ii)(II). Second, even when this work may constitute covered employment (as in the case of some PIECP jobs, the only category of work not excluded from the statute), most incarcerated workers “do not earn sufficient income per quarter to surpass the statutory thresholds.” Stephanie Hunter McMahon, *Inmates May Work, But Don’t Tell Social Security*, 72 SOUTH CAROLINA L. REV. 757, 773 (2021); Social Security Act of 1935, 42 U.S.C. §§ 410(a)(6)(A), 418(c)(6)(B).

⁹³ Incarcerated workers do not qualify for the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC) because Congress explicitly excluded any wages earned while the person is incarcerated from the earnings that earn towards the EITC and the CTC. §32(c)(2)(B)(iv); §24(d)(1)(B)(i). See also Stephanie Hunter McMahon, *Prison Work is Taxing and Should Be Taxed*, manuscript in preparation, 2022 (on file with authors).

⁹⁴ The vast majority of incarcerated workers labor within correctional institutions operated by state and local governments, which are not considered “employers” under OSHA. See 29 U.S.C. § 652(5)-(6) (“(5) The term “employer” means a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State. (6) The term “employee” means an employee of an employer who is employed in a business of his employer which affects commerce.”). See also U.S. Department of Labor, OSHA, Standard Interpretations, in letter to William Linn, *Clarification on whether an employer with multiple facilities needs a separate written ECP for each facility*, Standard number 1910.1030; 1960 (2011), <https://www.osha.gov/laws-regs/standardinterpretations/2011-12-13> (“Federal OSHA does not cover state or local government-operated prisons.”). See also U.S. Department of Labor, OSHA, Standard Interpretations, in letter to Deleon James Mintz, *OSHA Does Not Have Jurisdiction Over State Employees or Inmates*, Standard number 1975.5 (1992), <https://www.osha.gov/laws-regs/standardinterpretations/1992-12-16-1> (“The definition of an ‘employer’ under Section 3(5) of the Occupational Safety and Health Act specifically excludes a State or any political subdivision of a State from coverage under the OSHA Act. Therefore, OSHA does not have jurisdiction over the State of Colorado or its employees, including inmates in correctional institutions, either paid or nonpaid.”). However, according to an OSHA instruction from 1995, “when inmates are required to perform work similar to that outside of prisons, e.g., farming, industries, machine operations, etc., the applicable protections open to anyone else in similar situations should apply, including the right to file a report of hazards with appropriate safety and health officials.” See U.S. Department of Labor,

OSHA Directives, *Federal Agency Safety and Health Programs with the Bureau of Prisons*, U.S. Department of Justice, Directive number FAP 01-00-002 (1995), <https://www.osha.gov/enforcement/directives/fap-01-00-002>.

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¹⁰¹ Written survey response by [Name withheld to preserve anonymity, at survey respondent’s request], incarcerated at Lincoln Correctional Center in IL (on file with authors).

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Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy, 42 W. ST. L. REV. 1, 10 (2014); U.S. Dep't of Justice, Bureau of Justice, Council of State Justice Center, National Reentry Resource Center.

¹⁸³ Rand Corporation, *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs that Provide Education to Incarcerated Adults*, xvii (2013), https://www.rand.org/pubs/research_reports/RR266.html.

¹⁸⁴ California Prison Industry Authority (CALPIA), *The Effect of Prison Industry On Recidivism: An Evaluation of California Prison Industry Authority (CALPIA)* (finding that over a three-year period, CALPIA participants returned to prison, on average, 26 to 38 percent less often than incarcerated individuals released from the CDCR general population) (Nov. 2021) at 16, https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports_and_Publications/The%20Effect%20of%20Prison%20Industry%20on%20Recidivism-V2-PIA.pdf.

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http://www.bop.gov/inmates/custody_and_care/unicor.jsp; Federal Bureau of Prisons, *UNICOR Program Details*, https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp. The share of UNICOR jobs (8 percent) is shrinking, down from 25 percent in 2009. See House Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, Federal Bureau of Prisons Oversight Hearing (July 21, 2009).

¹⁸⁶ Rand Corporation, *Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook* (Aug. 22, 2013), <https://www.rand.org/news/press/2013/08/22.html>.

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¹⁸⁸ *Jones v. N. Carolina Prisoners' Lab. Union, Inc.*, 433 U.S. 119 (1977).

¹⁸⁹ Incarcerated Workers Organizing Committee and Jailhouse Lawyers Speak, *August 21st Is Going To Be Lit* (June 12, 2018), <https://incarceratedworkers.org/news/august-21st-going-be-lit>. See also Mike Elk, *The Next Step for Organized Labor? People in Prison*, THE NATION (July 11, 2016), <https://www.thenation.com/article/archive/the-next-step-for-organized-labor-people-in-prison/>.

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¹⁹¹ International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement, Report to the United Nations Human Rights Council, *Visit to the United States of America*, paras. 110-114, 156, (Sept. 26, 2023), <https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial>.

Hello and thank you everyone for the opportunity to address you today.

My name is Department of Corrections Number 296659 or Terrance Winn, a native of the plantation known as Angola by way of Shreveport. Angola is also known as the Louisiana State Penitentiary, an 18,000-acre prison larger than the island of Manhattan.

My name change took place on December 25, 1989 when I was a 16-year-old kid and took the life of Jeffery Owens and attempted to take the life of Dejuan Lewis. For my actions, I was arrested and taken to Shreveport's Juvenile Detention Center where Judge Gallagher ordered that I was to be tried as an adult. I was immediately taken from Juvie and left in a one-man cell at the Parish jail. For my crimes, Judge Hamilton gave me life without the possibility of parole plus 25 years to be served at hard labor.

I heard my mother cry when the Judge read the sentence. But I promised her and myself that one day I would come home.

I was eventually transferred to Angola, at the time one of the bloodiest penitentiaries in the world. Upon entering the gates of that former plantation, one sees a beautiful, manicured lawn. There are flowers and open fields. For one second, I thought, maybe this won't be so bad. That second didn't last.

Within a few days, I was transferred to the infirmary where a doctor is in charge of determining if a person is fit to work the field. As a 17-year-old, the doctor confirmed I was fit to work. I had never worked a day in my life when I found myself walking out of a gate, rifles pointed at me, next to a guy that I didn't know. The line was made up of 125 men. When the last guy came through that gate, we were counted by the guards and the field foreman got on his horse and gave an order "Walk it on."

The field is back breaking work. Every day, we would walk for miles in excessively hot weather and work sometimes bent over, on our knees, without breaks for hours. We would go back in to eat then out again until the work day was finished. Working in the fields I was forced to goose pick (that's picking grass with your hands), I was forced to dig ditches, I was forced to cut the levy with a hoe, while officers on horses looked over us holding rifles.

There were a few occasions when the field warden decided to bring the line in early from work. Those rare occasions happened when one of the horses would fall due to the oppressive heat. If a man fell over, we kept working. If you got injured, you kept working. Nothing took precedent over going to work. I witnessed tool fights that led to the death of a man and we kept working. I suffered a back injury at the age of 25, an injury I live with today and I was forced to work until I got so tired of suffering that I chose to be sent to the hole. That's the dungeon or administrative segregation.

I spent 30 years at Angola. 25 of those I spent working in the field. I received 75 disciplinary write ups for aggravated work offense. This means, in layman terms, refusing to work. I mostly refused to work because of the physical pain. More so than out of a rebellious nature. I admit though, every time I was told to pick cotton, I refused to do it. Every time, I chose to go to the dungeon.

2 cents an hour, 8 hours a day, five days a week. That is the pay they decided makes us human and not slaves. Those two cents never made me feel better than how I know my ancestors felt. I felt humiliated every time I had to use the restroom in the field, every time a horse defecated in my path as I walked to a work site, every time a guard refused to let me use the restroom with threats of writing me up, every time a white foreman called the whole line “N’s” or “Boys” and every time a guard took their anger out of me while I worked.

Was the modern version of slavery better for me than it was for my ancestors? Two cents is what separates 17th century slavery and 21st century slavery. The dungeon replaces the whip as punishment. The dungeon is a place of humiliation where you’re stripped of all of your possessions and placed in a jumpsuit. You can only have a toothbrush and toothpaste, nothing else. Just you and your thoughts and the sounds of people losing their minds or fighting or being beaten to death.

After 25 years being forced to work in the fields, I was assigned as a tier walker, a job that forces you to be an inmate guard. The job required me to walk up and down the extended lockdown tier for hours, making sure that no one was trying to commit suicide. You become a security guard and a mental health worker, while being labeled as a “rat.”

I also attended the culinary arts school in Angola, and once I completed the course, I became a kitchen worker.

My last job was as a nurse’s aide, a job that changed my life forever. Taking care of people who were dying and could no longer take care of themselves, showing care and compassion for guys in their final days, that truly changed me.

Thirty years of incarceration at hard labor. I never made more than 16 cents an hour. It would have been easy to come home and never look back. But when I was released, I found my old neighborhood plagued with violence and a lack of resources, so I immediately knew what I needed to do. I founded my organization, PIPE (Priorities, Intentions Practical Exchanges), our mission was and remains today to make life better for our community members, especially our youth, while working with formerly incarcerated people in their reentry process. Post incarceration syndrome is real, and our people need support.

I still think about my family all those years serving time with me. I think about the families of people who are incarcerated today, all of them directly impacted as well. My goal doing the work I do is to keep our communities safe and thriving. I believe we can create a system that does not simply punish perpetrators but works with them while investing in communities and taking care of victims.

Senate Judiciary Committee
Hearing on “An Examination of Prison Labor in America”
May 21, 2024

Response to Question for the Record

Andrea Armstrong*,
Dr. Norman C. Francis Distinguished Professor of Law
Loyola University New Orleans, College of Law

QUESTION (Sen. Amy Klobuchar): Nationally, more than 40 percent of people in prisons and jails have a diagnosed mental health condition. That is one of the reasons why I co-led the *Justice and Mental Health Collaboration Reauthorization Act* with Senator Cornyn, which the president signed into law in 2022. In your written testimony, you state that the “unstable or emergency nature of the work may complicate providing appropriate accommodations for incarcerated workers with disabilities.” Based on your studies, are mental conditions and other disabilities taken into account when assigning jobs for incarcerated individuals?

RESPONSE: Our current system of incarcerated labor heavily relies on involuntary servitude.¹ In forcing incarcerated people to work, state and federal prisons do not always account for the mental conditions and other disabilities of individuals during the job assignment process.²

The Americans with Disabilities Act³ applies to people incarcerated in prisons and jails.⁴ The ADA defines “a disability” as a “physical or mental impairment that substantially limits one or more major life activities,” including but not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”⁵ Prisons are required to provide reasonable accommodations to incarcerated people with disabilities who wish to work.⁶

People with disabilities are also overrepresented in the prison population. Thirty-eight percent of people in state and federal prisons reported at least one disability, according to a survey conducted

* Andru Okun and Caroline Raymond, law students at Loyola University New Orleans, College of Law, provided invaluable assistance in preparing this response. The author’s institutional affiliation is provided for identification purposes only.

¹ Andrea C. Armstrong, *Beyond the 13th Amendment – Captive Labor*, 82 OHIO ST. L.J. 1039 (2021).

² Jennifer Turner, et al., *Captive Labor: Exploitation of Incarcerated Workers*, ACLU, UNIVERSITY OF CHICAGO LAW SCHOOL - GLOBAL HUMAN RIGHTS CLINIC, at 61 (June 15, 2022), <https://assets.aclu.org/live/uploads/publications/2022-06-15-captivelaborresearchreport.pdf>.

³ 42 U.S.C. § 12101 *et seq.* (1990).

⁴ See 42 U.S.C. § 12132; Rehabilitation Act of 1973 § 504, 29 U.S.C. § 701; 29 U.S.C. § 794.

⁵ 42 U.S.C. §§ 12102(1)(A), (2)(A).

⁶ Rehabilitation Act of 1973 § 504, 29 U.S.C. § 701; see 42 U.S.C. § 12132.

by the U.S. Department of Justice.⁷ Individuals in state and federal prisons are also two and a half times more likely than the general population to report having at least one disability.⁸ The overrepresentation of people with disabilities in prison is also likely to increase as federal and state prison populations rapidly age due to extended sentences.⁹ Despite the prevalence of people with disabilities in prisons, the intersection of forced prison labor and disability is underexamined.

Nevertheless, there is an abundance of individual accounts indicating that prisons have failed to accommodate a person's disability and even punished them when a person's disability prevented them from working. Examples of individuals who have been subjected to such treatment include an HIV-positive man who had difficulty standing¹⁰, a female kitchen worker with COVID-19¹¹, an anemic, asthmatic man with degenerative discs in his spine¹², and a woman who was unable to stand, as her leg had been amputated and she had yet to receive a prosthetic.¹³

In some cases, prisons have forced people to work in environments that exacerbate their disability, putting them at greater risk. At Louisiana State Penitentiary, Damaris Jackson is challenging his assignment to work in the excessive heat and humidity of the prison's agricultural fields because his high blood pressure impairs his ability to thermoregulate.¹⁴ At the same prison, Nate Walker is similarly forced to engage in manual agricultural labor, despite having high blood pressure, glaucoma, thyroid cancer, depression, and a family history of sickle-cell anemia.¹⁵ Both men have argued that their disabilities have been made worse due to the conditions in which they are forced to work, and both men have made requests for reasonable accommodations that were denied.¹⁶

⁷ Laura M. Maruschak, *et al.*, *Disabilities Reported by Prisoners - Survey of Prison Inmates, 2016*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, at 1 (March 2021), <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>.

⁸ *Id.* at 2.

⁹ See *id.* (noting that over 50% of people in state and federal prisons over the age of 55 report having at least one disability); Meg Anderson, *The U.S. prison population is rapidly graying. Prisons aren't built for what's coming*, MORNING EDITION, NPR (March 11, 2024, 5:12 AM), <https://www.npr.org/2024/03/11/1234655082/prison-elderly-aging-geriatric-population-care>.

¹⁰ Darius Rafieyan & Cardiff Garcia, *The Indicator From Planet Money, The Uncounted Workforce*, NPR (Jun. 29, 2020), <https://www.npr.org/transcripts/884989263>.

¹¹ Written survey response by [Name withheld to preserve anonymity, at survey respondent's request], incarcerated at Decatur Correctional Center, IL (on file with authors of "Captive Labor: Exploitation of Incarcerated Workers").

¹² Katie Rose Quandt, *et al.*, *Louisiana on Lockdown: A Report on the Use of Solitary Confinement in Louisiana State Prisons, With Testimony from the People Who Live it*, SOLITARY WATCH, ACLU OF LOUISIANA, and the JESUIT SOCIAL RESEARCH INSTITUTE/LOYOLA UNIVERSITY NEW ORLEANS, at 67 (June 2019), <https://solitarywatch.org/wp-content/uploads/2019/06/Louisiana-on-Lockdown-Report-June-2019.pdf>.

¹³ Interview with Kelly Savage-Rodriguez, CALIFORNIA COALITION FOR WOMEN PRISONERS (Apr. 30, 2020) (on file with authors of "Captive Labor: Exploitation of Incarcerated Workers").

¹⁴ *Voice of the Experienced, et al. v. LeBlanc, et al.*, No. 3:23-CV-01304-BAJ, Rec. Doc. 1, at 5 (Sept. 16, 2023) <https://static1.squarespace.com/static/5fe0e9cce6e50722511b03cc/6508647b5b4a0f58692b7e22/1695048828476/VOTE+v.+LeBlanc+Complaint.pdf>.

¹⁵ *Id.* at 5–6.

¹⁶ *Id.* at 29–30.

Prisons have also discriminated against incarcerated people by barring them from willful work on account of their disability status. Incarcerated people have been excluded from willful prison programs and work due to issues such as diabetes, hearing disabilities, vision disabilities, and HIV status.¹⁷ Additional examples of incarcerated individuals subject to disability discrimination include a man barred from a motivational boot camp due to having hypertension¹⁸, a man denied access to his prison's work program as a result of being a quadriplegic¹⁹, and a man barred from participating in work release on account of walking with cane.²⁰

Prison healthcare systems may also have failed to diagnose a person's disability in the first place. Federal courts have found entire healthcare systems unconstitutional for their failure to adequately diagnose and treat medical and/or mental health conditions for incarcerated people.²¹ Incarcerated people have filed complaints alleging substantial delays in diagnostic testing for cancer,²² as well as misdiagnoses of terminal cancer.²³ For developmental disorders, the risk of a missed diagnosis may be even more pronounced. The Marshall Project found that 25 intake screening protocols from 38 different agencies did not meet professional diagnosis standards for developmental disabilities and that five states do not even screen for these conditions.²⁴

Thank you for the opportunity to respond to your question. If I can provide any additional information for your review, please do not hesitate to let me know.

¹⁷ Turner, *supra* note 2, at 53 n.460.

¹⁸ Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 208 (1998).

¹⁹ Love v. Westville Corr. Ctr., 103 F.3d 558, 560 (7th Cir. 1996).

²⁰ Jaros v. Illinois Dep't of Corr., 684 F.3d 667, 669 (7th Cir. 2012).

²¹ See e.g., Brown v. Plata, 563 U.S. 493 (2011) (upholding lower court findings that overcrowding was the primary cause of inadequate medical and mental health care in California prisons); Jensen v. Shinn, 609 F. Supp. 3d 789 (D. Ariz. 2022), amended by, 2022 WL 2910835 (D. Ariz. July 18, 2022) (finding that the Arizona Department of Corrections, Rehabilitation, and Reentry failed to provide constitutionally adequate healthcare statewide across ten prison complexes); Lewis v. Cain, 2021 WL 1219988, (M.D. La. Mar. 31, 2021) (finding medical care at Louisiana's largest state prison violated the U.S. Constitution).

²² Mina Corpuz, *As cancer spread in Susie Balfour's body, she says prison medical providers failed to treat it. Now she's fighting for life.*, MISSISSIPPI TODAY, (Feb. 14, 2024) <https://mississippitoday.org/2024/02/14/ex-inmate-says-medical-providers-failed-to-treat-her-cancer/>.

²³ Chao Xiong, *Lawsuit alleges misdiagnosis of inmate's prostate cancer, leading to death*, STAR TRIBUNE, (Sept. 27, 2019) <https://www.startribune.com/lawsuit-alleges-misdiagnosis-of-inmate-s-prostate-cancer-leading-to-death/561583182/>; Jim Brunner, *Wash. pays \$9.9M to woman who got terminal cancer in prison*, CORRECTIONS 1, (Feb. 1, 2024) <https://www.corrections1.com/lawsuit/wash-pays-9-9m-to-woman-who-got-terminal-cancer-in-prison>.

²⁴ Chiara Eisner, *Prison Is Even Worse When You Have a Disability Like Autism*, THE MARSHALL PROJECT, (Nov. 2, 2020) <https://www.themarshallproject.org/2020/11/02/prison-is-even-worse-when-you-have-a-disability-like-autism>.



WRITTEN RESPONSES OF

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American Civil Liberties Union

June 12, 2024

Questions for the Record

For a Hearing on

An Examination of Prison Labor in America

Before the

United States Senate

Committee on the Judiciary

Subcommittee on Criminal Justice and Counterterrorism

Held on

May 21, 2024

The most successful vocational programs are those that provide incarcerated workers with a fair wage, safe working conditions, and marketable skills and training that will help them to find employment after release. These programs should provide opportunities for advancement, certifications of completed training, certifications of work performance achievements, and employment-based recommendation letters from supervisors. Programs should provide vocational training in professions that are forecast for job growth. Moreover, these programs should include post-release employment services to connect incarcerated workers to long-term employment after their release, and incarcerated workers should be released from prison with a guaranteed, secure job placement.

Prison work programs that provide vocational training should be expanded to provide incarcerated workers with real wages and job skills development that meaningfully prepare them for success upon release and improve public safety. Research has found that joblessness is the single most important predictor of recidivism.¹ Vocational programs can boost formerly incarcerated individuals' job prospects by almost 30 percent.² A November 2021 study of California's prison industry program found that "participants were significantly less likely to be arrested at one, two and three years post release" than incarcerated people who were waitlisted for the program.³ The federal government's UNICOR prison industries program has been shown to reduce recidivism by 24 percent and participants in the program are more likely to be employed after release from prison than similarly situated individuals, yet the program has a 25,000-person waitlist and employs only 8 percent of workers incarcerated in federal prisons.⁴ Expanding these programs makes good economic sense: Money spent on vocational programs in the short term translates into long-term gains through reduced recidivism rates.⁵

Incarcerated workers are eager to learn new job skills: More than 70 percent of incarcerated workers rank skills-learning as a very important reason for working.⁶ However, the promise of providing incarcerated people with transferable skills and work experience for their eventual reentry into society often proves illusory. In reality, the vast majority of work programs in prisons involve menial and repetitive tasks that provide workers with no marketable skills or training.⁷ Of the nation's approximately 800,000 workers incarcerated in prisons, more than 80 percent perform typically low-paid maintenance work.⁸ Some workers pick up cigarette butts from cracks in the pavement outside; others rake rocks in the yard or are simply told to go outside and stand in the rain.⁹ Almost 70 percent of currently incarcerated workers surveyed by the ACLU reported that they received *no* formal job training.¹⁰

The ACLU's research shows that better-paid prison industries jobs are declining, while maintenance jobs increasingly represent a larger share of work assignments. The number of incarcerated workers employed in state prison industries programs has been dropping in recent years, from 91,043 in 2008¹¹ to 51,569 in 2021.¹² Vocational training programs are declining in prisons across the country, cut from state correctional budgets. The rate of participation in job training programs has fallen nationwide among people incarcerated in state prisons, according to analysis of the Bureau of Justice Statistics surveys of people in prisons conducted periodically between 1986 and 2016.¹³

In Illinois, as state funding for vocational programs provided by community colleges has dropped, so too has participation in and access to these programs.¹⁴ In 2002, around 6,000

incarcerated people participated in over 130 vocational programs. But just seven years later, the number of vocational programs had fallen to 100, leaving over a thousand fewer incarcerated people with the opportunity to take part.¹⁵ N’ Ashid Abdul Latif, a formerly incarcerated worker, shared his experience witnessing this regression first-hand in California: “They took away the better jobs over time—those that taught us engine repair and other valuable trades. They should bring back jobs people can use when they get home.”¹⁶

Even vocational programs often fail to meet their full potential. Incarcerated workers report that vocational programs often involve training on outdated equipment no longer used outside of prison walls,¹⁷ described by one formerly incarcerated worker as “stuff from the dinosaur era.”¹⁸ A state legislative audit of the Louisiana Prison Enterprises program found that one-third of incarcerated people working in the state prison industries program are trained for jobs that are projected to decrease in the labor market, such as garment factory work and agriculture, finding that “many... may not be learning job skills that could help them after they are released.”¹⁹ A state legislative audit of Mississippi’s correctional industries program likewise found it is providing “work skills in occupations for which there were expected to be few to no job prospects in Mississippi.”²⁰

We should invest in valuable work and education programs designed to enhance incarcerated individuals’ prospects of securing employment and becoming self-sufficient upon release and improve public safety.

- The federal and state governments should allocate funding for prison work programs that provide incarcerated workers with marketable skills and training that will help them to find employment after release.
- Programs should provide opportunities for advancement, certifications of completed training, certifications of work performance achievements, and employment-based recommendation letters from supervisors. Programs should provide vocational training in professions that are forecast for job growth.
- Expand post-release employment services to connect incarcerated workers to long-term employment after their release. Incarcerated workers should be released from prison with a guaranteed, secure job placement.
- The federal and state governments should expand access to post-secondary education in prison by reinstating Pell grants in all U.S. states and territories, to increase employment rates and earnings for the formerly incarcerated.

¹ American Bar Association, Commission on Effective Criminal Sanctions, *Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies* (2007); Steven D. Bell, *The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy*, 42 W. ST. L. REV. 1, 10 (2014); U.S. Dep’t of Justice, Bureau of Justice, Council of State Justice Center, National Reentry Resource Center.

² Rand Corporation, *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs that Provide Education to Incarcerated Adults*, xvii (2013), https://www.rand.org/pubs/research_reports/RR266.html.

³ California Prison Industry Authority (CALPIA), *The Effect of Prison Industry On Recidivism: An Evaluation of California Prison Industry Authority (CALPIA)* (finding that over a three-year period, CALPIA participants returned to prison, on average, 26 to 38 percent less often than incarcerated individuals released from the CDCR general population) (Nov. 2021) at 16, https://www.calpia.ca.gov/wp-content/uploads/calpia/news/Reports_and_Publications/The%20Effect%20of%20Prison%20Industry%20on%20Recidivism-V2-PIA.pdf.

- ⁴ See Federal Bureau of Prisons, *FPI and Vocational Training Works: Post-Release Employment Project (PREP)*, http://www.bop.gov/resources/pdfs/prep_summary_05012012.pdf; see also Federal Bureau of Prisons, *UNICOR: Preparing Inmates for Successful Reentry through Job Training*, http://www.bop.gov/inmates/custody_and_care/unicor.jsp; Federal Bureau of Prisons, *UNICOR Program Details*, https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp. The share of UNICOR jobs (8 percent) is shrinking, down from 25 percent in 2009. See House Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, Federal Bureau of Prisons Oversight Hearing (July 21, 2009).
- ⁵ Rand Corporation, *Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook* (Aug. 22, 2013), <https://www.rand.org/news/press/2013/08/22.html>.
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- ⁷ Beth Schwartzapfel, *Taking Freedom: Modern-Day Slavery in America's Prison Workforce*, PAC. STANDARD (May 7, 2018), <https://psmag.com/social-justice/taking-freedom-modern-day-slavery>.
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- ⁹ Colorado Department of Corrections, *Employed as of 12.31.2018*, FOIA response document (on file with authors); Michael Gibson-Light, *The Prison as Market: How Penal Labor Systems Reproduce Inequality*, PhD diss. University of Arizona, 55 (2019); Written survey response by [Name withheld to preserve anonymity, at survey respondent's request], incarcerated at Cal. State Prison- Solano, CA (on file with authors).
- ¹⁰ Data is calculated from the three-state survey conducted by the ACLU and the Global Human Rights Clinic.
- ¹¹ Data is for fiscal year 2008. National Correctional Industries Association (NCIA), *2009 NCIA Directory* (Baltimore, MD: NCIA, 2009).
- ¹² Telephone interview with Wil Heslop, interim executive director, National Correctional Industries Association (NCIA), Nov. 18, 2021, citing 2021 NCIA Directory.
- ¹³ Bruce Western, *Inside the Box: Safety, Health, and Isolation in Prison*, 35 J. OF ECONOMIC PERSPECTIVES 97, 102-103 (Fall 2021), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.35.4.97>.
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- ¹⁵ *Id.*
- ¹⁶ Interview with N'ashid Abdul Latif, former hospice worker in California Medical Facility prison (Dec. 16, 2020) (on file with authors).
- ¹⁷ Michael Gibson-Light, *The Prison as Market: How Penal Labor Systems Reproduce Inequality*, PhD diss. at 95 (University of Arizona, 2019).
- ¹⁸ Interview with Jerome Morgan, Free-Dem Foundations Co-Founder, in New Orleans, LA (Nov. 6, 2019) (on file with authors).
- ¹⁹ Louisiana Legislative Auditor, *Prison Enterprises—Evaluation of Operations, Department of Public Safety and Corrections* (May 1, 2019), https://www.prisonlegalnews.org/media/publications/Louisiana_Legislative_Auditor_-_Prison_Enterprises_-_Evaluation_of_Operations_Dept_of_Public_Safety_and_Corrections_2019.pdf.
- ²⁰ PEER Mississippi, Joint Legislative Committee on Performance Evaluation and Expenditure Review, *Issue Brief: A Review of the Sustainability of the Mississippi Prison Industries Corporation* (Nov. 17, 2021) at 4 <https://www.peer.ms.gov/Reports/reports/rpt663.pdf>.



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Advocacy that fits.

**Statement for the Record
American Apparel & Footwear Association (AAFA)**

**Hearing
on
Prison Labor in America
Subcommittee on Criminal Justice and Counterterrorism
Senate Judiciary Committee**

May 21, 2024

We are pleased to share the perspectives of the American Apparel & Footwear Association (AAFA)¹ as this Subcommittee make a welcome review of concepts related to prison labor in America, and how it affects the domestic textile and apparel industry.²

The comments we share herein are focused primarily on Federal Prison Industries (FPI), the federally owned prison factory complex that trades under the name of UNICOR, which has been at the forefront of our own prison labor reform efforts at the Federal level.

As a general matter, textile, apparel, footwear, and accessories companies work hard to make sure that prison and other forms of forced labor do not taint their supply chains. Brands and retailers deploy a variety of rigorous protocols – composed of compliance requirements, strict codes of conduct, training, and audits – to prevent, detect, and, if found, mitigate – prison labor. As our supply chains become increasingly transparent, traceable, and sustainable, the efforts to guard against forced labor accelerate. While we support measures to provide opportunities for inmates to rehabilitate, including learning vocational skills, we do not believe that such prison labor programs are the way to accomplish this.

¹ The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel, footwear, travel goods, and other sewn products companies, and their suppliers, which compete in the U.S. and global markets. We represent the full range of the apparel and footwear supply chain, including many who proudly make uniforms – clothes, shoes, and accessory items – for the U.S. military, as well as many of their suppliers. They do so under the auspices of the Berry Amendment, which requires the U.S. armed forces to purchase domestically made textiles, apparel, footwear, and related gear. These members make up the bulk of our Government Contracts Committee.

² In these comments, the phrase “textiles and apparel” is used to describe the industry affecting the range of production encompassing the production of textiles (i.e., yarns and fabrics), apparel, footwear, finished goods made with textiles (such as home textile items like sheets), and accessories (such as luggage and backpacks).

The *status quo* with respect to UNICOR triggers three separate, but overlapping, issues that we wish to bring to this Subcommittee's attention. While we appreciate that some of these issues may go beyond the scope of this Subcommittee's jurisdiction, we believe this Subcommittee needs to be aware of them as it contemplates oversight or legislation to reform the way in which UNICOR is operated.

- **First, UNICOR is being operated in a manner that contravenes its statutory authority, creating unfair competition for companies and their workers in the private sector.**
- **Second, UNICOR is being operated in a manner that raises serious moral concerns, especially given the strong focus that Congress, the Administration, and the industry have placed on stopping imports of goods made with foreign prison labor.**
- **Third, UNICOR undermines military preparedness by forcing the U.S. military to procure an ever-increasing share of a declining market for clothing and textiles from an unsustainable source while eroding the viability of the domestic textile and apparel warm industrial base.**

Let us review each of these concerns in turn. As we explore these topics, please make no mistake that the single biggest threat to "made in America" textiles and apparel right now comes from the U.S. government's own addiction to forced labor in the form of preferences and subsidies it gives to UNICOR.

UNFAIR COMPETITION

UNICOR's organizing statute³ makes very clear multiple times that UNICOR should be operated so that it does not have a negative impact on private industry.

After noting that the UNICOR Board of Directors shall provide employment for the greatest number of inmates, 18 U.S. Code § 4122 (b)(1) requires UNICOR to "diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor."

In 18 U.S. Code § 4122 (b)(2), UNICOR is further told to "conduct its operations so as to produce products on an economic basis but shall avoid capturing more than a reasonable share of the market among Federal departments, agencies, and institutions for any specific product."

³ <https://www.law.cornell.edu/uscode/text/18/4122>

18 U.S. Code § 4122 (b)(3) further stipulates that “Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.”

We submit that, with respect to the U.S. domestic textile and apparel manufacturing industry, especially those manufacturers who produce uniforms and related items for the U.S. military, UNICOR is failing to meet these the statutory requirements.

As you may know, the U.S. Government shields domestic manufacturers of textiles and apparel procured for the U.S. military from foreign competition through the Berry Amendment⁴. These protections also cover U.S. prison factories run by UNICOR. However, UNICOR is accorded mandatory source preference, which essentially gives it a “right of first refusal” for all military textile and apparel contracts that are protected by the Berry Amendment. In short, if UNICOR has the capability to make an article the U.S. military needs, it is awarded the contract and this award comes at the expense of domestic textile and apparel manufacturers.

UNICOR is statutorily precluded⁵ from using its mandatory source status to take contracts once it achieves a significant market share, which has been defined as five percent⁶, of a Federal Supply Class (FSC). This limitation is misleading in a few ways.

First, as a recent GAO report documented⁷, UNICOR often uses indefinite delivery, indefinite quantity (IDIQ) contracts to supply the military even when its market share exceeds 5%. It is able to do this because the award occurs when the market share is below 5%, but the subsequent performance will push UNICOR above 5%. GAO notes, “even if the product category were to exceed the 5 percent threshold in those years, DOD may fulfill requirements through delivery orders issued to FPI under the existing indefinite-delivery contract.”⁸ GAO further states how UNICOR manipulates this system to retain market share, noting, “FPI officials indicated that they prefer to secure longer-term indefinite-delivery contracts from DOD in situations where FPI has close to 5 percent share of DOD’s market. By doing so, they continue to receive delivery orders on the existing contract in subsequent fiscal years through the original direct award, even if the product category is added to the 5 percent memorandum.”⁹

Second, UNICOR has concentrated production in FSCs that are used by the domestic textile and apparel industry. Every year since 2008, the Defense Department has published a report to show the market share, by FSC, of UNICOR.¹⁰ Attachment A shows that since this report was first

⁴ <https://www.law.cornell.edu/uscode/text/10/4862>

⁵ <https://www.law.cornell.edu/uscode/text/10/3905>

⁶ <https://www.law.cornell.edu/cfr/text/48/208.602-70>

⁷ See “Defense Contracting: DOD’s Use of Federal Prison Industries (GAO-23-106240)– August 2023” <https://www.gao.gov/products/gao-23-106240>

⁸ Ibid, page 14.

⁹ Ibid, page 15.

¹⁰ <https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html>

published, approximately 60% of the FSCs where UNICOR has met or exceeded the 5% limitation have been in textile and apparel FSCs. The aforementioned GAO report reached a more disturbing conclusion, depicting a chart showing that 69 percent FSCs during the period FY 2018 - 2023 in which UNICOR hit or exceeded 5% were in the textile and apparel industry, suggesting that UNICOR concentration in and targeting of this industry is getting worse.

Using government contracting data from the Federal Procurement Data System (FPDS), the GAO report further documents UNICOR's concentration in this industry. It notes that 5 categories account for 80 percent of DoD obligation to FPI with, special purpose clothing, personal armor, and men's outwear accounting for 64% of that 80%.¹¹

Third, once UNICOR has hit the 5% limitation, it is still allowed to win contracts in that same FSC provided it is awarded those contracts through competitive practices. Two concerns emerge here. First, it is difficult to understand how to evaluate a competitive bid from UNICOR when it is not subject to many of the same economic pressures that competitors in the commercial market must meet. For example, UNICOR pays no income tax; is not required to meet basic safety, health, and wage employment obligations, including the requirement to pay a minimum wage; provides no workers compensation; has its overhead subsidized by the Federal Government; and has a captive work force (at a time when commercial actors have to raise wages dramatically to retain workers).

Beyond this massive competitive advantage, an enormous loophole in federal contracting law allows UNICOR to be awarded contracts that are set aside for small businesses, HUBZones, or other similar entities.¹² While such a loophole is outrageous, particularly since UNICOR satisfies none of the criteria of those set aside entities, it is particularly troubling in that UNICOR has used this power to further prey on the domestic textile and apparel industry. A recent Congressional study, commissioned by Rep. Burchett (R-TN), showed that approximately 85% of the set aside contracts won by UNICOR were in textile and apparel FSCs. (See attachment B.

Finally, an analysis of FPI's annual reports over the last few years – **an analysis that is incomplete because FPI does not consistently publish these reports online** – shows that about 30-35% of FPI sales annually occur in the textile and apparel industry. See attachment C.

It is now wonder that UNICOR is the single largest supplier of uniforms to the U.S. military.

¹¹ GAO, page 9

¹² See, for example, https://www.acquisition.gov/far/subpart-19.5#FAR_Subpart_19_5

MORAL CONCERNS

This competitive imbalance is premised around a U.S. domestic forced labor situation. More than a decade ago, the International Labor Organization (ILO) published a report flagging 11 indicators of forced labor. These indicators, which are listed below, provide industries throughout the world with a first tool to help detect potential forced labor situations.

Abuse of vulnerability.

Deception.

Restriction of movement.

Isolation.

Physical and sexual violence.

Intimidation and threats.

Retention of identity documents.

Withholding of wages.

Debt bondage.

Abusive working and living conditions.

Excessive overtime.

UNICOR objectively meets 4 of the 11 indicators – those highlighted in boldface – and depending on the practices at particularly facilities, could meet many more.

For the commercial sector, the suspected presence of even a single indicator is a warning sign that merits immediate action, be it remediation or, if that is not possible, termination of a business relationship due to widespread protocols that demand zero tolerance for forced labor. Companies take these steps because forced labor does not align with their core values, nor those of their customers or business partners. Moreover, the U.S. maintains a series of strict import bans on products made in whole or in part of with forced labor.

In fact, Customs and Border Protection (CBP), as they work to determine if a potential imported article might be in violation of these U.S. trade laws, relies on these indicators. Such indicators also inform reporting and policy making by various government agencies that make up the Forced Labor Task Force, which is chaired by the Department of Homeland Security (DHS), as well as a variety of non-governmental organizations (NGOs).

The connection between UNICOR and forced labor is hidden in plain sight. The Bureau of Prisons website clarifies that all able-bodied inmates are required to work,¹³ even if they are not required to work at FPI *per se*. Of course, the 13th amendment to U.S. constitution – “Neither slavery nor involuntary servitude, **except as a punishment for crime whereof the party shall have been duly convicted**, shall exist within the United States, or any place subject to their jurisdiction”¹⁴ – also clearly connects activities that occur daily at UNICOR facilities with forced labor.

¹³ https://www.bop.gov/inmates/custody_and_care/work_programs.jsp

¹⁴ <https://www.archives.gov/milestone-documents/13th-amendment>

What's worse is that for the U.S. government, such indicators are competitive boasting points. UNICOR's own nickname of the program is "factories with fences" as it has been marketed to potential business partners and government customers.¹⁵

This marketing has also been targeted for foreign consumption, primarily through the Select USA conference. It is disturbing and confusing that it uses this venue to promote U.S. prison factories. It is especially hurtful when this is done with these tag lines: "UNICOR represents American manufacturing at its best" and "domestic solutions with offshore cost benefits." Attachment D shows how the USG has marketed UNICOR in recent years in the Select USA conference.¹⁶

At a time when Congress and the Administration are rightfully shining a spotlight on foreign prison and forced labor situations and increasing efforts to prevent goods made with foreign forced labor from being imported, and when U.S. industries are on the frontlines of these efforts, it is awkward that the Administration is promoting and awarding preferences to a forced labor situation at home or that Congress has not taken action to exercise greater oversight and limitations over this program.

MILITARY PREPAREDNESS

UNICOR's outsized role in the military textile and apparel space creates several threats to our nation's military preparedness, particularly in the event that our country is required to surge the production of uniforms should there be a large-scale deployment.

First, UNICOR, by its own admission, is sometime an unreliable supplier to federal government customers, including the military. Years ago, UNICOR developed a series of emergency protocols that could be turned on to "pass through" contracts to non-mandatory source companies in the event that it could not perform on those contracts. In the decision memo, UNICOR blamed such production delays on "events such as a prison lock down, factory fire, fog, or machine failure occur." Although this "pass through" practice is now discontinued, largely because of Congressional pressure that it was undermining what was supposed to be the reason for FPI's mandatory source in the first place – employing inmates – those unreliability concerns continue. In fact, it has been an open discussion at many industry meetings and gatherings over the past few years of situations where UNICOR was unable to meet its contractual commitments due to production and quality failures or because of workplace disruptions, such as prison riots or COVID. In some cases, the contract has been temporarily awarded to another supplier – assuming another supplier can be found – but in other cases the military customer had to tolerate a delay.

¹⁵ https://www.unicor.gov/publications/corporate/CATMC1101_C.pdf

¹⁶ <https://www.selectusasummit.us/About/Investment-Summit-Archives>

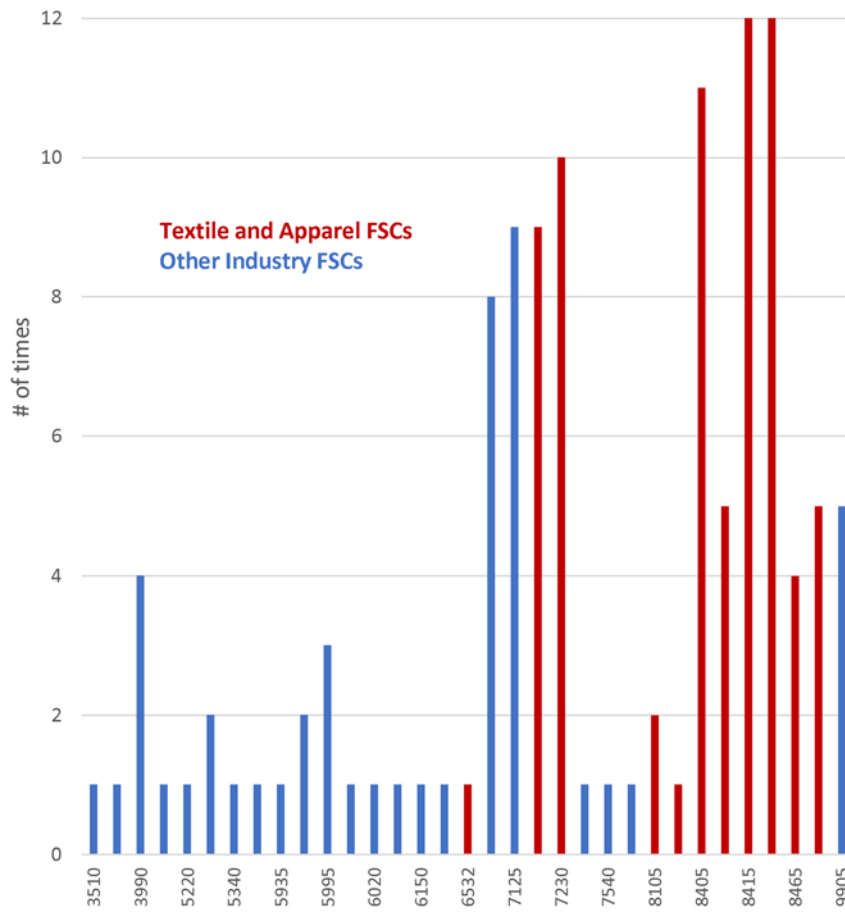
Second, as noted above, production at UNICOR comes at the direct expense of commercial contractors. As more production is concentrated at UNICOR and in light of decreases in overall military spending as current drawdowns continue, domestic textile and apparel companies are unable to sustain production and are forced to close. The resulting loss of skills and capability in the private sector is not easily replaced or regrown, and it means that the military is becoming increasingly dependent upon an unreliable supplier.

* * * * *

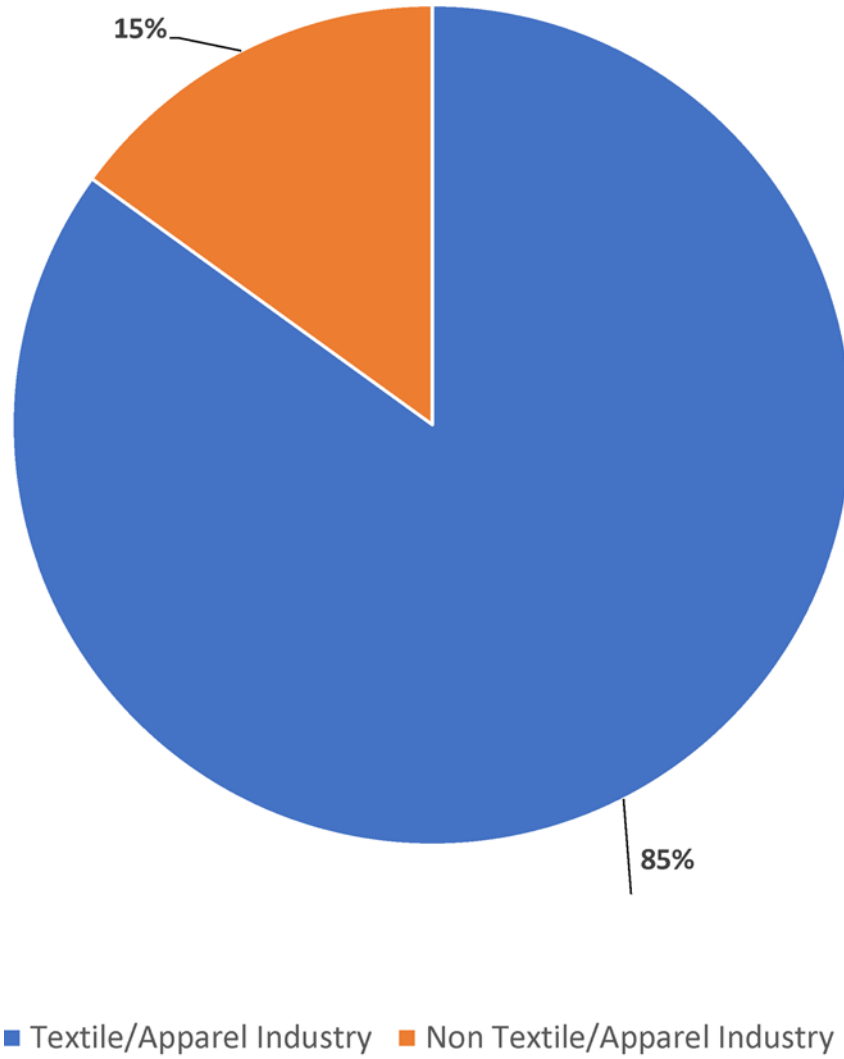
Thank you for providing us an opportunity to share these perspectives. We believe it is long past time for the Congress to conduct a more thorough examination of UNICOR, not only assessing the role of prison labor in America, but also to develop tangible policy recommendations. We stand ready to assist this Committee, and other Congressional committees with tangible policy recommendations that will ensure prison rehabilitation programs are conducted in a way that they do not harm the inmates they are intended to serve, American manufacturers, U.S. military preparedness, or U.S. moral leadership.

Attachment A
of Times FPI has Achieved Significant Market Share in Selected FSC
Codes
2008-2024 (Source: DCP)

14 **60% of FSCs for which FPI has had a significant market share in the past 16 years have been in textiles and clothing categories.**



Attachment B
FY 2017 - 2021 Set Aside Awards Made to UNICOR



Attachment C**Clothing and Textile UNICOR Sales as Percent of Total
UNICOR Sales**

FY	2020	2021	2022
Total Net Sales	\$ 363,224	\$ 404,065	\$ 386,308
Total Clothing and Textile Sales	\$ 121,923	\$ 127,956	\$ 142,973
Clothing and Textile as % of Total	34%	32%	37%

Source: <https://www.unicor.gov/PublicNotices.aspx>

Attachment D
UNICOR Marketing at Select USA Summit – 2021-2023

UNICOR at Select USA 2023

“With modern, nationwide factories, a proven history, and a diverse range of production capabilities and expertise, UNICOR represents American manufacturing at its best. Learn about our unique alternatives to offshoring and subcontracting while providing products that are ‘Made/Assembled in the USA.’”

🕒 2:30 p.m. - 3:00 p.m.
📅 Wednesday, May 3
📍 Antelope 1
📅 Add to Calendar

Manufacturing Your Products in Federal Prison Facilities
Session Type: U.S. Government Programming, Interagency Investment Working Group (IIWG)

Less 🗨️
With modern nationwide factories, a proven history, and a diverse range of production capabilities and expertise, UNICOR represents American manufacturing at its best. Learn about our unique alternative to offshoring and subcontracting while providing products that are “Made/Assembled in the USA.”

Presenter
Mr. Mark Miller
Senior Program Manager
UNICOR

UNICOR at Select USA 2022


“With nationwide, modern factories, a proven history, and a diverse range of production capabilities and expertise, UNICOR represents American manufacturing at its best.”

Monday, June 27, 2022 📅

Manufacturing Your Products in Federal Prison Facilities
Session Type: U.S. Government Programming, Interagency Investment Working Group (IIWG)

Less 🗨️
With nationwide, modern factories, a proven history, and a diverse range of production capabilities and expertise, UNICOR represents American manufacturing at its best. Learn about our unique alternative to offshoring and subcontracting while providing products that are “Made/Assembled in the USA.”

Mr. Mark Miller
UNICOR
Sr. Program Manager - Marketing



Mark has worked for UNICOR for 30 years, and is the Senior Program Manager for Marketing on UNICOR's Business Development Team. Included among his diverse corporate marketing responsibilities is the role of customer education, addressing Federal Government contracting classes nationwide, and serving as a featured speaker at other federally-sponsored events.

UNICOR at Select USA 2021

"UNICOR – Federal Prison Industries. Invest in America: Domestic Solutions with Off Shore Cost Benefits."

🕒 08:30 - 09:00
EDT

📅 Wednesday, June 9

📅 Add to Calendar

UNICOR - Federal Prison Industries: Invest in America: Domestic Solutions with Off Shore Cost Benefits

Track: U.S. Government Programming; Interagency Investment Working Group (IWG)

Less

Mr. Mark Miller



Mark has worked for UNICOR nearly 30 years. Included among his diverse corporate marketing responsibilities is the role of customer education, addressing Federal Government contracting classes nationwide, and serving as a featured speaker at federally-sponsored events. A graduate of Missouri State University, Mark lives in Fredericksburg, VA.
Presenter



“No Way Out,” by Charlie Gray,
Plaintiff in *Stanley v. Ivey*, Case No. 03-CV-2024-900649.00 (Al. Cir. Ct. 2024)

Written Statement by
the Center for Constitutional Rights
before the Subcommittee on Criminal Justice and Counterterrorism of
the Senate Judiciary Committee
Regarding “An Examination of Prison Labor in America”
May 21, 2024, 2pm EST

The Center for Constitutional Rights thanks Chairperson Booker and the Senate Judiciary Subcommittee on Criminal Justice and Counterterrorism for holding this hearing on the urgent need to abolish involuntary servitude, slavery, and other forms of forced labor within this country’s state and federal prisons (hereinafter “forced prison labor”), as permitted under the Exception Clause of the Thirteenth Amendment of the U.S. Constitution and various state constitutions and laws. We are grateful for the opportunity to submit this written statement on behalf of incarcerated workers in Alabama and across the South and nation.

Introduction

In coercing individuals—the majority of whom are Black, of color, or from vulnerable communities—to labor against their will for little to no compensation, the system of forced prison labor in the United States has directly descended from, and is an outgrowth of the ongoing legacy

of, slavery, the Black Codes, convict leasing, and the Jim Crow era of this country. It is the present-day foundation for the overcriminalization, dehumanization, subjugation, and warehousing of Black people in carceral institutions.

Forced prison labor exploits incarcerated workers for their labor, violently violating their bodily autonomy while promoting degrading and dangerous work conditions. Incarcerated workers are forced to work under threats of punishment, including, but certainly not limited to, solitary confinement, transfers to more dangerous prisons, loss of contact with loved ones, and loss of good time credit that would reduce their time in prison. These practices are particularly acute in the State of Alabama's prison system—the most overcrowded in the country, operating at over 168% capacity and with less than 40% of the total correctional staff required to operate its prisons.

Due to this overcrowding and severe understaffing, prison staff in Alabama Department of Corrections ("ADOC") prisons are increasingly reliant on incarcerated persons to perform the most essential tasks necessary to maintain the functionality of prisons, in exchange for very little to no pay. Such tasks include preparing and serving food, laundry, barbering, cleaning, painting, plumbing, HVAC repair, clerical work, and courier-like work throughout the prisons, as well as many core job functions of correctional officers.

Despite a 2022 amendment to the Alabama Constitution that expanded the state's constitutional ban on slavery and involuntary servitude to prison, these practices have persisted and were even enacted into state law the year after the constitutional amendment via Governor Ivey's Executive Order No. 725, ADOC Revised Administrative Regulation 403, and revisions to Section 14-9-41 of the Alabama Code (amended July 1, 2022). Under these laws, people incarcerated by ADOC are routinely punished, or threatened with punishment, for not working or declining to work, just as they were before the 2022 amendment.

On May 1, 2024, International Workers' Day, six incarcerated people—Trayveka Stanley, Reginald Burrell (whose written testimony before this Subcommittee is forthcoming), Dexter Avery, Charlie Gray, Melvin Pringle, and Ranquel Smith—filed a state court lawsuit against Alabama Governor Kay Ivey and ADOC Commissioner John Hamm, Stanley v. Ivey, Case No. 03-CV-2024-900649.00 (Al. Cir. Ct. 2024), to enjoin these practices, and the state laws authorizing them, and to declare them unconstitutional under Article I, Section 32 of the Constitution of Alabama of 2022 ("Section 32"). Through this novel lawsuit, they ultimately seek to enforce Section 32's ban against forced labor in the state's prison system.

As a national, not-for-profit organization that works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications, the Center for Constitutional Rights, as counsel for the plaintiffs in *Stanley*, stands in solidarity with Ms. Stanley, Mr. Burrell, Mr. Avery, Mr. Gray, Mr. Pringle, and Mr. Smith, and the thousands of other incarcerated workers in Alabama and across the country who are demanding the abolishment of forced prison labor in all its forms.

To urgently stop these systemic abuses, now is the time for Congress and President Biden to enact laws that protect incarcerated workers' safety, health, well-being, and dignity, in state as

well as federal prisons. Forced prison labor has no place in the United States, and Congress and the President must end this abusive system now.

Forced Prison Labor in Alabama

Alabama's prison system incarcerates Black people at disproportionate rates while subjecting them to inhumane conditions within the prison system. Black individuals disproportionately make up 53 percent of Alabama's state prison population while only making up 26 percent of the state's general population. Thus, a high percentage of incarcerated workers, who are subjected to the inherently abusive nature of forced prison labor, are Black.

The labor of incarcerated persons is essential to the maintenance of ADOC prisons. Workers are forced to perform many jobs within the prison for little to no pay. Indeed, the only incarcerated workers housed in major institutions who are paid by ADOC for their labor are workers for Alabama Correctional Industries ("ACI") and workers in prison commissaries, who are paid as little as \$2 per day. Incarcerated persons are also forced to labor for other state entities—also for little pay and often under unsafe working conditions. For example, people incarcerated in community work centers perform labor for governmental entities such as street maintenance for the City of Montgomery. These workers are paid as little as \$2 per day, as well.

This system of forced prison labor is not restricted to work "on the inside": people incarcerated in work release centers also perform labor for private companies in the "free world." These companies pay the workers' earned wages directly to ADOC, which then deducts a 40% fee and deposits the remainder into their prison trust accounts. ADOC also charges work release workers, and deducts from their pay, additional fees for laundry (\$15 per month) and transportation to and from their jobs (\$5 round trip), among other costs.

Given these deductions, ADOC's contractual relationship with the private companies, and the absence of a requirement to pay incarcerated workers any minimum wage or extend any safety protections to the workers, incarcerated workers are extremely profitable for the State of Alabama. Incarcerated workers working for ACI generated over \$3 million in profit for the State of Alabama between October 2022 to September 2023. And according to ADOC's own reporting, work release workers generated \$12,942,048.13 for the State of Alabama between October 2022 and September 2023.

Yet in return, incarcerated workers are not entitled to a guaranteed livable wage, training, or safety. And if they cannot work or they refuse to work, they have no protection against retaliation under federal or Alabama law, as Senator Booker himself has acknowledged. In fact, ADOC routinely requires incarcerated workers at work release prisons, who are issued behavior citations or disciplinary reports—including for not working or refusing to work—to perform "extra duty" (i.e., unpaid labor that typically consists of cleaning or picking up trash), in addition to the work they perform at institutional or free-world jobs.

After a 2022 prison labor strike where thousands of incarcerated people in Alabama prisons raised demands to address grave human rights violations that they were experiencing, Alabama

voters approved a new state constitution that prohibits the above-mentioned system of slavery as well as involuntary servitude in all circumstances, including in prisons. This prohibition, along with several other changes, were proposed by a state joint legislative committee, with the express purpose of “remov[ing] racist language” from the overtly white supremacist 1901 constitution.

Shortly after the strike and the changes to the Alabama Constitution banning prison slavery, the state government responded with three legal measures to punish incarcerated people who resist forced labor: Alabama Executive Order No. 725, ADOC Administrative Regulation 403, and revisions to Section 14-9-41(c)(4) of the Alabama Code. Each measure allows prison officials to punish incarcerated workers by revoking earned good time, placing them in solitary confinement, and eliminating opportunities to communicate with loved ones, among other sanctions.

Stanley v. Ivey and the National Movement to End Forced Prison Labor

Against this backdrop, six incarcerated workers—Trayveka Stanley, Reginald Burrell, Dexter Avery, Charlie Gray, Melvin Pringle, and Ranquel Smith—are challenging these state executive and legislative actions by seeking to abolish the practice of forced labor and involuntary servitude in all ADOC prisons in their state court lawsuit, *Stanley v. Ivey*, a copy of which can be found here. This lawsuit, as well as their accompanying narratives, shares each of the plaintiffs’ experiences as incarcerated workers subject to ADOC’s systemic policy and practice of forced prison labor, in an effort to enforce Section 32’s ban on prison labor.

In so doing, the case builds upon the growing national movement to remove the prison slavery exception in all state constitutions and in the Thirteenth Amendment of the U.S. Constitution and to ultimately abolish prison slavery and involuntary servitude at the state and federal level. In amending its state constitution in 2022, Alabama joined this ongoing movement. And voters in Colorado, Nebraska, Tennessee, Utah, Oregon, and Vermont have likewise approved changes to their states’ respective constitutions to remove the loophole permitting slavery as a form of punishment for incarcerated people.

Congress and the President must, too, join or at minimum, support this robust movement by enacting federal legislation that bans forced labor in all its forms in state and federal prisons, as well as immigration detention prisons, by abolishing the Exception Clause in the Thirteenth Amendment and any analogues in state constitutions and state laws. They also must require the fair, dignified treatment of incarcerated workers by meeting their demands for provisions of a guaranteed fair wage, educational development, and proper training on skills, safety, and equipment, among others, as detailed below.

While we recognize that incarceration will never provide truly safe conditions because prisons are inherent sites of violence and are not designed with the well-being of incarcerated people in mind, incarcerated workers in Alabama prisons deserve workers’ protections and the ability not to be forced into labor.

Recommendations & Summary of Key Provisions:
**Congress and the President Must Enact Legislation that
 Guarantees a Federal Minimum Wage and Prohibits Wage Deductions;
 Ensures Safe Workplaces for Incarcerated Workers;
 Advances Job and Educational Opportunities; Prohibits Requiring People to Work; and
 Entitles Incarcerated Workers to Civil Rights, Including Protections Against Retaliation
 for Their Refusal to Work, in State and Federal Prisons**

Congress and the President must urgently act to end forced prison labor to stop state and federal prisons from abusing incarcerated workers. By enacting into law Senator Booker's proposed package of bills—the Fair Wages for Incarcerated Workers Act, the Correctional Facilities Occupational Safety and Health Act, the Ensuring Work Opportunities in Correctional Facilities Act, and Combating Workplace Discrimination in Correctional Facilities Act—the House and Senate and the President are taking steps in a positive, affirming direction to abolish forced prison labor and to protect the safety and dignity of incarcerated workers in state and federal prisons.

In the interim, and at the very minimum, the President can, and *must*, immediately take executive action to adopt and implement the following provisions of Senator Booker's bill package, as well as additional protections, in support of incarcerated workers across the country—all of which we unequivocally support:

- the guarantee of a federal minimum wage for incarcerated workers;
- the elimination of wage deductions while ensuring incarcerated people can fulfill legal and financial obligations;
- the inclusion of incarcerated workers in state occupational safety and health plans;
- amendment of Occupational Safety and Health Act to include state and local facilities as employers and incarcerated workers as employees;
- the creation of a grant program for state and local governments to amend their occupational health and safety plans to cover incarcerated workers and to support enforcement;
- prohibition against requiring people incarcerated in state and federal facilities to work;
- prohibition of retaliation against an incarcerated person by any officer of a correctional facility for refusal to work;
- the removal of “refusing to work” from the list of BOP inmate behaviors justifying sanctions, including disciplinary segregation, monetary fines, loss of earned time, and delayed parole;
- an amendment of the Prison Litigation Reform Act of 1995 to end the requirement that incarcerated individuals exhaust all available administrative remedies before being able to sue a correctional facility or officer under federal law to assert their civil rights; and
- an extension of the protections of the Americans with Disabilities Act and/or the Rehabilitation Act and Title VII of the Civil Rights Act of 1964 to incarcerated workers to prohibit employment-related discrimination against workers based on disability, race, color, religion, sex, or national origin.

Conclusion

Ranquel Smith, one of our clients in *Stanley v. Ivey*, said it best: being forced to work in prison under the threat of punishment “[i]s not being treated fairly *at all*.” Mr. Smith and our other clients, along with other incarcerated individuals throughout ADOC, other state, and federal prisons, are forced to carry out countless jobs within prisons and for other state entities and private employers, for little to no pay, often under unsafe working conditions. This system is undeniably tied to the ongoing legacy of chattel slavery that has exploited Black people for their labor for centuries.

We stand alongside Mr. Smith, our other *Stanley* clients, and incarcerated workers across the South and the country in their fight to end the practice of punishing incarcerated persons for not working or refusing to work and to abolish the system of forced labor in all its forms at the state and federal levels. As Chairperson Booker stated in 2023 upon introducing federal legislation to end unfair, abusive labor practices in prisons, “the current state of prison labor in America is inhumane and unacceptable.” The President and Congress must address this reality and act now.

The Unethical Use of Captive Labor in U.S. Prisons

Lulit Shewan | May 2024

An exploitative labor economy exists within the confines of this nation's prisons. This is a fundamental pillar of the criminal justice system, yet it is largely concealed from public view. In the United States, all state and federal prisons allow some form of involuntary labor as part of various correctional work programs. Even when prison labor is ostensibly voluntary, the combination of meager pay (often less than \$1/hour) and the presence of harsh alternatives creates an inherently exploitative system that depends on the labor of those behind bars and perpetuates a cycle of exploitation and marginalization. Prison labor amplifies deep-seated issues within the criminal justice system and casts a stark light on the intersection of labor rights, social justice, and the ethics of incarceration.

The Exploitative Prison Labor Economy

Incarcerated men and women toil in workshops, kitchens, and fields, producing goods and services that reach far beyond their confinement. From manufacturing furniture and processing food to fighting fires¹ and working in call centers², their labor fuels supply chains, corporate profits, and consumer markets. Yet these workers remain invisible, their contributions often overlooked or dismissed. The commodification of their labor perpetuates a cycle of vulnerability, where meager wages and limited rights prevail.

In the intricate tapestry of the prison industrial complex, we confront a profound challenge that transcends temporary reforms. The only holistic and ethical approach calls for a paradigm shift, a reimagining of justice itself. Within this context, we fiercely advocate for granting incarcerated individuals fundamental rights: the right to choose voluntary work and earn fair wages, and the freedom to join unions. These rights are not concessions; they are affirmations of human dignity and agency, and are necessary to improving the material conditions of incarcerated people.

Our vision reaches toward the dismantling of the current prison industrial complex. By its nature, prison labor perpetuates coercion and exploitation within a system that inherently denies the agency and rights of incarcerated individuals. Our vision acknowledges that the history of forced labor in prisons is deeply intertwined with racial injustice, economic inequality, and the broader carceral system's oppressive structures.³ As we advocate for a better future, we must confront this legacy and strive for resolutions that exist outside of the bounds of the current carceral system.

Historical Context: Convict Leasing

The roots of the U.S. carceral system can be found in the history of convict leasing. After the Civil War, as slavery officially ended, Southern states enacted laws that criminalized minor offenses, disproportionately targeting Black individuals. So-called “Black Codes” were created by white Southern lawmakers to undermine the Reconstruction Amendments (the 13th, 14th, and 15th amendments to the Constitution).⁴ They enabled local law enforcement to create a steady stream of labor for private industry in the South, including plantations, mines, and railroads. Black people accused of crimes were ‘leased out’ to private companies, effectively re-enslaving them under brutal conditions. Their labor built the infrastructure of the ‘New South,’ while their humanity was systematically denied. This dark chapter in American history casts a long shadow over today’s prison labor practices. The commodification of inmate labor persists, echoing the exploitative patterns of the past.

Collective Action and Resistance

Throughout history, moments of collective action have illuminated the demand for fair treatment and humane conditions within prisons. The 1971 Attica Prison uprising stands as a powerful testament to this struggle.⁵ In that pivotal event, incarcerated individuals at New York’s Attica Correctional Facility rebelled against oppressive conditions, demanding better wages, improved healthcare, and an end to dehumanizing practices. Tragically, the state’s violent response resulted in numerous deaths and injuries, but it also brought national attention to the plight of incarcerated workers.

The 2018 nationwide prison strike echoed those calls for justice.⁶ Organized by incarcerated activists and supported by external allies, the strike aimed to highlight exploitative labor practices, inadequate pay, and the lack of basic rights for those behind bars. In prisons across the United States, incarcerated individuals engaged in work stoppages, hunger strikes, and protests, emphasizing their collective power and resilience. Their demands extended beyond immediate reforms; they challenged the very foundations of the prison industrial complex, advocating for a system that prioritizes rehabilitation and community-based alternatives.

Policy Failures and Institutional Neglect

On average, incarcerated laborers earn between 15 cents and 52 cents per hour nationwide, although seven states do not pay for the majority of prison work performed in their states.⁷ The 13th Amendment was designed to abolish slavery and other forms of involuntary servitude, but contains an exception allowing involuntary servitude as a punishment for a “crime whereof the party shall have been duly convicted.”⁸ Paltry wages, hazardous conditions, and the absence of collective bargaining rights persist. This system disproportionately affects Black Americans, who are imprisoned at nearly five times the rate of white Americans, and Latino Americans, who are imprisoned at 1.3 times the rate of white Americans, according to The Sentencing Project.⁹ Notably, nearly two-thirds of incarcerated individuals work behind bars, totaling approximately 800,000 workers. Declining to work can result in punishment for over three-quarters of those surveyed, and 64 percent of incarcerated workers expressed safety concerns while working.

Prison labor is utilized across the public and private sector. The U.S. Department of Defense engages with correctional facilities under initiatives like Federal Prison Industries (UNICOR)¹⁰, leveraging incarcerated

labor to manufacture military paraphernalia and make furniture for government offices.¹¹ Corporations including McDonald's and Costco use goods produced by incarcerated individuals, enabling these corporations to amass substantial profits through the remuneration of low wages.¹² This pervasive reliance perpetuates a cycle of exploitation, subordinating the rehabilitative intent of correctional systems to the exigencies of financial gains.

This exclusion is not an oversight. It is a deliberate choice embedded in the policy frameworks governing prisons and labor practices within them.

The lack of protections for incarcerated workers is a glaring issue rooted in systemic racism and maintained by policy failures and institutional neglect within the carceral system. The exclusion of incarcerated individuals from the protections of the Fair Labor Standards Act (FLSA) reflects a perspective that fails to recognize and respect the lives and dignity of those within the carceral system, reinforcing a pattern of exploitation and disregard that is justified on the premise that prison labor is a form of correctional activity rather than conventional employment.¹³

While non-incarcerated individuals can benefit from a range of labor laws and safety regulations, incarcerated workers face a stark reality devoid of such protections. This discrepancy extends beyond prison walls, affecting individuals with criminal records who encounter significant barriers to securing fair employment opportunities.¹⁴ Discriminatory hiring practices, limited job options, and the enduring stigma of a criminal record contribute to pushing them into exploitative labor conditions. Although the FLSA is vital for protecting incarcerated workers, addressing the systemic barriers that drive economic exploitation and inequality requires a multifaceted approach that goes beyond legislative measures.

Coercion and Power Dynamics

A consequence of such neglect is an underbelly of prison labor rife with abuse and coercion, enabled by a lack of regulatory oversight and accountability mechanisms. The lack of fundamental labor protections, coupled with the profit-driven incentives of corporations and prison authorities, create an environment where power dynamics heavily favor the latter. This imbalance allows for the exploitation of incarcerated individuals, who often have limited ability to challenge or negotiate their working conditions.

In this environment, coercion becomes a tool for maintaining control and productivity. Incarcerated individuals may be compelled to work under fear of punishment. For instance, labor exploitation forces inmates to perform arduous tasks with little to no compensation, and failure to comply can result in punitive measures such as solitary confinement or loss of privileges.¹⁵ Some prisons even incentivize compliance by offering small rewards like extra phone time or slightly improved living conditions.¹⁶ However, the underlying message remains clear: compliance is rewarded; resistance invites punishment.

This power dynamic strips incarcerated individuals of their agency, relegating them to roles dictated by the prison-industrial complex.

Coercion manifests in various forms within the prison labor system.¹⁷ Inmates may be compelled to work under threat of punishment such as loss of visitation rights or access to basic necessities like hygiene products, or even have their sentences extended through disciplinary measures. The fear of reprisal looms large, forcing many incarcerated individuals into exploitative labor arrangements against their will.

The absence of substantial pathways to education and vocational training intensifies this dynamic.¹⁸ With constrained avenues for acquiring new skills, knowledge, or alternative career prospects, incarcerated individuals frequently find themselves compelled to partake in labor under exploitative circumstances. The lack of autonomy further underscores how inmates are subject to external control within the prison-industrial complex. This system prioritizes utilitarian labor over sincere rehabilitation efforts, leaving little room for individual agency.¹⁹

Without the ability to negotiate fair wages, reasonable working hours, or safe working conditions, incarcerated workers are trapped in a cycle of economic exploitation that reinforces their marginalization. This dynamic not only undermines their dignity and rights but also perpetuates broader social inequalities by reinforcing structural barriers to upward mobility and economic stability.

Reimagining Prison Labor Practices

Prison labor in the United States reflects a deeply entrenched system of exploitation and marginalization. Incarcerated individuals often find themselves in situations where their labor is undervalued, their rights are disregarded, and their dignity is compromised. This reality underscores the urgent need for transformational changes in prison labor practices.

Far-reaching implementation of fair labor practices within correctional facilities is necessary. These following labor standards represent a fundamental re-evaluation of how we approach labor within correctional facilities.

- Incarcerated individuals must be paid fair wages that align with living wage standards. Compensation should reflect the value of the work performed and provide incarcerated individuals with a means to support themselves and their families both during their incarceration and upon release.
- All labor performed within correctional facilities must be voluntary, respecting the autonomy and rights of incarcerated individuals. This entails ensuring informed consent, a non-coercive environment, fair compensation, workplace safety, the right to withdraw consent without repercussions, oversight mechanisms, educational resources, and advocacy efforts.
- Practices that prevent formerly incarcerated individuals from accessing certain jobs or professions based solely on their criminal history must be eliminated. Measures must also be put in place to ensure that past convictions do not automatically disqualify individuals from employment or professional licensure.
- Incarcerated individuals must have the right to unionize and be covered under the National Labor Relations Act. This includes granting them the freedom to form and join unions; engage in collective bargaining; and advocate for fair wages, dignified working conditions, and essential labor protections.
- Incarcerated workers must be guaranteed basic labor protections, such as access to health care services and the right to refuse unsafe work. This includes addressing hazards in the workplace, providing appropriate training and protective gear, and ensuring timely access to medical care for work-related injuries or illnesses.

- The management and operation of prison labor programs must be transparent and include the establishment of oversight mechanisms, including independent monitoring and reporting. This will ensure compliance with fair labor standards and address any instances of exploitation or abuse. Accountability measures should be in place to hold institutions accountable for upholding the rights of incarcerated workers.
- Correctional facilities must implement comprehensive disability screening and accommodation processes. Many individuals in carceral settings have disabilities that would typically qualify for workplace accommodations in non-carceral settings. Ensuring that these accommodations are provided can improve the working conditions and well-being of incarcerated workers.

Moreover, addressing the disabling effects of incarceration itself is crucial. Prisons and jails often exacerbate existing disabilities or create new ones due to inadequate health care, harsh living conditions, and lack of accessibility.²⁰ A disability justice analysis must be incorporated into recommendations to highlight these issues and advocate for equitable treatment and support for incarcerated individuals with disabilities.

- Reparative justice is integral to addressing the historical and ongoing harms of mass incarceration. Recommending reparations for individuals and families impacted by mass incarceration, including compensation for stolen wages and labor under coercive work conditions in prisons, is a critical step. This acknowledges the exploitation and loss experienced by incarcerated workers and their families and advocates for accountability and restitution. Reparations may include financial compensation, access to education and vocational training, and support services for re-integration into communities post-release.

Within the deeply embedded context of historical injustice, systemic inequality, and power dynamics that perpetuate exploitation and marginalization within U.S. prisons, the abolition of prison labor stands as an indisputably critical component to dismantling the carceral system as we know it.

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Workers Doing Time Must Be Protected by Job Safety Laws

Anastasia Christman & Han Lu
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Workers Doing Time Must Be Protected by Job Safety Laws

By: Anastasia Christman and Han Lu

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About the National Employment Law Project

Founded in 1969, the National Employment Law Project (NELP) is a leading advocacy organization with the mission to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs.

Foreword by Senator Cory A. Booker (D-NJ)

"It is unfathomable that to this day the Constitution allows prisons to force incarcerated people to work, often in dangerous conditions, and exploit their labor for the profit of corporations. This report lays clear the dangers that incarcerated people face when working both inside and outside the walls of prison. I am grateful to the National Employment Law Project for shining a light on these abuses. We must work to pass the Correctional Facilities and Occupational Safety and Health Act, which would explicitly apply OSHA protections to incarcerated individuals and ensure that they are not forced to work in dangerous conditions. Our labor laws should apply to All American workers and we must recognize that incarcerated are a critical work force in our country that has been hidden from public view. We must do more to support incarcerated individuals as they prepare to reenter society," said Senator Booker.

Foreword by Representative Emanuel Cleaver, II (D-MO, 5th District)

"In the United States of America, every individual should be treated with the respect and dignity that all human beings deserve—but far too often that isn't the case for those who are incarcerated," said Congressman Cleaver. "Whether it's the lack of workplace protections or the atrocious wages being paid for essential labor, I appreciate the attention NELP is bringing to the failures of America's incarceration system, as well as the desperate need for immediate reforms. Congress should begin the process of rectifying the unacceptable standards we see today by passing the Correctional Facilities and Occupational Safety and Health introduced by myself and Senator Booker, to ensure that everybody is guaranteed a safe workplace."

Executive Summary

In virtually all US states, official emergency response plans (EOPs) include roles for incarcerated workers as part of preparation, response, and recovery work. Many EOPs define roles for “inmates” or “prisoners” that place these workers in danger from environmental hazards or exposure to chemicals or biological dangers. Elected officials often admit that they could not afford to engage in disaster response without access to this coerced and typically unpaid work force.

But in most cases, states also refuse to extend the typical health and safety protections of other workers as laid out in the Occupational Safety and Health Act (OSHA). These states alternately rely on longstanding and racist loopholes in Civil War-era amendments that extended coerced labor for those in the carceral system, assertions that incarcerated disaster workers are volunteers engaging in dangerous work as a form of redemption, and claims that exemptions in federal OSHA law for public sector employees shield departments of correction from having to abide by labor protections.

We explore the language and structure of assignments in some of the 30 states that include incarcerated workers in their EOPs to identify how age-old notions of a racist carceral system and the necessity of punishment underlie dangerous assignments during disasters. We place this analysis next to legal arguments and conventions in health and safety laws that put these workers outside the jurisdiction of labor regulators. Together, these narratives work to put incarcerated people in peril during natural disasters without even basic workplace protections.

We find that:

- In many states incarcerated workers are labelled as “prisoners” or “offender labor” and are sent to clear roadways of debris, engage in wildfire suppression, assist in heat emergency response, and dispose of dead or diseased livestock.
- While departments of correction often characterize this work as voluntary, systems of physical danger, privation, and excessive carceral costs and fees coupled with strong incentives for early release push incarcerated workers into accepting dangerous assignments.
- Very few incarcerated workers have recourse to OSHA protections if they get hurt working on assignment by department of corrections officials, and nearly 90 percent fear retaliation if they lodge complaints about carceral operations.
- Health and safety protections for incarcerated workers are minimal and inconsistent, with some states offering limited protections for workers having contact with private businesses, others denying all coverage entirely, and some deciding on a case-by-case basis if OSHA has jurisdiction.

We conclude that:

- The abolition of coerced labor entirely is a matter of basic human rights and dignity, and every state should amend its state constitution to prohibit all

slavery and then immediately change all regulations, rules, and practices that exempt these workers from basic labor standards.

- States with their own OSHA plans should explicitly extend health and safety protections to all incarcerated workers and work with community advocates and incarcerated workers to understand the health and safety needs of this group of workers.
- Federal lawmakers should pass the Correctional Facilities Occupational Safety and Health Act immediately to amend the OSH Act to include state and local carceral facilities as employers and incarcerated workers as employees under the law.

Needed, but Still Excluded from Basic Job Safety Protections

In August 2023, as Hurricane Idalia bore down on Florida’s Gulf Coast as a Category 4 storm, the Federal Emergency Management Authority (FEMA) administrator urged residents to evacuate and protect property from a destructive storm surge. More than 30 county leaders followed suit.¹ As has long been the case, various government agencies relied upon incarcerated workers to act as disaster preparation workers. “Got a sandbag? Thank an inmate!” the Flagler County Sheriff’s Office posted on Facebook, noting that in two days incarcerated workers filled and distributed more than 5,100 sandbags to residents.² Fortunately, the storm shifted direction and Flagler County was spared the deaths and damages that other parts of the state suffered.

But how safe were these incarcerated workers? Workers in the United States are supposed to be protected from workplace hazards by either the federal Occupational Safety and Health Administration (OSHA) or under a comparable state-level plan. However, longstanding cultural and structural beliefs connecting notions of “punishment,” “remorse,” and “redemption” allow policymakers and regulators to exclude incarcerated workers from OSHA protections.

Like Florida, many states rely on incarcerated labor to prevent and respond to natural disasters. State emergency planners mobilize incarcerated workers to do dangerous tasks – shifting vulnerability to workers often excluded from basic protections like pay and health and safety precautions. Choosing to exclude incarcerated workers from basic health and safety protections reflects and expands anti-poor and anti-Black policies increasingly recognized as foundational to US criminal punishment.³ If policies to address climate change are to be just, all workers who perform critical preparation, mitigation, and recovery work must at the very least have the same protections as other workers.⁴

In this brief, we examine the types of work incarcerated workers are assigned through official state Emergency Operations Plans (EOP). We then place these work assignments side-by-side with language from state and federal occupational health and safety laws to

explore the dangerous (and purposeful) gap in which incarcerated workers labor in an era of increasing climate change.

We find that in most states, public authorities and the carceral system knowingly place incarcerated workers in job categories with high incidences of injuries in the name of public safety while absolving themselves of responsibility for ensuring their safety.

Major natural disasters are becoming more numerous and more frequent with just 18 days on average separating crises between 2017 and 2021.⁵ Much of the disaster work assigned to incarcerated workers is inherently and obviously dangerous. As is true for any worker, an occupational illness or injury sustained while doing coerced work may have lifetime ripple effects, including diminished physical ability, mental trauma, and a lack of faith in the ability of regulatory agencies to protect working people.

As climate change exacerbates both the frequency and severity of natural disasters—and, by extension, the level of danger these workers face in their role as emergency responders—it is ever more important that policymakers end the unjust exclusion of incarcerated workers from our workplace safety laws.

Forced incarcerated labor is rooted in slavery.

It is a legacy of the racist history of the carceral system that states and counties assign incarcerated workers to duties before, during, and after natural disasters. With the official end of slavery after the Civil War, governments and businesses needed to replace the unpaid labor to continue building their economies that were established using enslaved laborers.

The Thirteenth Amendment to the US Constitution outlaws slavery and involuntary servitude, “except as a punishment for crime whereof the party shall have been duly convicted,” an exception which quickly allowed white supremacists and elected lawmakers to reinstitute a pool of Black coerced labor.⁶ White legislators and policy makers implemented Black Codes and Jim Crow laws to restrict the movement and employment of Black workers that remained in legal effect until 1965, including broad and vague vagrancy laws that subjected hundreds of thousands of people to criminal prosecution, imprisonment, and compulsory labor for appearing “out of place,” “wandering without apparent lawful purpose,” or not carrying proof of employment.⁷

“Convict leasing” allowed Southern states to replenish coffers diminished by the Civil War and Reconstruction by charging private parties for incarcerated workers and by using their labor to rebuild state infrastructure.⁸ In Northern states, prisons implemented a system of building workplaces within the carceral facility and signing contracts to produce goods for private businesses.⁹ And in the West, despite a state constitution that outlawed slavery, California coerced labor from Indigenous and Black workers to the profit of private entities.¹⁰

By the 20th century, states throughout the country used incarcerated labor to maintain carceral facilities, produce a variety of goods through prison industries, and provide services to other state and local governments at an unrealistically low cost. “Progressive Era” policies of the 1910s celebrated using incarcerated labor to build public works, boasting that, “Splendid highways have been shot through mountain fastnesses, [and] splendid manhood has been made from degraded, sullen and vicious men.”¹¹ Mass incarceration of Black men because of the so-called “War on Drugs” waged since the 1970s resulted in continued labor market manipulation by the State as carceral systems pulled potential workers out of the labor pool and then reoffered their work for little or no pay.

We recognize the challenges in naming incarcerated people doing natural disaster work. We believe it is important to use the term “worker” to underscore our assessment that if an employer requires or allows individuals to work (or “suffer or permit to work,” in the terms of the Fair Labor Standards Act), that individual should be protected by all labor standards and protections.

However, the word “worker” can diminish the violent and coercive context of racial capitalism and the carceral system. It is the very presence of this coercion that courts and legislatures use to undervalue the labor and the person doing it to exclude these workers from workplace protections.

The terms “incarcerated disaster worker” and “incarcerated workers” are attempts to wrestle with the racial capitalism that fuels the country’s exceptionally large carceral system and to capture the economic and social value of the labor performed by these human beings. Many of the public policies we examine here use terms like “inmates,” “prisoners,” “offenders,” or “trustees” to refer to incarcerated workers. When examining these policies, we will use those terms in quotes to reflect the narrative that Departments of Correction and other agencies promote regarding people in the carceral system.

States have long depended on incarcerated labor to prevent and fight natural disasters.¹² For example, California’s use of incarcerated workers for wildfire management goes back to the early 1900s when fire wardens pulled unemployed “vagrants” off the streets and gave them the option of doing forestry work or going to jail.¹³ Later the state switched to a forestry labor camp model that has been widely replicated.¹⁴

States come to depend on these cost savings:

- Between 2015 and 2019 an estimated 3,500 Florida incarcerated workers did nearly 18 million hours of public works valued by the Department of Correction (DOC) at \$147.5 million, though this number does not reflect the real cost of competitive pay and benefits necessary to recruit un-incarcerated labor.¹⁵
- In 1970 in California, a community fought against a prison closure concerned that they would not be able to afford wildfire management programs without unpaid labor, and fifty years later the state legislature rejected a ballot measure

to abolish slavery in part due to concerns about the cost of paying incarcerated workers.¹⁶

- In 2022, the director of Arizona’s Department of Corrections (DOC) testified to state legislators that many communities would “collapse” without access to underpaid incarcerated labor.¹⁷

At times, the lines between private contracting of incarcerated workers and public emergency disaster relief can become blurred.

- In 2010 when the British Petroleum Company was compelled to clean up its Gulf Coast oil spill. The company used workers from Louisiana state prisons to do the work, paying them nothing, providing substandard protective equipment, and counting on the lack of protection from state agencies.¹⁸
- In a bid to undermine a 2020 sanitation worker strike in New Orleans over personal protective equipment and hazard pay related to COVID-19, employers used staffing agency People Ready which contracted with a private “transitional work release company” to replace strikers with incarcerated workers.¹⁹
- In numerous states, incarcerated workers were recruited during the COVID pandemic to produce protective equipment, face masks, and hand sanitizer for health care workers even as they themselves became infected and too often went untreated.²⁰
- In 2022, during a Colorado mass culling of chickens in an attempt to stave off bird flu, an incarcerated worker doing the killing became the first documented case of human infection.²¹

The coercive reach of punishment systems extends far beyond physical prisons and jails themselves. State ordered work occurs while a worker is free in the community but they are threatened with incarceration or reincarceration. They include parole, probation, and diversion requirements that mandate work as a condition of release.

Such conditions can pressure workers to accept substandard jobs and stay silent about safety hazards, discrimination and harassment, asking for accommodations, and organizing with co-workers – for fear of incarceration.

Private labor brokers target such workers for underpaid and often dangerous jobs. One union has begun challenging these coercive work structures. Concerned with how court-supervised workers were both being exploited and being leveraged by employers against unionized workers, New York’s Construction and General Building Laborers’ Local 79 organized its “Real Reentry” campaign to bring transparency and accountability to what is often an opaque dynamic between punishment systems and labor markets.

These victories included legislation requiring labor brokers in New York City to maintain insurance for workers’ compensation, disability, and unemployment, and, importantly, changes to parole rules that previously considered workplace

organizing a parole violation. More must be done, but campaigns such as the Laborers show us the beginning of what's possible when pro-worker formations organize workplaces to challenge the criminal punishment system.²²

Lacking precise data on the race of incarcerated workers, we can still assume that like the carceral population overall they are so disproportionately Black or Latinx that they are mostly Black or Latinx. The most recent Bureau of Justice Statistics survey of state-level carceral facilities in 2016, found that 33.8 percent of incarcerated people were Black, 20.7 percent identified as Hispanic, and 11.3 percent were two or more races.²³

An analysis by The Pew Charitable Trust and the Jail Data Initiative estimate that in local jails, Black people comprise an average 26 percent of the incarcerated population, more than twice the 12 percent Black population in local communities.²⁴ The most recent data from the Federal Bureau of Prisons reveals that 38.6 percent of federally incarcerated people are Black, and that 29.8 percent identify as Hispanic.²⁵ As Michele Goodwin has argued, the state-sanctioned use of coerced incarcerated labor is simply the “reject[ion] of one form of discrimination—antebellum slavery—while distinguishing it from the marginally remunerated and totally unremunerated prison labor that courts legitimate.”²⁶

When disasters strike, states depend on incarcerated workers.

Under the Stafford Disaster Relief and Emergency Assistance Act, which authorizes FEMA, states are instructed to create a multi-agency Emergency Operations Plan (EOP) to address all types of hazards (natural and human-caused) and are given 15 different types of emergency support functions to include, ranging from communications to the public, to mass care and public health, to post-disaster long-term community recovery.²⁷ Each of these functions has a lead agency to coordinate and oversee the response, with other state agencies assigned supplemental roles.

EOPs are documents of urgency, most of them list systems of authority and reporting without details of the human beings doing critical emergency response work. One exception is the way that incarcerated workers appear in the text using language that presumes untrustworthiness and with assignments that come with danger of harm. While silent about other emergency workers, many EOPs underscore the stereotype of incarcerated people as inherently dangerous by specifying that incarcerated workers must be “trustees” or “minimum-security inmates,” or state that the DOC can assign workers “within security limitations.”²⁸

New York’s plan includes details on what the expected ratio of incarcerated workers to corrections staff will be for any crew.²⁹ In Ohio, the EOP specifically states that while

When an EOP lays out incarcerated workers’ assigned tasks or details about transportation or housing for these workers, it is directly related to the long history of unpaid incarcerated work in maintaining public infrastructure and underscores the potency of state control of their work.

incarcerated workers might remove domestic debris, scrap tires, and appliances from curbsides they are not authorized to enter dwellings.³⁰

When an EOP lays out incarcerated workers' assigned tasks or details about transportation or housing for these workers, it is directly related to the long history of unpaid incarcerated work in maintaining public infrastructure and underscores the potency of state control of their work.

An EOP is an instruction manual for state authorities and a claim to the public that they will be able to protect residents during a disaster and quickly return society to its previous condition. The language of emergency itself helps fuel state planners' justification for placing incarcerated workers in dangerous jobs.

Behind this language, emergency planners absolve themselves of wrestling with the conflicting notions that **the state can both knowingly send incarcerated workers into dangerous situations and deny them its own health and safety protections.**

Critics of the current process for emergency declarations note the way they reinforce and expand racial, socio-economic, and political inequities and privilege wealthy communities.³¹ Assigning incarcerated workers to clear away fallen trees or dead animals or to fight fires threatening private property exacerbates wealth inequality—sometimes literally, as in the case of filling sandbags for property owners—while ignoring the needs of the communities where their own families and friends live.

Emergency Operations Plans provide insight into how states use incarcerated labor as part of emergency response.

Not all states include a role for incarcerated workers in their EOP, and sometimes ambiguity in language complicates analysis. In 2020, researchers found EOPs for 47 states, and concluded that nearly two-thirds called for incarcerated labor in at least one of the 15 functional areas.³²

We also examined publicly available EOPs to analyze the language emergency management authorities used to discuss incarcerated labor and the tasks they are assigning to them. In a few cases, the role of the state's DOC is limited. In Maryland and Massachusetts, the EOP has no specified role for the Department of Corrections (DOC), while Pennsylvania lists only responsibilities for maintaining carceral facilities and occupants. Connecticut's plan notes transportation and communications equipment that the DOC might provide but remains largely silent on the issue of human labor.

In other cases, the role for the DOC is broadly stated and vague:

- In Louisiana, the plan simply states that for various functions, the DOC and other agencies are "responsible for developing and maintaining plans, procedures and asset inventories" to support the primary agency coordinators.³³
- In Oklahoma, the DOC is flagged for support in public works, firefighting, and distributing donations, assigned "as requested, [to] provide manpower, equipment, and other appropriate resources."³⁴ Oregon notes that when the

state issues any state of emergency declaration, “inmate work crews” might be dispatched to tasks like mass feeding operations, debris mitigation, wildland firefighting mop up, or setting up mobile showers.³⁵

While some incarcerated workers may be confined in camps during a disaster response, carceral facilities themselves pose significant risks for those compelled to live there during a climate-change emergency.³⁶

One incarcerated firefighter in Washington State filed a grievance over the heat at a correction center, saying “I battle dehydration and heat exhaustion. The living conditions in my unit when returning from work are unsafe due to oppressive heat.”³⁷

Flooding in the Florida Panhandle in 2014 resulted in a gas explosion in the laundry room of the Escambia County Jail, killing two incarcerated people and injuring 184 others and corrections staff.³⁸

When a natural disaster takes place, the people incarcerated within carceral facilities depend on corrections officials to safely evacuate them. A survey of nearly 600 incarcerated Californians found that 72 percent did not know the emergency procedures in case of extreme heat, 88 percent did not know how to respond to extreme cold or to wildfires, and 92 percent reported no knowledge of procedures to address flooding.³⁹

Frequently, people inside carceral facilities are not evacuated during natural disasters or are evacuated carelessly and haphazardly to other unsafe facilities without even the knowledge of their loved ones.⁴⁰

But in other states, during an emergency the role of incarcerated workers is laid out more specifically:

- Arizona’s firefighting plan calls for the DOC to provide a “minimum 20-person crew plus supervision for multiple labor tasks including certified wildland firefighting, debris removal, sandbagging, etc.”⁴¹
- In the event of a biological incident or a pathogen outbreak in Alabama, incarcerated workers may be assigned by the DOC “to use as a labor force to clear roadways and debris after storms,” and “to assist in the collection and disposal of animal carcasses.”⁴²
- In Kansas, they may be deployed for “cleaning domestic animals, and livestock care.”⁴³
- North Carolina’s plan states that in a heat emergency the DOC may, “provide prisoner work teams to assist with the heat emergency response.”⁴⁴

In many states, “offender labor” and “correctional facility work crews” are to be available for sandbagging, non-hazardous cleanups, distributing meals to emergency personnel, and especially in doing wildland firefighting work.

Some EOPs list work assignments that muddy the distinctions between work that supports the internal functioning of the carceral facility and public works that take place outside the property:

- Illinois' mass care plans call for "use of the correctional institution (including the use of individuals in custody and correctional center staff) for the preparation of food for disaster victims and emergency workers" and to "provide for the use of correctional center laundry facilities to wash disaster victims' and emergency workers' clothing."⁴⁵
- Nevada's plan similarly mentions that the DOC might provide "meals from institutional culinary facilities,"⁴⁶ using systems that typically include incarcerated workers as staff.

This distinction between work to maintain the carceral facility itself and work outside of it to maintain private property and public order can become important for decisions regarding incarcerated workers' pay and whether they have access to health and safety protections.

The carceral system defines incarcerated labor in contradictory ways to avoid employer responsibilities.

Departments of Correction depend on two narratives about incarcerated workers and disaster work to distance themselves from legal definitions of employers; they simultaneously cast this work as an integral part of punishment, but they also claim that the work is "similar to community service or volunteer work."⁴⁷

Neither narrative fully reflects the role that incarcerated workers play in state-designed emergency preparedness and response, even as both give the DOC and state policymakers a rationale for excluding these workers from standard health and safety protections.

OSHA exempts workers who are currently incarcerated because the agency regulates employers and thus only protects workers who are classified as "employees." In a continuation of the antebellum privileging of white "free labor" over Black "slave labor," courts have frequently ruled that incarcerated people live within a system of forced and unpaid labor and are therefore not employees.

Although most prison work programs consistently emphasize the voluntary nature of incarcerated work—as skills development, altruism, voluntary rehabilitation, or a means to a shorter sentence—OSHA and the courts have determined that the coercive nature of the penal relationship makes a true market relationship within the carceral system impossible.⁴⁸

This stance is rooted in the provision in the 13th Amendment that allows for involuntary servitude as "punishment for a crime whereof the party shall have been duly convicted." As one researcher notes, in the United States "prison is punishment, prisoners are

convicts, not workers, and regardless of the work they may perform, their offenses have not earned them the 'privilege' of workplace safety."⁴⁹

Similar to the notion that participants in welfare programs must prove their worth by working to gain access to benefits, incarcerated people must work without pay or benefits to prove they are being punished.

However, even as the coercive nature of incarcerated work is used to justify a lack of health and safety protections, DOCs also take great pains to cast this work as voluntary. The language of volunteerism can serve a strategic legal purpose.

Just as the category of prisoner is not extended labor protections, so too volunteers are not generally covered by labor standards that protect employees in a contractual relationship with employers. In claiming that incarcerated people uniformly want to serve outside communities in a time of need, carceral systems echo the post-bellum racially based arguments that have long protected their ability to direct unpaid and underpaid incarcerated labor and to avoid the statutory obligations of employers.

Relatedly, this characterization of incarcerated disaster work as redemptive or rehabilitative to the incarcerated worker also relieves lawmakers of funding actual alternatives to incarceration, casting unpaid work as a reform alternative itself.

One effect of the failure to include incarcerated workers in OSHA's jurisdiction is that carceral facilities are excused from reporting requirements to which other employers must comply. As a result, our knowledge about the rate or type of injuries or illnesses that these workers may suffer doing emergency disaster work is limited.

One report found that incarcerated wildland firefighters in California were four times more likely to suffer some injuries and eight times more likely to inhale smoke and particulates than professional firefighters on the same fire.⁵⁰ OSHA data on facilities that hire work-release incarcerated workers show at least 20 complaints between 2017 and 2020.⁵¹

Workers recognize the peril of working while incarcerated. Among the demands during an extended strike by incarcerated people during 2021 was the lack of safety protection for prison labor,⁵² and 64 percent of incarcerated workers interviewed by researchers stated that they were concerned about their safety while working.⁵³ However, they are also aware of the limited options to address these concerns.

The carceral context complicates workers' choices to accept dangerous work.

One typical response to worker complaints of dangerous workplaces is to say they should simply find other work. While this is a questionable solution for any worker, it is clearly not an option for an incarcerated one.

Incarcerated workers are unable to challenge workplace directives lest they experience dangerous repercussions. These workers may feel they must accept dangers while doing disaster work to avoid potentially worse circumstances as punishment for refusal.

Poverty and debt push incarcerated workers into unpaid and underpaid disaster work.

Pay for incarcerated disaster workers is often difficult to uncover, and in some cases, it is determined by the agency for which the work is being done.⁵⁴

- As of 2017, in Alaska, community works projects paid incarcerated workers up to \$1 per hour (though with no provisions for pay beyond 8 hours of work).
- In Idaho work camps pay between 50 and 90 cents per hour.
- In Minnesota, wages were specified for bio-hazardous waste cleanup work at a rate of \$2.00 per event.
- In Missouri incarcerated workers on detail with the Department of Transportation—which could include both disaster work and day-to-day litter details—are paid \$7.50 per day.
- South Dakota’s incarcerated wildland fire workers get paid 38 cents per hour, but if staff find their work unsatisfactory, they may not be compensated at all.
- California’s DOC maintains numerous conservation camps from which incarcerated workers do preventive forestry work and fight active fire outbreaks. For weeks that may stretch to 72 hours, they are paid approximately \$3 to \$5 a day with a slight increase for active firefighting work.⁵⁵
- In Washington State, incarcerated firefighters are paid about 62 cents per hour.⁵⁶

Even these meager wages may not reach the incarcerated worker, but in what some call a “play-to-stay” system may be garnished by the carceral facility to pay for operations costs.

Other systems may take wages to offset criminal justice system fines, fees, or restitution costs:⁵⁷

- In Montana, the DOC’s crew of incarcerated firefighters are paid \$15 an hour by the Department of Natural Resources, but the DOC applies \$50 per day toward the worker’s court fees, restitution, or child support with the remainder going to pay prison operations costs.⁵⁸
- Carceral facilities also charge exorbitant rates for basic necessities like warm clothing, extra food, toilet paper, and soap – in at least 18 states, assistance given to those who cannot afford the inflated prices is issued by the facility as repayable debt.⁵⁹

This practice of layering indebtedness on top of incarceration can act as another form of coercion that keeps incarcerated workers doing emergency disaster work even at risk to their own bodily safety; if they aren't earning even pennies for their labors, they cannot escape these monetary sanctions.

Violence and conditions within carceral facilities may push incarcerated workers into disaster work.

The living conditions in carceral facilities can be so brutal that those living there may see any chance to leave as a saving grace, no matter the conditions in the work camps or on the job doing disaster work. "I never met a fellow prisoner who didn't want to be in 'fire camp'," recalls Matthew Hahn who was incarcerated in California. "The conditions in California prisons are so terrible that fighting wildfires is a rational choice. It is probably the safest choice as well."⁶⁰

Poor living conditions, insufficient staffing, hostile authoritarianism, social isolation, and undiagnosed mental trauma all combine to make carceral facilities dangerous places.⁶¹ Carceral facilities may be built on properties that are highly vulnerable to disasters like flooding,⁶² earthquakes,⁶³ hurricanes,⁶⁴ and wildfire smoke.⁶⁵

During 2023 heat waves, incarcerated people reported being exposed to dangerous levels of heat in Texas, Kentucky, Alabama, New York, Louisiana, Pennsylvania, Florida, Iowa, and in carceral facilities run by the Bureau of Indian Affairs or tribal nations.⁶⁶ Researchers have found that just one extreme heat day in a carceral facility's location could result in a 3.5 percent increase in deaths, with the rate rising to 7.4 percent during a three-day heatwave.⁶⁷

These poor conditions can result in serious injuries for incarcerated people. According to 2004 data, people incarcerated in state facilities suffered a violence-related injury rate more than 14 times that of community residents, and accident-related injuries were 2.3 times higher than among community counterparts. Researchers found that those on work details suffered fewer violent injuries, although their work-related accident injury rate increased.⁶⁸

Even shorter-term disaster preparedness work may seem more appealing than the day-to-day existence in a carceral facility. Incarcerated workers filling sandbags in Illinois received contributions of food from local fast-food restaurants, which may have been a welcome and necessary supplement to carceral meal offerings.⁶⁹

Mr. Hahn also observed that the food at the fire camps was plentiful and "more nutritious and higher-calorie than those served in the chow hall behind the walls." He called the decision to participate in the program as one "made under duress."⁷⁰

Incarcerated workers may acquiesce to dangers in disaster work to limit the terms of their imprisonment.

Given the perils of life inside a carceral facility, incarcerated workers may accept dangerous disaster work to earn expedited early time off or to protect promises of an earlier parole.

- In California, incarcerated workers earned “good time,” or days off their sentences, at a higher rate for doing firefighting work than any other type of work assignment.⁷¹
- In Colorado incarcerated workers can earn time off sentence for various educational or therapeutic programs, but get an additional 1 day for every day they spend working at a disaster site,
- In Nevada, they earn 10 days for a month working in a conservation camp. In Louisiana they must work a full 30 days on disaster remediation to earn an equivalent 30 days off their sentence.⁷²

“Good time” can be used as a punishment as well as an incentive.

- In Tennessee, laws written before the recent vote to abolish coerced labor in the state said that, “Any prisoner refusing to work or becoming disorderly may be confined in solitary confinement.”⁷³
- Texas DOC policies state that an incarcerated person who refuses to work may have recreational privileges taken away or be restricted to their cell.⁷⁴
- Refusing to work while incarcerated in Louisiana can mean punitive forfeiture of 15 days of good time, loss of wages, and solitary confinement up to 180 days.⁷⁵
- A 2022 labor strike in Alabama carceral facilities resulted in the Alabama DOC limiting meals, switching to a less substantial “holiday meal schedule” on the fourth day of the strike and serving only two meals a day.⁷⁶ The same year, Alabama voters approved a ballot measure to change the state’s constitution and prohibit slavery and involuntary servitude, but just months later the Alabama Governor signed an executive order calling for strong punishments if incarcerated workers refuse to work. If an individual refuses, he could lose two years’ worth of accrued time off sentence and could not earn any new time for at least six months. And if he is perceived to be encouraging others to refuse, the penalty increases to three years of lost accrued time and a prohibition on earning new time for a year.⁷⁷

With these dire consequences, an incarcerated worker assigned to clear downed trees after a storm or incinerate culled animals after an avian flu outbreak is highly unlikely to prioritize his own safety or that of his fellow workers over obeying orders to work.

Incarcerated workers have little or no legal protection from injury or illness.

Incarcerated workers labor under patchwork of health and safety rules. There is one set for those in federal facilities and different rules for those in state or local carceral facilities.

Some state OSHA plans cover only selected incarcerated workers, while other states explicitly exclude all incarcerated workers, and still others decide on a case-by-case basis. As a result, tens of thousands of workers face injury and even death as they perform inherently dangerous disaster work and critical public safety functions.

The consequences can be dire. Travis Buckley, who was incarcerated in Alabama, recalls feeling fearful about his assignment to chainsaw a tree that was blocking a road. He had

never been trained on this equipment. He was told to do the task anyway or risk a written reprimand that could imperil his eligibility for parole. The resulting accident left him paralyzed.⁷⁸

Similarly, seven incarcerated women in Nevada working as part of a fire crew allege that after a three-day initial classroom program, they did not receive other crucial firefighting training in the field before being sent in to a “mop up” operation to clean up any burning. When their protective boots failed, they were not able to refuse to continue working lest they be sent away from the camp to a high security facility.⁷⁹

Federal OSHA has a narrow provision for jurisdiction over a small number of incarcerated workers.

In federal prisons, if the work performed by incarcerated workers has them “working in conditions similar to those outside prisons,” they can file an OSHA complaint, but results are few and far between.

The Bureau of Prisons requires advance notice from OSHA of any inspection and control over witness interviews by prison officials. The facility can even simply ask OSHA officials to leave, after which they may not be allowed to complete the investigation.

“If this occurs, the Bureau [of Prisons] will be requested to complete the investigation and provide a report to OSHA,” explains an OSHA directive.⁸⁰

The role of the carceral power structure in the safety claims process creates a strong disincentive for workers to raise concerns about workplace safety, particularly without real whistleblower protections. One survey of incarcerated people found that more than 70 percent of respondents said they faced retaliation after voicing grievances about facility operations, and 87 percent believed that the corrections staff would retaliate if they used the grievance process.⁸¹

In addition, more than half of incarcerated people are in state-run facilities, and Section 3(5) of the OSHA Act specifically excludes a State or any political subdivision of a State from coverage. Dodging the question of whether incarcerated workers meet other legal criteria for employment, an OSHA interpretation letter written in 1992 explains to a man incarcerated in Colorado that it will not investigate his complaint of exposure to hazardous chemicals because the OSH Act does not cover Colorado’s own employees, “including inmates in correctional institutions, either paid or nonpaid.”⁸²

Most state OSHA plans also fail to protect incarcerated workers in state and local carceral facilities.

There are 22 state plans that cover both private sector and public sector workers. Another 7 states or territories have a plan solely covering public sector workers (who are exempted from federal OSHA) but depend on the federal infrastructure to protect private sector workers.

Any state plan must be deemed at least as effective as OSHA in protecting workers and preventing workplace illnesses and injuries. Generally, incarcerated workers in states

with their own OSHA plans do not have any more protection than their counterparts in states where health and safety is overseen by federal OSHA. Here, too, OSHA agencies have jurisdiction over “employers” and their “employees.”

In some cases, lawmakers explicitly exclude incarcerated workers from state protections.

- In Arizona the state code specifies that “no prisoner given a work assignment or required to perform any labor by the state department of corrections shall be considered an employee or to be employed” by the state or the DOC, and therefore “none of the rights or privileges otherwise accorded to employees by law shall accrue to such prisoners.” Its definition of “employment” does not include “an inmate of a custodial or penal institution,” primarily because hard labor is required by those in carceral facilities.⁸³
- In New Mexico, “An inmate participating in the [forestry work camp] program shall not be considered an employee of the state or of any other person deriving benefits from inmate services pursuant to the program.”⁸⁴ Even when a private company is operating on carceral property and is bound by occupational health and safety standards, the workers doing the work are considered “volunteers” and therefore not “employees” for purposes of filing an occupational health and safety complaint.⁸⁵
- In Kentucky, where seven incarcerated workers were killed in a private manufacturing facility when a tornado hit in 2021, the statute regarding the leasing of incarcerated labor states that, “the leasing of prisoner labor shall not be deemed to create an employer-employee relationship between the person leasing the labor of the prisoner and the prisoner.”⁸⁶
- A North Carolina Department of Justice opinion letter determines that because incarcerated workers are laboring “for the public benefit” of lowering carceral facility costs and to gain “skills and work habits needed to secure honest employment after their release,” they are not employees for purposes of the state’s occupational safety and health laws.⁸⁷
- A Virginia directive says that because the state’s minimum wage law specifically excludes incarcerated workers, unless an incarcerated worker is employed by a public employer as part of a work-release program, she is not under the jurisdiction of the state’s OSHA definition of “public employee.” If an incarcerated worker nonetheless filed a complaint, the state OSHA regional director may choose to send a notification to the warden of the correctional institution notifying them of the complaint.⁸⁸

In other states, decisions about occupational safety and health agencies’ jurisdiction over these workers may be made on a case-by-case basis.

- In Nevada, OSHA may investigate the injury of an incarcerated worker if they are being compensated for the work,⁸⁹
- In Utah OSH officials report that claims filed by incarcerated workers have resulted in investigations if the work is done for a private employer inside the carceral facility.⁹⁰
- In Wyoming state law specifies that “inmates” are excluded from the definition of “employee,” but DOC policies and procedures state that facilities should have

written documentation that working conditions meet any applicable health and safety standards, and if an incarcerated worker filed a complaint with the state's OSHA agency a compliance team would review the complaint to determine if they have jurisdiction over the case.⁹¹

In some states selected incarcerated workers may have health and safety protections.

Along the West Coast, state OSHA programs do offer some levels of protection for incarcerated workers.

- In Oregon, cities and counties might make the decision to include incarcerated workers in their workers' compensation programs, and in accordance with state code those workers would then also be covered by occupational safety and health laws.⁹² (It is unclear how this system may change because of the 2022 ballot initiative to abolish slavery and involuntary servitude from the State Constitution, see box below.)
- In California, if CalOSHA receives notice of an injury or death of an incarcerated worker the agency can communicate recommendations to the DOC "of ways in which corrections might improve the safety of the working conditions and work areas of state prisoners and other safety matters." If the DOC does not comply with those recommendations or CalOSHA otherwise deems it necessary, it can adopt special orders with which correctional staff must comply.⁹³
- And in Washington State, the occupational health and safety agency is required to consider incarcerated workers who are doing work for private companies, state-owned and -operated work programs, or providing services to the government or non-profit organizations as being within its jurisdiction. (However institutional support services or court-ordered community service programs are considered compulsory and are therefore not covered by the state OSHA agency.⁹⁴)

It is unclear how recent votes in Oregon, Tennessee, and Vermont to remove prison labor from their constitutions will impact state-plan OSHA coverage for incarcerated workers. (Alabama voters also chose to prohibit coerced labor, but the state is covered by federal OSHA).

For example, Tennessee Code has a provision stating that no government agencies or government employees would have any liabilities to incarcerated workers who were injured on the job and state OSHA employees stated to us that incarcerated workers did not fit the definition of "employee."

Even after its amendment banning slavery was passed, a recent investigation of incarcerated labor in Colorado found that more than 14,000 incarcerated people were given disciplinary write-ups for failing to work, with many assigned to do even more work or losing other privileges.⁹⁵

Even in these states, some incarcerated people may not receive the benefits of the health and safety protections in the place where they were convicted. Interstate agreements allow one state to send incarcerated people to another, so that, for example, an incarcerated worker from Washington State where at least some types of work merit OSHA coverage might be sent to serve a sentence in Arizona where they do not.

In fact, in 2019 Washington State sent people to 23 other states many of which do not have their own OSHA systems and some of which, like Florida, have compulsory labor mandates for all incarcerated people. In Vermont, where voters approved a measure to abolish slavery for incarcerated people, 15 percent of people in the state's prisons were transferred to other states in 2019.⁹⁶

Conclusion

Extending health and safety protections to incarcerated workers doing state-mandated disaster work alone does not address the coercive nature of this work. And yet it is a step that can protect workers and inspire greater campaigns and challenges towards economic justice and decarceration.

Despite claims that the work is voluntary, these workers are compelled to obey the demands of supervisory corrections officials, or the directives of other state agency personnel, and every element of the work is controlled by DOC staff or officials of other state agencies.

Their work is a critical component of emergency preparedness and response, and several officials have been candid about their inability to perform these duties without the un- or under-paid labor of incarcerated workers. Including these workers in ordinary safety standards during a disaster is the least the state could do in return for their work. At the same time, exempting incarcerated workers by simultaneously arguing that the work is compulsory and it is voluntary delegitimizes the fundamental commitment of OSHA to protect all workers.

Ultimately, the abolition of coerced labor entirely is a matter of basic human rights and dignity.

As scholars of the carceral system have observed, incarcerating significant portions of a community weakens its own ability to survive a natural disaster and rebuild while carceral facilities fail to protect incarcerated people in their roles as workers and residents alike.⁹⁷

As a first step, every state should follow the examples set by Rhode Island, Nebraska, Utah, Alabama, Colorado, Oregon, Vermont, and Tennessee and amend state constitutions to prohibit all slavery and indentured servitude. And they should then immediately change all regulations, rules, statutes, and practices that exempt these workers from basic labor standards or that allow the carceral system to coerce labor or punish the refusal to do labor by incarcerated workers.

Another short-term protection on the path to abolition of coerced labor is to ensure that these workers have the right to fundamental safety on the job as a concrete policy to counter callous disregard for their bodily integrity and value as workers.

- This year the Correctional Facilities Occupational Safety and Health Act was introduced in both the US House and Senate to amend the OSH Act to include state and local facilities as employers and incarcerated workers as employees, and to require the same of state plans. Lawmakers should pass this Act now and with requirements that OSHA implement and enforce it quickly.
- All states with their own OSHA plans should explicitly extend health and safety protections to all incarcerated workers. Those with partial protections should make policy changes to create parity between incarcerated workers performing labor within carceral facilities and those working outside the facility. OSHA officials should craft these policy changes in partnership with incarcerated workers themselves through the formation of an advisory committee to identify the health and safety needs of this community appropriately and adequately.
- Both state and federal OSHA agencies should insist on the collection of illness and injury data among incarcerated workers and the federal agency should make all reported data publicly available.
- States with labor protections for incarcerated workers, including health and safety protections, should not engage in agreements to move incarcerated people to other states. Not only does this practice deprive them of the protections that voters and elected leaders in their own communities have deemed important for them, but it also separates incarcerated people from the family and community connections that are critical for reentry after release.

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⁹⁰ Phone call with UT OSHA staff, August 24, 2023, notes on file with author.

⁹¹ WY 27-3-105(b)(xii) <https://wyoleg.gov/statutes/compress/title27.pdf>; Wyoming Department of Corrections, Policy and Procedure 3.210, dated March 16, 2023.

<https://drive.google.com/file/d/1wTPzDvl6KTNb9GXCXEblrtiG9TdgoHjt/view> ; email correspondence with OSHA staff, dated August 28, 2023, on file with author.

⁹² State of Oregon Department of Justice, Opinion Request OP-2004-1, Dated January 5, 2004, <https://www.doi.state.or.us/wp-content/uploads/2017/06/op2004-1.pdf>

⁹³ CA 3.2-2-9 §344.46, https://www.dir.ca.gov/title8/344_46.html

⁹⁴ Washington Industrial Safety and Health Administration, “Regional Directive 1.40,” July 7, 2006. <https://lni.wa.gov/dA/e7f0fac8e3/DD140.pdf>

⁹⁵ “Colorado banned forced prison labor 5 years ago. Prisoners say it’s still happening,” *National Public Radio*, November 13, 2023, <https://www.npr.org/2023/11/13/1210564359/slavery-prison-forced-labor-movement>

⁹⁶ Emma Kaufman, “The Prisoner Trade,” *Harvard Law Review* 133(6), April 2020, <https://harvardlawreview.org/print/vol-133/the-prisoner-trade/>

⁹⁷ J. Carlee Purdum, et. al., “No Justice, No Resilience: Prison Abolition as Disaster Mitigation in an Era of Climate Change,” *Environmental Justice*, 14(6), 2021, https://www.researchgate.net/publication/356811582_No_Justice_No_Resilience_Prison_Abolition_As_Disaster_Mitigation_in_an_Era_of_Climate_Change

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Written Testimony of the Southern Poverty Law Center

Submitted to the U.S. Senate Committee on the Judiciary
Subcommittee on Criminal Justice and Counterterrorism

In connection with its hearing entitled
“State-Sanctioned Slavery: Examining Forced Labor in Prisons”

Hearing May 21, 2024

Organizational Testimony Submitted May 30, 2024

On behalf of the Southern Poverty Law Center, we write to provide our insights for your hearing on “State-Sanctioned Slavery: Examining Forced Labor in Prisons.” We appreciate this opportunity to share our expertise in this area and ask that this statement be included as part of the official hearing record.

The Southern Poverty Law Center’s Work to Protect Human Rights in the Deep South.

The SPLC is a nonprofit advocacy organization working to serve as a catalyst for racial justice in the South and beyond. We work to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. We have deep expertise in the jail and prison systems in our five-state region, which includes Alabama, Florida, Georgia, Louisiana and Mississippi, through extensive litigation addressing prison conditions. Relatedly, the SPLC Action Fund advocates for laws and policies that would reduce reliance on mass incarceration while creating stronger and safer communities. Our international human rights advocacy is focused on pressing for domestic implementation of US obligations under international human rights treaties and laws.

Background.

The prison systems operated by states in the southern US represent a deeply embedded legacy of slavery and racial exploitation. Southern prisons have largely been built on the foundations of the plantation system. For many years after Emancipation, incarcerated people were disproportionately assigned to labor for private companies in arrangements known as convict leasing.¹ Rather than being paid as wages, the funds earned went both into state coffers and into the pockets of unscrupulous officials. Incarcerated people were also ordered to perform manual labor for the state itself, shackled together in “chain gangs,”² which reappeared in some states in more recent times.³ Many were forced to work in plantation-like conditions, such as cotton farms, and were subjected to harsh punishments for failing to work quickly or productively enough, harkening back to the abuses of slavery-era plantation bosses. In many Southern states, including Florida, Georgia, Louisiana and Mississippi in SPLC’s region, incarcerated workers continue to perform farm labor on penal plantations, some of which are on the sites of former slave plantations.⁴ The Committee heard the firsthand experience of Terrance Winn, who was incarcerated on the former slave plantation at the Louisiana State Penitentiary at Angola. Scores of other formerly and currently incarcerated people, disproportionately Black, have suffered the same conditions at Angola and elsewhere. The Promise of Justice Initiative has documented the perpetuation of slavery at Angola through its *End Plantation Prisons* project, which presents videotaped testimonies of a number of survivors, including Mr. Winn.⁵

The facts and figures surrounding forced prison labor in the US are thoroughly presented in the ACLU’s excellent 2022 report, [Captive Labor: Exploitation of Incarcerated Workers](#). We write separately to highlight the many violations of US international human rights obligations that are

¹ Terrell, E., [The Convict Leasing System: Slavery in its Worst Aspects](#). The Library of Congress, June 17, 2021.

² [Slavery By Another Name: Chain Gangs](#). PBS.

³ [The Return of the Chain Gangs](#). Washington Post, May 3, 1995.

⁴ [Captive Labor: Exploitation of Incarcerated Workers](#). American Civil Liberties Union, 2022, at 34.

⁵ [End Plantation Prisons](#). Promise of Justice Initiative.

inherent in these practices as they persist today. The continued failure of the US to undertake domestic implementation of its obligations under ratified international human rights treaties contributes substantially to a wide variety of deeply harmful conditions and practices that disproportionately impact Black and Brown people and communities. One important step Congress can take to implement the human rights obligations discussed below is to require that existing laws for the protection of workers, such as regulations promulgated under the Occupational Health and Safety Act and Fair Labor Standards Act, be applicable to incarcerated people. In the absence of such basic protections, the forced labor of the disproportionately Black and Brown incarcerated workforce – worth billions of dollars annually – perpetuates both slavery and mass incarceration.

Violations of International Human Rights Obligations Associated with Forced Prison Labor.

The terrible and dehumanizing labor conditions under which incarcerated people are forced to work, as detailed in the ACLU's report, are broadly violative of Articles 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR),⁶ which prohibit subjecting incarcerated people to cruel, inhuman or degrading treatment or punishment, and require that they be treated with humanity and with respect for the inherent dignity of the human person.

The inhumane and degrading forced labor practices in US prisons also violate a number of specific provisions of the UN Standard Minimum Rules for the Treatment of Prisoners⁷ (the Nelson Mandela Rules), adopted by the United Nations General Assembly to provide a baseline of minimum standards to ensure the humane treatment of incarcerated people. The US championed the adoption of the Mandela Rules at the May 2015 session of the UN Commission on Crime Prevention and Criminal Justice, and opposed efforts to allow some countries to disregard portions of the Rules based on religious or cultural issues.⁸ The US has also explicitly incorporated the Mandela Rules into its own worldwide penal reform programs.⁹ It should certainly hold itself to the same standards it promotes abroad.

Following its official US country visit in 2023, the UN's International Independent Expert Mechanism to Advance Racial Justice and Equity in the Context of Law Enforcement (EMLER) made extensive findings about what it called "shocking" forced prison labor conditions in the US.¹⁰ Declaring itself "astonished by evidence stating that this access to free or almost free Black work force, through free or poorly paid prison forced labour, exists to this day in the United States, constituting a contemporary form of slavery," the EMLER called on the US to eliminate these practices in accordance with international human rights standards, such as the Mandela Rules.¹¹

⁶ United Nations, *International Covenant on Civil and Political Rights*, Treaty Series, vol. 999, December 1966, at 171.

⁷ United Nations General Assembly, A/Res/70/175 (January 8, 2016).

⁸ *Victory! UN Crime Commission Approves Mandela Rules on Treatment of Prisoners*, ACLU, May 27, 2015.

⁹ *The Nelson Mandela Rules: Honoring a Prisoner Turned World Leader*, US Department of State, July 18, 2017.

¹⁰ UN Human Rights Council, *International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement: Visit to the United States of America*, A/HRC/54/CRP.7, September 26, 2023, at Section V.J.

¹¹ *Id.* at paras 111, 114.

Incarcerated Workers Make Pennies on the Dollar. This Must End.

Rule 103 of the Mandela Rules provides that incarcerated workers should receive equitable pay, be able to send money home to their families, and have a portion of their wages set aside to be given to them upon release. Minimum wage and overtime pay laws that protect most US workers don't apply to incarcerated people.¹² The US Supreme Court has also held that incarcerated workers have no right to form unions to help them negotiate for better pay or conditions, with the Court reasoning that permitting union activities could "stir up trouble among incarcerated individuals."¹³ In many US prison systems, incarcerated people are forced or coerced to work jobs for which they are paid negligible wages – and some states pay nothing at all.¹⁴ For example, more than 2,100 incarcerated people work at Texas prison farms without pay, along with about 120,000 more who perform other types of work without pay.¹⁵ SPLC's states of Alabama, Florida, Georgia and Mississippi also pay nothing to incarcerated workers for most of the jobs they do.¹⁶

Incarcerated workers who are paid typically receive only cents per hour. People incarcerated in prisons operated by the US federal government are required to perform physical labor unless medically unable and are paid between 12 cents and 40 cents per hour.¹⁷ The average hourly wage paid to incarcerated workers for non-industry jobs is between 13 and 52 cents per hour.¹⁸ Incarcerated people are often required to work overtime or to be on call for emergency situations at all times without any additional compensation.¹⁹

The massive prison labor system, both through labor that is turned into cash and through labor that replaces the need to pay external workers, is what allows US mass incarceration to persist. More than 80% of incarcerated workers perform low-skilled maintenance in the facilities that imprison them, performing the work of janitors, plumbers, electricians, and auto mechanics.²⁰ Incarcerated people are also assigned to work-crews that clean and maintain public lands and facilities outside the prisons. About half of these public works programs are located in southern states.²¹ In Florida, where about 3,500 incarcerated people are assigned to road crews and community work crews, a former state official candidly admits that "there's no way we can take care of our facilities, our roads, our ditches, if we didn't have inmate labor."²² Outside of prison, some of these jobs would pay more than \$20 per hour, but the state prison workers who are forced to do them often earn nothing or are paid less than \$1.50 per hour.²³ In North Carolina, for example, state law provides that contracted prison laborers are to be paid "in an amount not exceeding \$1.00 per day."²⁴

¹² *Captive Labor*, *supra*, at 58.

¹³ *Jones v. North Carolina Prisoners Union*, 433 U.S. 119, ____ (1977).

¹⁴ [How much do incarcerated people earn in each state?](#), Prison Policy Initiative, April 10, 2017.

¹⁵ *Captive Labor*, *supra*, at 36, 55.

¹⁶ *Id.* at 55.

¹⁷ [Work Programs](#), US Bureau of Prisons.

¹⁸ *Captive Labor*, *supra*, at 55.

¹⁹ *Id.* at 56.

²⁰ *Captive Labor*, *supra*, at 38.

²¹ *Captive Labor*, *supra*, at 30.

²² *Id.*

²³ *Captive Labor*, *supra*, at 38.

²⁴ [N.C.G.S. Art 3, § 148-26\(a\)](#).

The value of maintenance services performed by incarcerated people is estimated to be at least \$9 billion annually,²⁵ and incarcerated workers also produce more than \$2 billion in goods each year.²⁶ Article 10 of the ICCPR provides that the “essential aim” of the carceral system “shall be the[] reformation and social rehabilitation” of those incarcerated, but states have a vested interest in maintaining the prison population at a high level, since they would have to pay fair market wages to external workers if incarcerated people were not available to do the work both inside and outside the prisons. In other words, the supply of slave labor states have come to rely on depends on the perpetuation of mass incarceration.

Rule 99 of the Mandela Rules specifies that the interests of incarcerated people, including their interest in rehabilitative vocational training, “must not be subordinated to the purpose of making a profit” from their labor. State-run prison industries sell goods and services to other state agencies at a fraction of what the state would otherwise pay. Every state except Alaska operates a correctional system industry, and the U.S. federal government does the same.²⁷ These workers produce everything from office supplies and furniture to agricultural products and license plates.²⁸ The value of the goods and services they provide was more than \$2 billion in 2021.²⁹ State-owned prison industries also sell to private, for-profit companies at far lower costs than they would pay on the open market. For example, prison industries in Colorado and South Carolina sold more than \$10.5 million of milk between 2017 and 2020 to the conglomerate that markets 30% of milk produced in the U.S.³⁰

Incarcerated people’s labor is also widely used by for-profit entities at little or no financial benefit to the incarcerated workers, hearkening back to the Reconstruction-era practice of “convict leasing” by providing labor to for-profit industries at extremely low rates.³¹ A currently pending class action lawsuit against Alabama officials and for-profit entities such as meat processors, automotive parts manufacturers and fast food chains details how more than 1,300 people assigned to “work release” programs are charged 40% of their gross pay for the costs of their incarceration, leaving them with very little income for their low-cost labor.³²

Compounding the paucity of their wages (if any), incarcerated people also experience significant price gouging for goods and services such as commissary items,³³ medical care charges,³⁴ and exorbitant telephone fees,³⁵ recalling the economic exploitation of sharecroppers in the years

²⁵ *Captive Labor*, *supra*, at 6.

²⁶ *Id.*

²⁷ *Id.* at 29.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 41-42.

³¹ [Involuntary Servitude: How Prison Labor is Modern Day Slavery](#), Harvard Political Review, February 3, 2022.

³² [Complaint, Robert Earl Council, et al., v. Kay Ivey, et al.](#), United States District Court for the Middle District of Alabama, at para. 15.

³³ [Following the Money of Mass Incarceration](#), Prison Policy Initiative, 25 January 2017.

³⁴ [Should Prisoners Have to Pay for Medical Care During a Pandemic?](#), The Marshall Project, 20 November 2020; [The \\$580 co-pay](#), The Marshall Project, 30 May 2018.

³⁵ [The staggeringly high price of a prison phone call](#), Katrina vanden Heuvel, Washington Post, 30 November 2021. A 2023 law is expected to bring telephone costs down. [Since You Asked: What’s next for prison and jail phone justice now that the Martha Wright-Reed Just and Reasonable Communications Act is law?](#), Prison Policy Initiative, 19 January 2023.

following the abolition of chattel slavery. In Alabama, for example, incarcerated people must pay such expenses as \$15 a month for laundry, \$4-8 for medical co-pays, and \$5 per day for transportation to work release jobs.³⁶ Combined with offender-funded criminal legal systems that impose massive fines and fees on people convicted of crimes,³⁷ these charges and the lack of even minimum wage compensation cause many people who are eventually released from prison to be saddled with overwhelming debt for decades – despite having been required to work throughout their incarceration. Incarcerated workers’ wages are also not counted for purposes of social safety net programs like Social Security, Medicare, and disability and unemployment benefits, leaving the workers without protections they have rightfully earned even after their sentences end.³⁸

Notably, prisons often deduct up to 80% of wages to pay for court fines and fees, taxes, restitution, child support, and even “room and board.”³⁹ In Florida, a state-created “Prison Industries Trust Fund” deducts funds from incarcerated people’s wages for the construction or renovation of correctional facilities and correctional work programs.⁴⁰

Recommendations:

- Adopt legislation, such as the “Fair Wages for Incarcerated Workers Act of 2023,” to ensure that incarcerated workers are paid at least the federal minimum wage for their labor and are otherwise protected by the Fair Labor Standards Act.
- Require private businesses who employ incarcerated workers to pay those workers the prevailing wage paid to other workers for the same jobs.
- Eliminate policies and practices that require incarcerated people to pay for necessities such as medical care and basic hygiene supplies.

Improve the Health and Safety Protections for Incarcerated Workers

Mandela Rule 101 provides that “the precautions laid down to protect the safety and health of free workers shall be equally observed in prisons,” and that “provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.” Federal worker safety standards do not apply to the vast majority of incarcerated workers⁴¹, and many states, such as Texas, expressly exclude incarcerated workers from receiving compensation for work-related injuries.⁴² The only protection afforded to prison workers under the US constitution is rendered all but meaningless by the evidentiary standard an injured worker would be required to meet in court. In addition to establishing unsafe conditions, the incarcerated person would have to prove that prison officials

³⁶ Council complaint, *supra*, at para. 16.

³⁷ [Who Pays? The True Cost of Incarceration on Families](#), Ella Baker Center for Human Rights, *et al.*, September 2015; [After a hard-won sentence reduction, Huntsville man’s court debt is another obstacle to freedom](#), Southern Poverty Law Center, 12 November 2019.

³⁸ *Captive Labor*, *supra*, at 60.

³⁹ *Id.* at 58-59.

⁴⁰ *Id.* at 60.

⁴¹ *Id.* at 61.

⁴² [Regulating Prison Labor](#), The Regulatory Review, 20 October 2021.

knew that those conditions posed a substantial risk of serious injury but did nothing to protect the worker from harm.⁴³

Much of the work required of incarcerated people is quite arduous and dangerous.⁴⁴ For example, the ACLU's recent report found that nearly one-third of counties in the state of Georgia use unpaid incarcerated workers as firefighters and emergency medical responders. In some counties, they are the sole source of fire and emergency response workers.⁴⁵ In Georgia and North Carolina, at least 24 workers were injured in poultry plant accidents between 2015 and 2018. The ACLU found numerous instances in which incarcerated workers were maimed or killed using dangerous machinery, falling from trees, or fighting fires.⁴⁶ Furthermore, farm laborers are often required to work in extreme heat without adequate access to water. In Louisiana, one former prison worker recalled that if a worker collapsed from the heat and was deemed to be "faking," he might be sent to solitary confinement or simply left unconscious in the field.⁴⁷

Prison workers are often tasked with dangerous work without being provided proper training or safety equipment. An SPLC investigation found that incarcerated people in at least eight states are sent to work at poultry plants in hazardous conditions.⁴⁸ One such worker in Alabama was killed while operating a machine that caught his arm and pulled him inside. Workers at the plant apparently did not know how to turn the machine off.⁴⁹

Recommendations:

- Adopt legislation, such as the "Correctional Facilities Occupational Health and Safety Act of 2023," to require that incarcerated workers be included in the protections afforded under the Occupational Health and Safety Act.

Eliminate Racial Disparities in Work Assignments

Pursuant to Article 2 of the ICCPR, the US is obligated to respect and to ensure the rights protected by the ICCPR to all individuals in its territory and jurisdiction "without distinction of any kind," including on the basis of race. In addition, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁵⁰ requires state parties to "pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms," "to engage in no act or practice of racial discrimination against persons, groups of persons or institutions" and "to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation." Pursuant to Article 1, "racial discrimination" includes "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic

⁴³ *Captive Labor*, *supra*, at 62.

⁴⁴ *Involuntary Servitude*, *supra*.

⁴⁵ *Captive Labor*, *supra*, at 41.

⁴⁶ *Id.* at 62-63.

⁴⁷ *Id.* at 64.

⁴⁸ *The Kill Line*, Southern Poverty Law Center, July 26, 2018.

⁴⁹ *Id.*

⁵⁰ United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination*, Treaty Series, vol. 660, March 1966, at 195.

origin which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.”

Nationally, Black Americans are five times more likely to be incarcerated in state prisons.⁵¹ As of 2021, these stark racial disparities devastated the southern US.⁵²

State	Prison Population	% Black in Prison	% Black in State Population
Alabama	25,032	53%	27%
Arkansas	17,022	40%	15%
Florida	80,417	48%	15%
Georgia	47,010	59%	31%
Louisiana	26,074	66%	32%
Mississippi	17,332	61%	38%
North Carolina	28,995	50%	21%
South Carolina	15,759	59%	27%
Texas	133,772	33%	12%

In 2022, the UN Committee on the Elimination of Racial Discrimination expressed its ongoing concern that because US mass incarceration disproportionately impacts racial and ethnic minorities, forced prison labor practices are also disproportionately inflicted upon them, without just compensation or basic labor protections.⁵³ The Committee recommended that the US undertake “a comprehensive review of domestic laws, policies and practices regarding prison labour, with a view to bringing them into full compliance with the Convention and other international obligations and standards,” including the Mandela Rules.⁵⁴

Prison systems in the South, many of which are located on former slave plantations⁵⁵ or named after former Confederate and enslavers, have been particularly prone to perpetuating elements of slavery-era conditions. The prohibition of cruel, inhuman or degrading treatment in Article 7 of the ICCPR extends “not only to physical pain but also to acts that inflict mental suffering.”⁵⁶ Forcing Black incarcerated people to reenact slave labor conditions in plantation settings, standing alone, constitutes inhumane treatment and also violates their dignity as human beings.⁵⁷

As Mr. Winn testified when he appeared before the UN Committee on the Elimination of Racial Discrimination in 2022,⁵⁸ incarcerated people who refuse to perform degrading forced labor, or who don’t do so to prison authorities’ satisfaction, are often placed in solitary confinement. Mr.

⁵¹ [The Color of Justice: Racial and Ethnic Disparity in State Prisons](#), Sentencing Project, 13 October 2021, at 5.

⁵² [Updated data and charts: Incarceration stats by race, ethnicity, and gender for all 50 states and D.C.](#), Prison Policy Initiative, September 27, 2023.

⁵³ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of the United States of America*, CERD/C/USA/CO/10-12, August 30, 2022, at para. 26.

⁵⁴ *Id.* at para. 27.

⁵⁵ Such as the Angola state penitentiary in Louisiana.

⁵⁶ UN Human Rights Committee, *General Comment No. 20*, CCPR/C/GC/20, March 10, 1992, at para. 5.

⁵⁷ Article 10, ICCPR.

⁵⁸ [Eyes of the World: SPLC Delegation Tells UN Committee of Ongoing Racial Discrimination in US](#), Southern Poverty Law Center, August 24, 2022.

Winn spent continuous periods of up to 13 months in solitary confinement, far longer than the maximum of 15 days prescribed by the Mandela Rules,⁵⁹ and contrary to the Articles 7 and 10 of the ICCPR. Black people are eight times more likely to be placed in solitary confinement and ten times more likely to be held there for excessively long periods of time, some for years at a time.⁶⁰ The racially discriminatory imposition of solitary confinement violates Articles 7, 10 and 26 of the ICCPR and Article 2 of the UN Convention Against Torture.⁶¹

The disparities in the use of solitary confinement on Black men and Latino are documented in a study conducted by The Liman Center at Yale Law School.¹³ Among the thirty-two jurisdictions that self-reported on race and ethnicity among male inmates in the total custodial population and in restrictive housing, Black men constituted 43.4% of the total male restrictive housing population as compared to 40.5% of the total male custodial population in those jurisdictions.¹⁴ Solitary confinement also has been imposed disproportionately on Hispanic and Latino men. While Hispanic and Latino men make up only 15.4% of the total male custodial population, they comprised 16.9% of the male restrictive housing population across all reporting jurisdictions.¹⁵ In North Carolina, Hispanic and Latino men make up 2.2% of the total custodial population and 2.1% of the restrictive housing population.¹⁶ Not only is there a disproportionate use of solitary confinement based on race, but disparities are exacerbated at the intersection of race and gender. Across reporting jurisdictions, Black females only accounted for 21.5% of the total female custodial population, however, they comprised 42.1% of the female restrictive housing population.¹⁷

Mandela Rules 98 and 99 provide that work assigned to incarcerated persons should help to prepare them for life and employment after release from prison. Incarcerated workers are not usually allowed to choose the type of work they perform, and work assignments are often made discriminatory. A 2016 study found Black men were much more likely than white men to be assigned to maintenance and facility service work, which are usually paid either the lowest wages or not paid at all, including agricultural field labor and low-level maintenance work.⁶² Conversely, Black men were less likely to be assigned to prison industry jobs that earn higher wages and offer more valuable skills and experience.⁶³ Race was also a significant factor in job assignments for incarcerated women.⁶⁴ One formerly incarcerated woman in Louisiana reported that she had been assigned to farm labor in the fields while white women worked indoors in the dining hall or in housekeeping.⁶⁵ These racially discriminatory practices violate Article 26 of the ICCPR and Articles 2, 5 and 6 of the ICERD.

⁵⁹ Mandela Rules 43 and 44.

⁶⁰ *The population prevalence of solitary confinement*, Science Advances, 2021, at 5.

⁶¹ United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment*, Treaty Series, vol. 1465, December 1984, at 85.

⁶² *Captive Labor*, *supra*, at 52.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Recommendations:

- Adopt legislation, such as the “Combating Workplace Discrimination in Correctional Facilities Act of 2023,” to ensure that incarcerated people’s work assignments are voluntary and are made in non-discriminatory manner.
- Mandate that work assignments in federal Bureau of Prisons facilities be made in a fair and equitable manner that considers job preferences and the development of skills and abilities.
- Require the federal Bureau of Prisons to collect and report data, disaggregated by race and ethnicity, on all work assignments.

Conclusion.

Forced prison labor in the US is a national scourge that perpetuates many aspects of chattel slavery and forms a critical pillar upon which the even greater scourge of mass incarceration stands. It is past time that Congress protects the civil and human rights of incarcerated workers in the United States and address the myriads of challenges they face with respect to wages, their health and safety, and disparities in the types of work assigned as well as discipline. We urge the committee to advance legislation in line with the recommendations outlined above.

Thank you again for holding a hearing on this critical issue. We appreciate the opportunity to submit this statement and stand ready to work with members of the Committee to address these and other human rights issues. If you have questions or need additional information, please contact Lisa Borden at lisa.borden@splcenter.org.



TESTIMONY FROM WORTH RISES AND OTHER ADVOCATES BEFORE THE SUBCOMMITTEE
ON CRIME AND FEDERAL GOVERNMENT SURVEILLANCE OF THE U.S. HOUSE OF
REPRESENTATIVES COMMITTEE ON THE JUDICIARY

May 21, 2024

An Examination of Prison Labor in America

[Worth Rises](#) is a U.S. non-profit advocacy organization working to end the exploitation of incarcerated people and their loved ones. Worth Rises leads [#EndTheException](#), a campaign to end the exception in the Thirteenth Amendment of the U.S. Constitution that allows slavery and involuntary servitude to be used “as a punishment for crime.” The campaign is part of the Abolish Slavery National Network, a national coalition fighting to abolish constitutional allowances for slavery and involuntary servitude and supported by a diverse coalition of over 90 organizations with expertise in advocating for the basic and most fundamental rights of incarcerated people.

Worth Rises and [#EndTheException](#) call on the Subcommittee on Criminal Justice and Counterterrorism to recommend that the United States Senate Judiciary Committee hold a hearing on Senate Joint Resolution 33, an amendment to the U.S. Constitution introduced by Senator Jeff Merkley (OR), which reads: “Neither slavery nor involuntary servitude may be imposed as a punishment for a crime.” We also urge passage of the bill package introduced by Senator Cory Booker (NJ) that would establish labor rights for minimum wage, workplace safety, and against discrimination for incarcerated workers.

History of Prison Labor in the U.S.

While the passage of the Thirteenth Amendment to the U.S. Constitution is celebrated as abolishing slavery in the United States in 1865, the amendment included an exception clause that allowed enslavement and involuntary servitude to persist “as a punishment for crime.”

This exception encouraged the passage of Black Codes, which were used to criminalize, round up, and incarcerate formerly enslaved Black people. Once incarcerated, states would lease incarcerated people to private corporations and individuals for their labor through a practice known as “convict leasing.” States profited from lease payments, private corporations profited from cheap forced labor, and incarcerated Black people were effectively re-enslaved. When “convict leasing” later fell out of favor with the public, states transitioned to using incarcerated people on chain gangs for public works projects.

These historical practices developed into the labor programs we see in nearly every prison in the U.S. today. More than 150 years later, people who are incarcerated and detained across U.S. are disproportionately Black and brown and forced to work for pennies an hour to no pay at all under the threat of additional punitive measures, such as the loss of family visits and solitary confinement. In fact, many U.S. prisons are located on former slave plantations, with incarcerated people picking the same crops that enslaved people were once forced to.

Types of Work in U.S. Prisons

Today, [there are 800,000 people working in U.S. prisons](#). The majority work in one of three categories: facility operations and maintenance, government businesses and public works projects, and private industry.

- **Facility operations and maintenance:** Incarcerated people hold most of the jobs that keep prisons running, including food preparation, janitorial services, laundry, commissary operation, and grounds maintenance. Over 80% of incarcerated workers work in jobs in this category.
- **Government businesses and public projects:** The federal government and every state runs its own [corrections industry business](#). These businesses manufacture products and provide services for other government agencies, generally. For example, they manufacture desks for public schools, dormitory furniture for public universities, and glasses for Medicare patients. They also provide services like asbestos abatement for government buildings and call centers for government departments. These jobs are most often done on prison premises. But some incarcerated workers are also taken off premises for public infrastructure projects like street cleaning. Roughly 17% of incarcerated workers have jobs in government businesses and public projects.
- **Private industry:** Private corporations also use prison labor in a wide variety of ways. Some have factories in prisons that manufacture candles. Others have call centers in prison that handle customer service. Still others use work release programs to staff their fast-food restaurants. The examples are endless as a [recent investigation by the Associated Press](#) into prison farming alone revealed. Just around 3% of all incarcerated people work for private corporations.

Legislative Regulatory Frameworks

The overwhelming majority of incarcerated workers effectively have no labor rights. Not only have they been carved out of nearly all labor laws, either explicitly or by interpretation, including the federal Fair Labor Standards Act, but, due to the exception in the Thirteenth Amendment, they still lack the most fundamental legal protection from enslavement afforded to all other Americans. Further, institutional policies often prohibit incarcerated workers from organizing to advocate for labor rights.

However, a small number of incarcerated people who work for government-run businesses and private industry are afforded limited protections by the federal Prison Industry Enhancement Certification Program (PIECP), which applies only to manufacturing jobs in which the final product is sold through interstate commerce. It requires that private employers pay prevailing wage, but allows for unfettered garnishments, which are common and can be extensive. Analyzing PIECP data, we found that [59% of wages from PIECP jobs are garnished](#) for fees like “room and board.”

Prison Labor Conditions in the U.S.

Conditions experienced by incarcerated workers in U.S. prison labor programs are, even in the best of cases, deeply exploitative. Most incarcerated people are required to work and refusal to do so can result in beatings, denial of contact with family, solitary confinement, and even the denial of parole. They are forced to work without wages or for abysmal wages, which are further garnished, and often in dangerous conditions.

- **Forced labor:** While many prisons claim their work programs are “voluntary,” this is disingenuous. Incarcerated workers may in some circumstances be given a degree of choice in terms of which work assignments they accept but they are punished if they refuse to work. Incarcerated people who refuse to work report facing physical violence, solitary confinement, and loss basic needs like calls to loved ones outside. Others have been [denied parole](#) on the basis of prior refusals to work. Importantly, the high cost of basic necessities in prison also coerces people to work. Items sold in prison commissaries are marked up egregiously compared to products outside, including essential items such as soap and sanitary products. For example, in [Missouri](#), a box of sanitary napkins or tampons costs roughly a month’s pay for an incarcerated worker. Under these conditions, refusing to work for any reason would cause incarcerated people severe deprivation and hardship.
- **Wages:** Incarcerated people are excluded from minimum wage and overtime protections and thus almost never paid fair wages. Most states pay incarcerated workers pennies per hour, and seven states pay them nothing at all. The average wage for the most common low-level facility operations and maintenance jobs is just [\\$0.14 per hour](#). And wages for the highest paying industry jobs that are similar to those paid free laborers are garnished excessively for room and board, court costs, and restitution, among other fees. In other words, even if a private employer has the intention of fairly paying incarcerated employees, the prison system prevents it. In the end, private use of prison labor today mimics “convict leasing.”
- **Dangerous conditions:** Most agencies that govern workplace safety have entirely delegated compliance to prisons and effectively ignored the safety of incarcerated workers. Consequently, working conditions can be dangerous and disgusting. Incarcerated workers have been [maimed](#) and even [lost their lives](#) while working. In a [recent survey](#), 70% of incarcerated workers report having received no formal job training and 64% worried about their safety while working.
- **Discrimination:** Incarcerated workers report substantial racial discrimination in the assignment of work. Black incarcerated workers are often relegated to the lowest paying and most back breaking work, such as field work in Louisiana, while white incarcerated workers are assigned the highest paying industry jobs. Again, incarcerated workers have little recourse to address such discrimination given their lack of labor rights and the limited attention of agencies.

Conclusion

Still today, more than 150 years later, people who are incarcerated and detained across our country are disproportionately Black and brown and forced to work for little to no pay under the threat of additional punitive measures, such as the loss of family visits and solitary confinement. It is time we unequivocally made the evils of slavery and involuntary servitude, history.

Since its launch, #EndTheException has successfully advocated for the introduction of the Abolition Amendment (SJR 33 | HJR 72), which today has over 75 bipartisan sponsors in the U.S. Senate and House. The campaign has engaged with hundreds of incarcerated people across the country and delivered

over 220,000 public petitions supporting the Abolition Amendment to Congress. We urge you to push for committee and floor votes of the Abolition Amendment to ensure that all Americans are protected from abolish slavery and involuntary servitude. We also urge passage of the bill package introduced by Senator Cory Booker (NJ) that would establish labor rights for minimum wage, workplace safety, and against discrimination for incarcerated workers.

Signed,



Bianca Tylek,
Executive Director, Worth Rises

Supporting Organizational Signatories

Abolish Private Prisons
Anti-Recidivism Coalition
Ben and Jerry's
Beyond the Bars
California Lawyers for the Arts
Coalition to Abolish Slavery and Trafficking
Community Alliance on Prisons
CURE
FedExclusive
Freedom United
Just Future Project
JustLeadership USA
LatinoJustice PRLDEF
Middle Ground Prison Reform
Polaris
Represent Justice
The Promise of Justice Initiative
United Women in Faith of Indiana Conference
Vera Institute of Justice