BREAKING **FREE**

OF THE THIRTEENTH AMENDMENT'S SLAVERY EXCEPTION

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EXECUTIVE SUMMARY

In 1871, the Supreme Court of Virginia declared incarcerated individuals to be *civiliter mortuus* – civilly dead. This judgment was made in the wake of the ratification of the Thirteenth Amendment to the U.S. Constitution, which abolished slavery and involuntary servitude except when used as punishment against an individual convicted of a crime. This "slavery exception" enabled the rise of convict leasing, Jim Crow, Black Codes, and finally, the United States' modern – and booming – prison economy.

> 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.

In 2023, the U.S. prison economy – a direct descendent of the U.S. enslavement-based economy – generated more revenue than the Gross Domestic Product of 133 nations, nearly 70 percent of the world's countries. U.S. states benefit tremendously from this success, as does private industry. For companies, prison labor is a windfall. Supported by a patchwork of state and federal laws – all possible under the Thirteenth Amendment – companies legally employ, contract with prisons for the labor of, or purchase goods and services produced and performed by incarcerated workers. Companies do this while paying low (or no) wages; providing few benefits and little training; receiving large tax benefits and other financial incentives; and forming profitable "joint ventures" with specific prison facilities. For example:

- Tyson Foods – the poultry behemoth that produces approximately twenty percent of all chicken, beef, and pork in the United States – employs dozens of workers from North Carolina's Wilkes Correctional Center, where many incarcerated workers likely make no more than $0.36 per hour.

- From at least 2017 to 2020, Louis Dreyfus Commodities – a multinational commodities corporation that generates nearly $35 billion in global sales each year – purchased corn and soybeans produced by workers in Louisiana's Angola prison, who make between $0.02 and $0.20 per hour.

- In 2010, after the Deepwater Horizon catastrophe in the Gulf of Mexico, British Petroleum paid incarcerated workers a paltry amount – in some cases nothing, or up to $0.40 per hour – to clean up the oil spill.

- Televerde, a Florida business-to-business telecommunications company, "offers significant business benefits to [] clients" by paying incarcerated call center workers 32 percent less than free workers and not offering workers' compensation and other benefits.

- Incarcerated workers in Koch Foods' poultry plant in Alabama report being pressured to maintain a dizzying production pace, often operating dangerous machines for entire shifts without taking a bathroom break, for "fear they'll be fired if they raise concerns about it."

- At Hickman's Family Farms in Arizona, where more than 100 incarcerated workers lived and worked at the height of the COVID-19 pandemic, hundreds of injuries have been reported, including repeated chemical burns, needlesticks, and finger amputations.

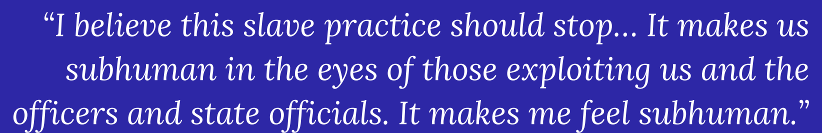
- By leveraging a federal tax credit, Foster Farms, an agricultural commodities company that operates a chicken processing plant in Louisiana, likely saved nearly 50 percent of the payroll costs it would have ordinarily incurred if employing free labor.

- In 2023, more than 50 incarcerated individuals from Lockhart Correctional Facility in Texas worked at Henderson Controls, Inc., producing air conditioning parts and brass heating valves as part of a "joint venture" between the correctional facility and the company – the result of Henderson Controls' years-long lobbying campaign promoting the commercial value of prison labor.

Private wealth generated from disproportionately Black, Latinx, and Indigenous captive labor is an entrenched U.S. narrative. It is not, however, inevitable. The existence of this modern prison economy may be constitutionally protected, but there are kinks in that armor. The harm wrought by slavery, convict leasing, and today's prison economy can never be sufficiently remedied, but we can – we must – begin to make repairs.

While writing this report, Corporate Accountability Lab asked for and received – from more than two dozen currently incarcerated individuals – answers to the following question: **What short-term recommendations for governments and for companies do you believe should be a part of Corporate Accountability Lab's reporting?**

The responses, like their authors, varied – but a remarkably clear and simple recommendation ultimately emerged. As one currently incarcerated worker put it, the primary instruction for governments and corporations is to: ***"[S]top exploiting [us] for your own gain."***



"I believe this slave practice should stop… It makes us subhuman in the eyes of those exploiting us and the officers and state officials. It makes me feel subhuman."

– Incarcerated Worker, High Desert State Prison (Nevada); Sorts used casino cards to be sold by gift shops, museums, and other commercial venues

The litigation, legislation, and corporate policies needed to make this exploitation stop may not be easily executed, enacted, or won – but the work to get there has begun. This report charts a course for ensuring it continues.

In the 'Recommendations' section of this report, we suggest specific actions be taken by policymakers, corporate actors, and advocates and lawyers, including filing civil claims in certain states, drafting new and amending existing federal and state legislation, and implementing robust corporate due diligence and contracting policies.

METHODOLOGY

Corporate Accountability Lab (CAL) (referred to as "we" throughout this report) is a Chicago-based legal human rights non-profit, with a mission to unleash the creative potential of the law to protect people and the planet from corporate abuse. We deploy innovative legal strategies to combat a wide range of egregious abuses – including forced labor and trafficking – by companies operating in the United States and abroad. This report is shaped by our expertise tracing complex value chains, analyzing forced labor and prison labor under international and domestic laws, and designing and testing legal and policy tools to hold corporations accountable for perpetrating, financing, or facilitating abuses.

This report is based on legal and policy research, as well as on interviews with civil society actors and organizations, journalists, and academics who have made invaluable contributions to this field. The Jailhouse Lawyers' Initiative (JLI) at the New York University Law School has been an especially vital partner. Through JLI, we were able to write to and solicit stories and recommendations from 500 currently incarcerated individuals in state and federal prisons around the country. We are deeply grateful to the 26 individuals who responded with thoughtful – often heartbreakingly clear – analysis of the horrifically degrading and dehumanizing experience of being forced to work for pennies while incarcerated. Short excerpts from many of the letters are shared throughout this report, all anonymized and all with the writer's consent.[1]

We encourage readers to support the Abolish Slavery National Network and its #EndtheException Campaign, Prison Policy Initiative, Forward Justice, Critical Resistance, Worth Rises, Latino Justice PRLDEF, Color of Change, and Abolish Private Prisons. These are vital leaders in the fight to reform and abolish the U.S. prison system and instrumental to our education on the issue.

RECOMMENDATIONS

FEDERAL POLICYMAKERS:

1. **Congress must eliminate the Thirteenth Amendment's exception to the prohibition on slavery and involuntary servitude for convicted persons.** The Abolition Amendment was reintroduced to the 118th Congress in June 2023 by Congresswoman Nikema Williams (D-GA-05), Senator Jeff Merkley (D-OR), and Senator Cory Booker (D-NJ). To become law, it must be passed by a two-thirds majority of the House and Senate and then ratified by three-fourths of U.S. states.

2. **Congress must extend the Occupational Safety and Health Act and the Fair Labor Standards Act to protect incarcerated workers.** This includes protection from any form of forced or compulsory labor, protection from discrimination, the right to a safe and healthy working environment, and minimum wage and maximum hour protections. Enacting the Fair Wages for Incarcerated Workers Act, the Correctional Facilities Occupational Safety and Health Act, and the Combating Workplace Discrimination in Correctional Facilities Act – all three of which were introduced to the 118th Congress in February 2023 by Senator Cory Booker (D-NJ) and Congressman Emmanuel Cleaver (D-MO-5) – is an excellent first step for Congress.

3. **Congress must extend the National Labor Relations Act to protect incarcerated workers.** Incarcerated workers must be entitled to the same protections as free workers. This includes the right to freely associate and to organize and bargain collectively. Without these rights, incarcerated workers will remain unable to effectively – and without fear of retaliation – seek better working conditions.

4. **Congress must amend the statutory exceptions to the Ashurst-Sumners Act. This Act broadly prohibits prison-made goods from trading in interstate commerce but includes significant exceptions to the prohibition.** These exceptions undercut the Ashurst-Sumners Act's prohibition, and must be eliminated. This should occur alongside the actions described in Recommendations 2 and 3.

5 **Congress must remove from the Prison Litigation Reform Act the requirement that incarcerated plaintiffs exhaust all administrative remedies before filing federal claims and the requirement that claims be based on prior showings of physical or sexual harm.** It must also be amended to define "punishment" as any form of disciplinary action, including the loss of privileges. Enacting the Combating Workplace Discrimination in Correctional Facilities Act is a good, if insufficient, place to begin.

6 **Congress must amend the Civil Rights of Institutionalized Persons Act to define work in the broadest possible terms, including work that may have a rehabilitative effect or that contributes to the maintenance of prison facilities.** It must also be amended to define "punishment" as any form of disciplinary action, including the loss of privileges.

STATE POLICYMAKERS:

7 **All states must eliminate their constitutional exception to the prohibition of slavery and involuntary servitude for convicted persons.**

8 **All states must ratify the federal Abolition Amendment, removing from the U.S. Constitution the exception to the prohibition of slavery and involuntary servitude for convicted persons, if enacted by Congress.**

9 **All states must enact legislation prohibiting prisons from mandating work, amend laws to prohibit punishment for refusing to work, and codify that the loss of "privileges" constitutes punishment.** States' legislatures should explicitly direct courts not to treat any purported "rehabilitative" effect or intent of work programs as a justification for – or safe harbor from – the existence of forced labor.

COMPANIES:

10 **Companies must adopt internal policies against the use of prison labor throughout their supply chains and create transparency apparatuses.** Companies should adopt policies prohibiting hiring incarcerated workers and buying any good produced by incarcerated workers along the entirety of their supply chains, encompassing both domestic and foreign suppliers.

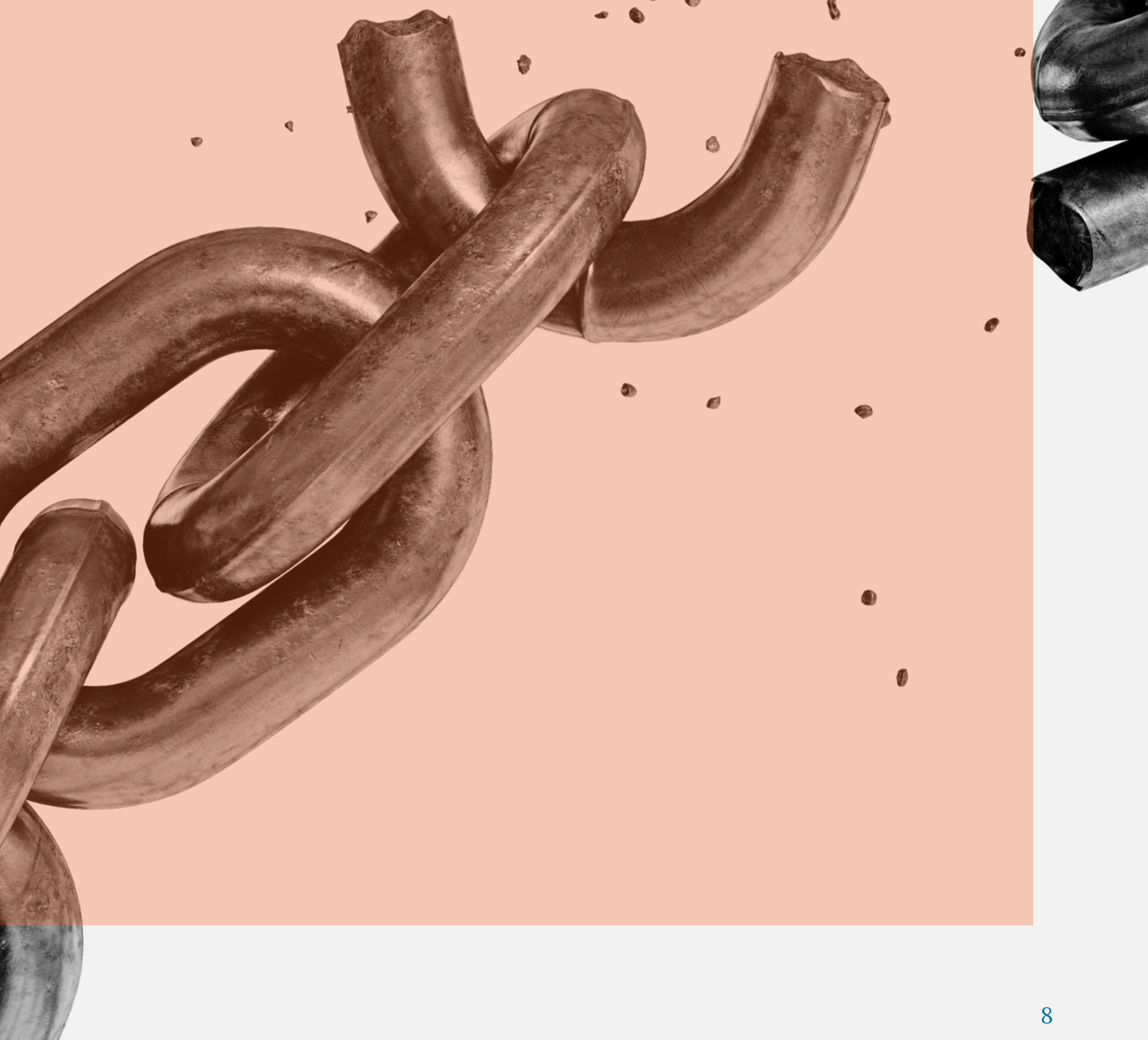
11 **Companies must implement robust audit and due diligence mechanisms for ridding their supply chain of prison labor.** Companies must demonstrate that suppliers are not using prison labor by implementing due diligence standards that require tracing and reporting publicly on 100 percent of their supply chains – from the production of raw materials to the end product, including goods produced by subsidiaries and contractors.

12 **Companies must implement contractual provisions in buyer-supplier contracts prohibiting the use of prison labor, mandating contract termination upon discovery of a violation, and granting third-party beneficiary rights to incarcerated workers in all buyer-supplier contracts.**

13 **Companies must certify that all corporate lobbying activities are consistent with the company's "no use of prison labor" policy.**

ADVOCATES & LAWYERS:

14 **Advocates and lawyers should pursue civil claims by incarcerated workers, alleging involuntary servitude, forced labor, or trafficking, against companies that contract for or employ prison labor in states that have amended their constitutions to prohibit slavery post-conviction.** These states include Colorado, Tennessee, Alabama, Oregon, Vermont, Rhode Island, Utah, and Nebraska.



INTRODUCTION

The United States is obligated under international law to uphold and enforce the human and labor rights owed to each and every person behind bars[2] – no matter the insidious exception to the prohibition of slavery and involuntary servitude included in the Thirteenth Amendment to the 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.[3]

And yet, in 2024, the United States has the enigmatic designation as both a world leader in the protection against forced labor – and one of the world's most practiced and committed violators. The modern U.S. prison economy depends on forced labor, builds private wealth, and is a direct descendent of the very atrocity the Thirteenth Amendment purported to condemn: slavery, and the domestic market it sustained.

IN 2024, THE UNITED STATES HAS THE ENIGMATIC DESIGNATION AS BOTH A WORLD LEADER IN THE PROTECTION AGAINST FORCED LABOR – AND ONE OF THE WORLD'S MOST PRACTICED AND COMMITTED VIOLATORS.

This report comes roughly a year after we published our first report, in November 2022, on the existence of forced labor in U.S. jails and prisons and the private wealth generated by that labor. In *Convicted: How Corporations Exploit the Thirteenth Amendment's Loophole for Profit* ("*Convicted*"), we traced the supply chains of three domestic companies that benefit from incarcerated labor, each of which leverages a different legal avenue around the general federal prohibition on prison-made goods entering interstate commerce.[4] We also recognized the many ways in which this use of incarcerated workers violates international law and perpetuates the United States' continuous embrace of systemically racist institutions.[5]

In this report, we build on the information in *Convicted* by providing deeper analysis – punctuated by stories of specific companies and commentary by currently incarcerated workers – of how private stakeholders profit from U.S. prison industries, and by weaving throughout the report immediately actionable recommendations for federal and state policymakers, companies, and lawyers and advocates. Like a road sign pointing drivers toward the avenue not yet taken – but plotted and visible – this report is intended to catalyze movement toward the creation of a domestic economy no longer dependent on the exploitation of cheap, captive, convicted, and frequently Black, Latinx, and Indigenous, labor.[6]

Across the United States, incarcerated individuals work in jobs earning as little as a few cents per hour, once a percentage of the wage is paid back to the state as reimbursement for room and board.[7] Roughly 80 percent of incarcerated workers perform jobs that keep correctional facilities operating – such as cooking, cleaning, doing laundry, or rewiring electrical grids – and nearly fifteen percent contribute to public works assignments or to "state-owned prison industries" that produce goods for use by other state agencies.[8] These jobs are devastatingly exploitative. It is, however, the nearly 40,000 individuals – approximately five percent of all incarcerated workers in state and federal prisons – laboring in work release programs, in factories, and on cotton plantations and chicken farms for the **benefit of private industry** that this report is most concerned with.[9]

APPROXIMATELY FIVE PERCENT OF ALL INCARCERATED WORKERS IN STATE AND FEDERAL PRISONS LABOR IN WORK RELEASE PROGRAMS, IN FACTORIES, AND ON COTTON PLANTATIONS AND CHICKEN FARMS FOR THE BENEFIT OF **PRIVATE INDUSTRY**.

While this report, and our work generally, focuses on companies exploiting human rights **within supply chains**, the failure of prison industries to prioritize human thriving over private profit is far more extensive than this. Companies generate wealth by exploiting the cheap cost of incarcerated labor – but also by profiting directly from mass incarceration.[10] Private prison companies and companies supplying goods and services to state and federal prisons – including health care, food, telephone services, and electronic monitoring – must calculate how demand

will plummet if the prison population decreases, and then must – presumably – take steps to ensure that it will not. This is insidious, and we support all efforts to eliminate the systems and structures that make this form of systemic exploitation possible.

> *"[P]risons do not disappear problems, they disappear human beings. And the practice of disappearing vast numbers of people from poor, immigrant, and racially marginalized communities has literally become big business."*
>
> – Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*[11]

In these private industry jobs, incarcerated workers are not entitled to the minimum wage or to safety and health protections, do not enjoy the right to form labor associations, are often restricted from managing – or retaining – the scant wages they do make, are generally restricted from bringing (and certainly from succeeding on) civil claims against employers or state officials after being injured while working, are frequently barred from receiving workers' compensation, and are punished – sometimes severely – for refusing to work or for requesting a safer position.[12] This system – which generates tremendous wealth for states and private actors alike – is emblematic of a deeply entrenched national commitment to both capitalism and race-based labor exploitation. This report adds to the tremendous canon of evidence – collected since the nation's founding – making clear that the United States' economic engine remains tethered to a cheap, captive, and convicted workforce.

The report also makes clear that there are ways to break free.

WHERE WE'VE BEEN:
AN ECONOMY DEFINED BY CHEAP, CAPTIVE, CONVICTED LABOR

1865: Thirteenth Amendment is Ratified, and Slavery Continues

The Thirteenth Amendment to the U.S. Constitution – enacted in 1863, ratified in 1865, and celebrated for freeing all those who were or would ever be enslaved – did not, in fact, free everyone. Fourteen words buried within the first clause of the Amendment – but central, critical, deliberate to its function – carve out a safe harbor for enslavement and involuntary servitude for those who have been convicted of a crime:

> 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.[13]

This clause, codified in the most authoritative body of law in the United States, established a constitutional foundation for convict leasing – which evolved alongside Jim Crow and Black Codes – and has allowed for the modern prison economy to flourish.[14]

A NOTE ON TERMINOLOGY: THERE IS NO "LOOPHOLE" IN THE THIRTEENTH AMENDMENT

In our previous report, *Convicted: How Corporations Exploit the Thirteenth Amendment's Loophole for Profit*, we frequently used the term "loophole" (including in the report's title) to describe the Thirteenth Amendment's exception to the prohibition of slavery and involuntary servitude for incarcerated individuals. This implies

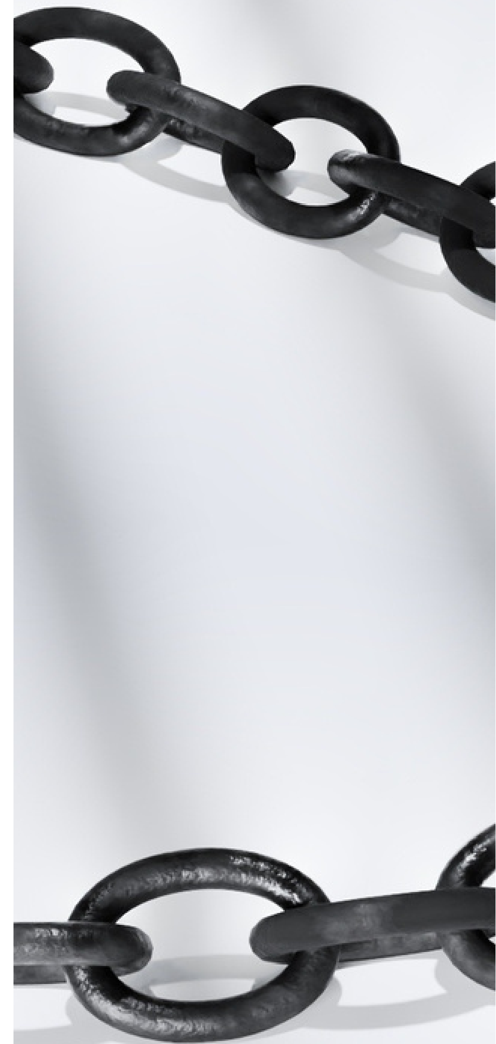
a gray area – an opportunity to exploit which was unforeseen by the initial architects of the law. The text of the Thirteenth Amendment, however, explicitly authorizes involuntary servitude as punishment for convicted individuals. It is no accident or quirk of fate that slavery and its deep relationship with private industry was transformed into convict leasing, which evolved into today's carceral state. Indeed, **the U.S. prison economy works precisely as designed**: as a tool for white supremacy capable of generating nearly $100 billion annually, or 0.4 percent of GDP – roughly the equivalent value of total American farm output in 2023.[15]

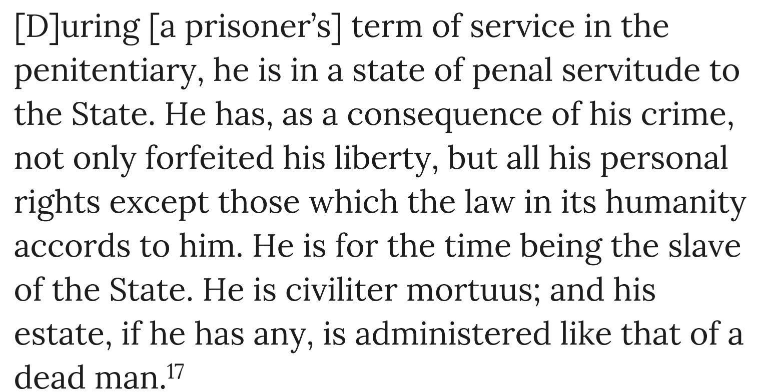
This report, and our previous one, describe **a legal and economic system that was intentionally created**. It exists because it was built, and it continues because it is maintained by state – and, critically, by private – beneficiaries.

See Recommendation 1: Congress must eliminate the Thirteenth Amendment's exception to the prohibition on slavery and involuntary servitude for convicted persons.

1871: Incarcerated Individuals Are "Slaves of the State"

In 1871, just eight years after President Lincoln issued the Emancipation Proclamation and six years after the Thirteenth Amendment to the U.S. Constitution enshrined involuntary labor as a legally acceptable form of punishment, the Supreme Court of Virginia declared – without mincing words – that incarcerated individuals were "slaves of the State."[16] In *Ruffin v. Commonwealth*, the court held:





> [D]uring [a prisoner's] term of service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State. He is civiliter mortuus; and his estate, if he has any, is administered like that of a dead man.[17]

While this landmark decision has been narrowed and unfavorably cited since it was issued – albeit never explicitly overturned[18] – the state of an incarcerated person in the United States remains unsettlingly close to *civiliter mortuus*, or dead in the eyes of the law.[19]

INCARCERATED LABOR UNDER **INTERNATIONAL LAW**

Buried within the *Ruffin* decision is the hint of something powerful: "personal rights… which the law in its humanity accords."[20] When *Ruffin* was decided, this promise of rights that cannot be forfeited – guaranteed by nature of humanity, rather than status of conviction – was almost certainly rhetorical flair: a toothless guarantee.

It would be 28 years before the first Hague Convention established the "laws and customs of war,"[21] 77 years before the Universal Declaration of Human Rights announced the existence of "fundamental human rights,"[22] and 78 years before the Geneva Conventions set forth the state obligation to treat prisoners of war with dignity.[23] It would also be 58 years before the United States signed the Convention to Suppress the Slave Trade and Slavery, and more than a century before the United States ratified the International Covenant on Civil and Political Rights, the International

Labour Organization's Abolition of Forced Labour Convention, and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.[24]

In 2024, the United States is bound by a constellation of human rights obligations, many of which speak directly to the issue of rights post-conviction, involuntary labor, and private control over incarcerated populations. These international legal conventions provide clear guidelines on how and when incarcerated individuals can work – and when such work is prohibited.[25] Much of the U.S. prison labor system, and corporations' complicity in perpetuating it, is in violation of numerous international conventions, including several ratified by the United States.

This report does not focus on these conventions (see *Convicted* for more analysis), but a brief summary of each is included in the Appendix.

1886: Convict Leasing is the "Most Renumerative" Labor System

In 1886, the U.S. Bureau of Labor described the convict leasing system, which by that time had emerged as the direct descendant of the United States' slave-based economy, as the "most remunerative" of *any* labor system.[26] Indeed, for states, the leasing fees paid by corporations amounted to nearly 400 percent of the cost of maintaining such large prison systems.[27] For corporations, leased convict labor was "a bulwark against disruptions."[28] There was no threat of strike, no risk of needing to answer demands for higher wages or better benefits, and the labor was "always available" and "usually docile" – the "ideal captive workforce."[29]

FOR CORPORATIONS, LEASED CONVICT LABOR WAS “A BULWARK AGAINST DISRUPTIONS.” THERE WAS NO THREAT OF STRIKE, NO RISK OF NEEDING TO ANSWER DEMANDS FOR HIGHER WAGES OR BETTER BENEFITS, AND THE LABOR WAS “ALWAYS AVAILABLE” AND “USUALLY DOCILE” – THE “IDEAL CAPTIVE WORKFORCE.”

Because labor was always available, leased convicts were treated by companies the same way enslaved workers were treated by their enslavers just decades before: as a productive and replenishable resource – most profitable if worked to death.[30] In Texas, a convict during this period lived, on average, for seven years.[31] In Mississippi, over the course of seven decades, not one convict survived for more than ten years.[32]

By the start of the twentieth century, many Southern states derived the majority of their annual revenue from renting incarcerated individuals out to private entities.[33] Penitentiaries supplanted plantations as the economic engines of the South. During this same period, Northern prison factories produced the equivalent of over $46 billion in goods in 2024 dollars – more than ten percent of total gross domestic product at the time.[34]

2024: PRISON LABOR REMAINS A COST-SAVING, PROFIT-MAKING MACHINE FOR **PRIVATE INDUSTRY**

Prison industries remain extensive and economically influential today. In 2023, nearly two million people in the United States languished in local and tribal jails, state and federal prisons, and other detention facilities.[35] Since 1986 – the year former-President Reagan signed the Anti-Drug Abuse Act, launching the War on Drugs and decimating Black, Latinx, and Indigenous communities throughout the country by establishing dozens of mandatory minimum sentences for low-level drug offenses[36] – the federal prison population has increased by nearly 400 percent and the overall U.S. prison population has increased by more than 225 percent.[37] The majority of these individuals are required to work.[38] This labor mandate produces results: in 2023, the U.S. prison economy generated more revenue than the Gross Domestic Product of 133 nations[39] – roughly 70 percent of the world's countries.

IN 2023, THE U.S. PRISON ECONOMY GENERATED MORE REVENUE THAN THE GROSS DOMESTIC PRODUCT OF 133 NATIONS – ROUGHLY 70 PERCENT OF THE WORLD'S COUNTRIES.

Buttressed by the Thirteenth Amendment, numerous federal and state laws authorize forced labor in U.S. prisons and incentivize private industry to leverage this cheap and captive workforce for profit. Private industry entities – whether casino gift shops, chicken farms, trailer-truck manufacturers, technology companies, marketing firms, defense contractors, or healthcare conglomerates – are legally able, and incentivized, to interact with and benefit from the low-cost incarcerated workforce in the United States.

ONE PROHIBITION, SEVEN **EXCEPTIONS**

The Ashurst-Sumners Act, passed in 1935 and amended in 1940, broadly prohibits "knowingly transport[ing] in interstate commerce… any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners."[40] However, this prohibition is far from restrictive.

Under the Ashurst-Sumners Act, a company is legally authorized to trade in prison-made goods that are (1) produced and sold within the state of production, (2) agricultural commodities, (3) intended for governmental or non-profit use, (4) produced as part of a government contract or when *competing for a government contract*, (5) might otherwise be produced overseas, or (6) produced within an authorized joint venture between a private entity and state prison system.[41] A company is also legally authorized to purchase services – which are, by definition, *not goods* and thus not covered by the Ashurst-Sumners Act – performed by incarcerated workers.[42]

See Recommendation 4: Congress must eliminate the statutory exceptions to the Ashurst-Sumners Act. (***See also Recommendations 2 and 3***, which must be achieved in combination with the elimination of exceptions within the Ashurst-Sumners Act, so that all who want to work can work – for just compensation and with full protections.)

Woven throughout the following pages are examples of specific companies that benefit from this legal landscape – **users of an established system *that is working as designed***.

The companies operate across six states – Florida, North Carolina, Louisiana, Texas, Alabama, and Arizona – but are broadly emblematic of private entities operating in states across the United States. Each company utilizes the prison industry differently, and thus profits to a different extent – but each *does* profit. Regardless of whether the impact on a company's bottom line is measured in wage savings or something less immediately tangible – like dollars saved when there are no unions to negotiate with and no health benefits to pay out – the U.S. prison economy continues to exist because it continues to generate wealth for those with the power to sustain it.

The reality of work in prison for me is I get no fulfillment of accomplishment. No pride in a job well done.

– Incarcerated Worker, ASP-CACRE, Unit GEO (Arizona)

COMPANIES PAY LOW (OR NO) WAGES

While the convict leasing system formally ended in the early-to-mid twentieth century, the price paid for a captive workforce has changed little since the system's inception. In the 1880s, Joseph Brown – a former slaveholder, private capitalist, and Governor of Georgia who was celebrated for turning "a coal mine into a gold mine"[43] – rented every incarcerated individual in the state of Georgia for less than seven cents per day and for a period of twenty years.[44] Adjusted for inflation, the average wage paid to an incarcerated worker in 2024 is unnervingly close to the rate paid by Brown: between $0.03 and $0.29 per day.[45]

Indeed, we spoke with an incarcerated worker in Nevada's High State Desert Prison who "works in the private industry card room," where he sorts – into suits and numbers – 1,600 used playing cards each day. His shift lasts more than nine hours, and he receives a ten minute break to eat. The sorted cards are then sold as "authentic casino cards" in casino gift shops or by other commercial actors.[46] In one online listing, a single deck – 52 cards – is sold for $8.00.[47] The individual we spoke with in Nevada is paid less than $0.01 per card sorted, compared to a commercial value of at least fifteen times that much.[48] He wrote to us that he "really hates [his] job. It's demeaning and its[sic] abusive."

TYSON FOODS: POULTRY IN NORTH CAROLINA

The federal prohibition on selling goods produced with prison labor across state lines does not apply to "agricultural commodities or parts for the repair of farm machinery."[49] State prisons across the country run "in-house" farms, where incarcerated individuals report to mandatory work assignments producing food for the facility where they reside, other state facilities, and private industry.[50]

In North Carolina, "all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them."[51] For at least ten percent of the state's "able-bodied inmates," this means laboring on farms located within prison facilities managed by the state-run Corrections Enterprises.[52] North Carolina's Roanoke River Correctional Institution (formerly known as Caledonia), Dan River Prison

Work Farm, Tyrrell Prison Work Farm, and Harnett Correctional Institution – which includes a meat processing plant – produce 1.5 million cans of vegetables, 12 million eggs, 10 million pounds of fresh produce, and 5 million pounds of meat annually.[53]

Caledonia, which spans 5,500 acres, is a former plantation previously owned by James Johnston in the mid-to-late nineteenth century.[54] Johnston was part of a powerful family – his father, uncle, and great-uncle served as a U.S. Senator, Governor of North Carolina, and U.S. Supreme Court Justice, respectively.[55] In 1860, Johnston enslaved more than 550 people – including 271 at Caledonia.[56] In 2021, Caledonia was renamed the Roanoke River Correctional Institution because – according to Todd Ishee, a state prison commissioner – "[i]n this day and age, it is unacceptable to maintain facility names with negative historical connotations."[57]

The name may have changed, but the historical legacy persists. Incarcerated workers on North Carolina prison farms receive an hourly wage, scaled by skill level.[58] The most experienced worker is eligible for a maximum of $0.36 per hour.[59] In 1910, when incarcerated farm workers in North Carolina first began receiving a wage – rather than no payment – the maximum was $0.15 per hour.[60] Adjusting for inflation, wages at North Carolina prison farms have decreased by nearly 93 percent since 1910.[61]

THE FORMER PLANTATION'S NAME MAY HAVE CHANGED, BUT ITS HISTORICAL LEGACY **PERSISTS**.

In North Carolina, companies can purchase commodities from prison farms, like Caledonia. They can also employ incarcerated workers directly in their agricultural operations. For example, Tyson Foods – the poultry behemoth that produces approximately twenty percent of all chicken, beef, and pork in the United States[62] – employs dozens of workers from North Carolina's Wilkes Correctional Center.[63] Tyson Foods sells to a huge variety of customers, including to Walmart, which accounts for nearly fifteen percent of Tyson's total annual sales.[64]

"If we can trust them to go into a chicken plant every day, why not just release them? Incarceration should not exist to provide workers for Tyson."

– Mary Pollard, Director of North Carolina Prison Legal Services, a non-profit law firm representing the interests of currently and formerly incarcerated individuals[65]

LOUIS DREYFUS: COTTON, CORN, AND SOYBEANS IN LOUISIANA

Angola State Prison, an 8,000-acre former plantation in West Feliciana Parish, Louisiana,[66] deserves its infamy. The plantation, originally owned by Isaac Franklin – who enslaved more than 600 people on the property before his death in 1846, and who is reported to have named the plantation "in honor" of the slave trade's "hey-dey" – operates today more or less the way it did 200 years ago.[67] In 2023, incarcerated workers at Angola earned between $0.02 and $0.20 per hour working in the fields to produce cotton, corn, soybeans and sugarcane for up to seventeen hours each day.[68] Prison officials, who monitor the workers on horseback, are reportedly all white and call themselves "Freeman."[69] When workers at Angola, who are nearly 75 percent Black,[70] refuse to work, they are restricted from calling loved ones and sometimes sent to solitary confinement.[71]

Angola is a maximum-security prison, with 63 percent of those incarcerated facing life sentences and an additional 27 percent facing more than two decades behind bars.[72] In 2022, the Washington Post reported that "[m]ost of them will die there and will be buried in a cemetery on the north side of the property."[73]

Companies profit from this guarantee of worker retention. From at least 2017 to 2020, Louis Dreyfus Commodities – a multinational commodities corporation that generated nearly $60 billion in global sales in 2022[74] – purchased, and presumably resold at a higher price, corn and soybeans produced by Angola workers.[75]

Curtis Ray Douglas, who was released from Angola in 2015 after serving more than 25 years for a crime for which he was eventually acquitted, described the plantation work like this: "I spent 25 years in prison and left with $1,200, and I was innocent of the crime I was convicted for… It was like being in slavery again. I was working 40 hours a week to make enough to maybe buy a bar of soap."[76]

"That people with life-without-parole or de facto life sentences are the most abused workers due to their sentences. They don't receive any good time credit, and once their bodies are used up after decades of coerced labor, they are simply dumped back in their cell…"

– Incarcerated Worker, Stateville Correctional Center (Illinois)

In work release programs – which are often touted as so-called "halfway houses" between incarceration and reentry – incarcerated workers are employed by companies and authorized to leave confinement during business hours and return to a secure facility at night.[77] These individuals, usually minimum-risk offenders or those with only a few years left on their sentences, must be approved for participation in work release programs, and in some states may be responsible for finding their own job.[78] Wage requirements in work release programs vary widely by state.[79] While some work release participants report being paid minimum wage – subject to state deductions, as always – there is evidence that suggests workers are also frequently paid little to nothing.[80]

Most incarcerated individuals in Louisiana, with notable exceptions for those convicted of specific violent crimes, are eligible for work release – at one of 39 Transitional Work Release centers in the state – four years before their release date.[81] The size of the state's work release population is unclear; a 2019 report by Louisiana's Department of Public Safety & Corrections claimed that fewer than 1,000 workers were involved in these programs.[82] However, there are other reports claiming that as many as 25 percent of Louisiana's staggering prison population is in a work release program.[83]

In the United States, and in Louisiana in particular, there is a long history of using captive labor to exploit natural resources.[84] Today, oil and gas is still big business in Louisiana, and several companies have depended on prison labor to do some of their dirtiest jobs. In recent years, for example, Coral Marine hired incarcerated workers to clean up an oil spill; Berry Brothers hired incarcerated workers to construct a pipeline; Provisions Energy used prison labor to serve meals on its rig sites; and Gator Rigging used prison labor to manufacture offshore rigging equipment.[85] All of these jobs exposed workers to huge quantities of chemicals and toxins.[86]

IN THE UNITED STATES, THERE IS A LONG HISTORY OF USING CAPTIVE LABOR TO EXPLOIT NATURAL RESOURCES. SEVERAL COMPANIES HAVE DEPENDED ON PRISON LABOR TO DO SOME OF THEIR DIRTIEST – AND MOST DANGEROUS – JOBS.

In 2020, Rob Martin – while incarcerated in Southeast Louisiana and enrolled in the Lafourche Parish Work Release facility – “us[ed] his body to divert a stream of drilling fluid from a ruptured line” while working for a company that produced this fluid for several oil and gas companies.[87] Martin told *Scalawag Magazine* that he “has no idea how many chemicals got into my body with that.”[88] He worked for the drilling fluid company seven days per week for the final two years of his twelve year sentence – and never got a single day off.[89]

Martin was hardly the first incarcerated worker in Louisiana to function as the primary defense against an environmental hazard. In 2010, after the Deepwater Horizon catastrophe in the Gulf of Mexico, British Petroleum utilized a Louisiana work release program to pay incarcerated workers a paltry amount – in some cases nothing, for others up to $0.40 per hour – to clean up the oil spill.[90] This work was exceedingly dangerous. The chemicals found in crude oil “can damage every system in the body, as well as cell structures and DNA.”[91] Louisiana’s incarcerated workers had no choice in the matter, facing severe repercussions if they refused: “If they say no to a job, they get that time that was taken off their sentence put right back on, and get sent right back to the lockup they came out of,” explained the Warden of the Terrebonne Parish Work Release Center in Houma to *The Nation* in 2010.[92]

LOSS OF “PRIVILEGE” IS **PUNISHMENT**

States and courts have argued that the loss of a “privilege” – such as the addition of time (previously removed for “good behavior”) to a prison sentence – does not constitute punishment and thus does not create conditions of forced labor.[93] But *of course* it does. Workers in Louisiana, and elsewhere, are threatened with longer incarceration – more time behind bars, more time stripped of rights otherwise deemed fundamental – if they refuse to perform dangerous jobs.[94] The argument itself is darkly circular: if an incarcerated individual is entitled to nothing, then everything – even freedom – is a privilege that can be taken away at any time.

These work release programs – brutal as they can be – are often conveyed as “a step [] between a conviction and life post-release that helps an incarcerated person get their footing.”[95] This nuanced view is reflected in the correspondence we had with incarcerated workers. The chance to be productive outside of prison walls is no small opportunity. And yet, as Bruce Reilly, the Deputy Director of Voice of the Experienced (VOTE) – a criminal justice reform organization run by and for formerly incarcerated people in Louisiana – explained in 2020: “Exploiting someone’s labor and having an opportunity to get out are not mutually exclusive.”[96]

TELEVERDE: CALL CENTERS AND LOTS OF "PRIDE" IN FLORIDA

Florida's prison labor oversight program – called Prison Rehabilitation Industries & Diversified Enterprises (PRIDE) – was federally certified in 1995; ever since, incarcerated workers in the state have received just over 30 percent of wages earned.[97] In 2022, 2,539 incarcerated workers were employed by PRIDE and worked for more than two million hours across seventeen "ventures."[98] PRIDE generated $65.7 million in revenue, a fraction of which was ultimately received by incarcerated workers.[99]

After partnering with PRIDE, the Arizona-based business-to-business telecommunications company Televerde moved into the Homestead Correctional Institution in Miami-Dade County in 2020.[100] There, Televerde employs 150 incarcerated individuals in a call center that serves several businesses – including Epson, Interstate Batteries,[101] and Securus Technologies, a prison communications firm that charges as much as $14 for a fifteen-minute phone call.[102] (That's a high price by any standard – but it is especially predatory in prisons, where the average incarcerated worker makes between thirteen and 52 cents per hour.[103])

Televerde, whose previous clients include household brands like Microsoft and IBM, claims to pay incarcerated workers the state minimum wage – $12 per hour in Florida, as of January 2024 – but also admits that a significant portion of these wages are deducted by the Florida Department of Corrections.[104] In other public materials, Televerde claims to pay wages that "are compliant with minimum wage laws."[105] This language is telling: in Florida, minimum wage laws do not protect incarcerated individuals.[106] Even at $12 per hour – before deductions for the "cost of incarceration," restitution, child support, and mandatory savings accounts[107] – Televerde and its clients likely save money. In 2023, a *free* call center representative at Televerde earned approximately $17.55 per hour.[108] This 32 percent savings on wages, plus what is saved by not offering workers' compensation and other benefits, "offers significant business benefits to [Televerde's] clients."[109]

> *"Absenteeism is the bane of the contact center world. UNICOR has effectively eliminated this issue from the equation."*
>
> – CEO of a "lead-generation company" that partnered with Federal Prison Industries, Inc. (FPI) to staff its call centers (FPI operates under the trade name UNICOR)[110]

"We would receive services from an onshore agent—a U.S. citizen—but at offshore prices. It's a win-win for everyone involved."

– Anonymous "CEO," quoted in a 2019 FPI promotional catalog titled *The Best Kept Secret in Contact Centers... The Secret is Out! Choose UNICOR.*[111]

In January 2019, UNICOR employed more than 1,700 incarcerated individuals at seven call centers around the country.[112]

IS PAYING MINIMUM WAGE (BEFORE DEDUCTIONS) EXPLOITATION? **YES.**

Televerde is proud of its labor model – and it boasts impressive results, including a 91 percent decrease in recidivism among its incarcerated workforce compared to the Bureau of Justice Statistics' national rate.[113] The company also speaks highly of the incarcerated individuals – mostly women – staffing its call centers.[114] One article on Televerde's website quotes an executive from Securus Technologies: "The empathy levels of the women answering the calls are off the charts."[115] Televerde also claims on its website that:

> These women partner with and directly support some of the most recognizable Fortune 500 companies in business today, building both experience and a professional network that will increase their marketability and provide a clear advantage over others in the hiring process when they are released from corrections.[116]

There are reasons to raise an eyebrow at such a statement. In 2019, nearly 30 percent of Florida's workforce required an occupational license – which individuals who have been convicted of first-degree felonies are permanently barred from obtaining, and those convicted of other felonies and misdemeanors are barred from obtaining for up to fifteen years post-incarceration.[117] Across the United States, the unemployment rate for formerly incarcerated persons is more than 25 percent – higher than the national unemployment rate during periods of extreme economic distress, including the Great Depression.[118] Despite this reality, Vince Barsolo, Televerde's chief strategy and growth officer, explains on the company's website: "When we do it right, the state makes money, the women

working for us make money, our company makes money and our clients make money."[119]

This may be technically true, and our correspondence with currently incarcerated workers throughout 2023 generally confirms that jobs paying incarcerated workers anything near the minimum wage – or anything more than the pennies paid to those working within internal prison facilities – are highly coveted positions. Yet, it is **also true** that incarcerated individuals are generally unprotected by state and federal fair labor, minimum wage, maximum hour, workplace condition, and labor organization laws. Individuals who have been convicted of felonies in Florida prisons – no matter how skillfully they staff call centers – lack the right to vote.[120] Even after incarceration, formerly imprisoned Flordians must *apply* upon release for the "restoration of civil rights."[121] Incarceration is an inherently isolating – and frequently dangerous – experience.

Televerde states that its "unique model" is based on "empowerment, not exploitation."[122] Exploitation, however, often exists where there is vulnerability. On its website, Televerde celebrates that positions in its call centers are "highly coveted" compared to farming jobs – which are notoriously dangerous for incarcerated workers and physically strenuous[123] – or jobs cleaning the prison's internal facilities for a few pennies per hour.[124] Offering the best option in a sea of lousy choices – and benefiting precisely *because* the option is better, but still lousy – hardly passes for empowerment. Incarcerated workers must be paid the same wages as free workers and offered equivalent protections.

COMPANIES OFFER FEW PROTECTIONS

During the early days of the COVID-19 pandemic, incarcerated individuals working for the California Prison Industry Authority (CALPIA) – a "self-supporting, customer-focused business"[125] overseen by the California Department of Corrections – manufactured masks for twelve hours each day earning 60 cents per hour.[126] The workers were told by their supervisors that they would "face disciplinary sanctions" if

they wore any of the masks they were making.[127] This occurred despite the federal guarantee, found in the Occupational Safety & Health Act (OSHA) of 1970, that employers will provide protective gear free of charge.[128] Under OSHA, the vast majority of workers in the United States have the right to a safe and healthy workplace, the right to seek and obtain information about the safety of their workplace, the right to demand a safe workplace without fear or (or actual) retaliation, and the right to health and safety training.[129]

These protections do not, however, extend to most incarcerated workers.[130] Nor do wage and hour protections under the federal Fair Labor Standards Act (FLSA) or collective bargaining protections under the National Labor Relations Act (NLRA).[131] This dearth of rights and protections endangers incarcerated individuals – and it attracts businesses looking to trim costs. Indeed, the cost savings from using incarcerated labor have historically been so large that organized free labor has suffered.[132] In 1928, the American Federation of Labor (the AFL-CIO today) requested that both national political parties endorse federal legislation prohibiting interstate sales of prison-made goods, calling competition between incarcerated and free labor "a menace."[133] This request and others ultimately resulted in the broad federal prohibition of trading prison-made goods in interstate commerce – which was enacted, but with a litany of exceptions.[134]

"We pay employees $9 on average... They get full medical insurance, 401(k) plans and paid vacation. Yet we're competing against a federal program that doesn't pay any of that."[135]

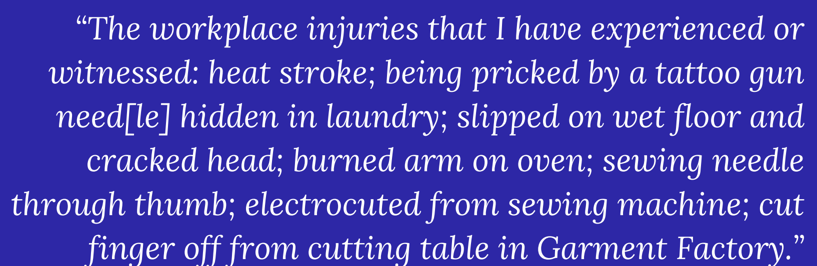
– Kurt Wilson, an executive at American Apparel, Inc., a small business in Alabama that manufactures military uniforms and frequently competes with UNICOR on government procurement bids (and as a result, laid off between 150 and 175 workers over the course of several years and several contract losses to UNICOR)[136]

"Medical care is given rarely unless your life is at stake."

– Incarcerated Worker, New Castle Correctional Facility (Indiana); Supervised by and works in service of Aramark, a for-profit "correctional services" firm

Beyond measly earnings and inadequate safety measures and workplace trainings, in some states, incarcerated individuals are explicitly excluded from access to workers' compensation.[137] In other states, the governing statutes do not directly address access by incarcerated individuals, but courts have generally interpreted there to be significant restrictions to the compensation owed to this class of workers.[138] The rationale provided in some of these cases is darkly ironic: because incarcerated workers are required – forced – to work, and thus are unable to enter into a voluntary contract with an employer, they cannot be considered "employees" under the law.[139] In select states, incarcerated individuals who contract directly with corporate employers may be entitled to workers' compensation.[140] However, across the vast landscape of U.S. prison industries, incarcerated workers are rarely offered adequate protection from injury or compensation post-injury.

The cost savings from failing to pay workers' compensation are often massive. In 2020, the Texas Department of Criminal Justice (TDCJ) submitted a bid for a government contract that was $750,000 below the nearest bidder.[141] In the bid, TDCJ claimed it could repair tires on city trucks for just over $4 million – while competitors budgeted closer to $5 million.[142] This spread was largely due to TDCJ's lack of budget for workers' compensation.[143] When the mayor of Houston instructed TDCJ to reapply with a line-item for workers' compensation, the department refused.[144]



> *"The workplace injuries that I have experienced or witnessed: heat stroke; being pricked by a tattoo gun need[le] hidden in laundry; slipped on wet floor and cracked head; burned arm on oven; sewing needle through thumb; electrocuted from sewing machine; cut finger off from cutting table in Garment Factory."*
>
> – Incarcerated Worker, Robertson Unit (Texas)

KOCH FOODS: DANGEROUS MACHINES AND NO TRAINING IN ALABAMA

It's called the Kill Line – the spot in a Koch Foods poultry plant where thousands of chickens are slaughtered each day.[145] It is also the spot where, in 2018, Frank Ellington – an incarcerated worker in Ashland, Alabama, employed via a work release program to clean the "Automatic Rehanger" machine – was pulled into the machine's whirling blades and killed immediately.[146] Police officers who arrived on the scene later told the

Southern Poverty Law Center they were surprised there was never a wrongful death claim filed.[147] "You would expect that," one of the officers said – after all, the machine was meant to be off when Ellington cleaned it and an investigation revealed that he had not been "properly trained to recognize the dangers of his job."[148] Yet, Koch Foods was only fined $38,802.[149]

The company contested this fine, arguing it had "already paid Ellington's funeral and burial expenses."[150]

In the Koch Foods plant, workers report being pressured to maintain a dangerous production pace.[151] Even so, the poultry lobby has advocated that the U.S. Department of Agriculture eliminate "the line speed limit," which restricts how many birds can be killed every 60 seconds.[152] In 2023, the speed limit was 140 birds per minute[153] – or, put another way, more than four million chickens killed over an eight hour shift. Incarcerated workers often operate these machines for entire shifts without taking bathroom breaks, for "fear they'll be fired if they raise concerns about it."[154] Federal officials investigating Elligton's death explained that it was "possible that inmate Ellington could have left the machine running to save time in the cleaning process."[155]

In his work release papers for Koch Foods, Ellington named his mother as the beneficiary of his unpaid wages in the event of his death.[156] Month after he was killed, and after state deductions were made, his mother received this payment: $129.[157]

NOTORIOUSLY **DANGEROUS WORK**

Work in meatpacking plants and factories, and in the poultry industry writ-large, is notoriously dangerous.[158] Every few years, incarcerated poultry workers in Alabama and other states report dozens of horrific injuries – due to sharp knives, unsafe machinery, and hazardous chemicals[159] – despite the pressure put on employees not to report or seek employer-sponsored medical support.[160]

A Southern Poverty Law Center investigation found that:

> [Al]though they're among the nation's most dangerous workplaces, poultry plants in Alabama and other states in the chicken belt continue to benefit from what is perhaps the most vulnerable workforce in the country – prisoners. Poultry processors employ them by the hundreds… Prisoners are arguably even more vulnerable workers than

undocumented immigrants. They won't get arrested by Immigration and Customs Enforcement, but they can be sent back to prison, and they can't move away. They also can't find a higher-paying job elsewhere. They are a captive workforce and a prime target for poultry companies.[161]

"The ideal employment opportunity for incarcerated workers would be learning a valuable trade or skill that can transition to a job or career outside of prison with above minimum wage earnings... It's true that inmates are often exploited for their labor, especially by the private sector, but jobs are needed for one to be self sufficient and independent... the only way to ensure inmates are not exploited by private, state, or government is to have strict law [sic] prohibiting such exploitation."

– Incarcerated Worker, Eyman Complex, Cook Unit (Arizona)

HICKMAN'S FAMILY FARMS: ACCIDENTAL VACCINATIONS AND AMPUTATIONS IN ARIZONA

Hickman's Family Farms, a privately held Arizona-based corporation and the largest egg producer in the Southwest, has relied on incarcerated workers in Arizona for more than twenty years.[162] The company's eggs are sold in grocery stores across the United States, including AJ's, Albertsons, Bashas', Food City, Fry's Food Stores, Safeway, and Sprouts.[163] We reported on Hickman's Family Farms' use of prison labor in our 2022 report, *Convicted: How Corporations Exploit the Thirteenth Amendment's Loophole for Profit*.[164] During the COVID-19 pandemic, Hickman's Family Farms successfully lobbied for more than 100 female incarcerated workers to be moved into a dorm located within one of its chicken farms.[165] The incarcerated workers spent the pandemic living and working in close quarters on the private company's property, where they experienced repeated chemical burns, needle sticks, and other injuries.[166]

The below injury descriptions are quoted directly from hundreds of incident reports – all of which occurred between 2018 and 2022 at Hickman's Family Farms' chicken farms

in Arizona – provided to us through a federal open records request.[167]

> On 01/17/2022 at 0125 hours, while working at Tonopah sanitation inmate [REDACTED] cut off tip of right index finger.
>
> On 01/08/2021, at approximately 1315 hours, I [] was advised that Inmate [REDACTED] had received a needle stick while vaccinating chickens at Hickman's Arlington Pullet House E. The vaccination gun needle stuck inmate [REDACTED] in the following areas of her body: (right inner thigh above knee).
>
> On 10/30/2020 at approximately 0432 hours, I [] initiated incident command system at Hickman's Dorm due to Inmate [REDACTED] complaining of a chemical burn on her back.
>
> On 3-5-2019 at apx. 1708 hours I [] was advised by Hickman supervisor [] that inmate [REDACTED] had received a needle stick while vaccinating chickens at Hickman's Arlington pullet house F.
>
> On 7-11-2018 at apx. 1615 hours inmate [REDACTED] received at [sic] needle stick vehicle vaccinating chickens at Hickman pullet house L in Tonopah. Inmate [REDACTED] stated that a chicken kicked the vaccination gun out of her hand and the needle stuck her in her chest.

"They don't have vacations; they don't call in sick."[168]

– Penny Rayfield, CEO of Onshore Resources, a private entity partner that partners with Lockhart Correctional Facility in Texas to produce electronic circuit boards and wire harnesses (2006)[169]

"I've seen two people die at work and only a few injuries are treated properly. I tore a muscle and was never allowed to see a doctor."

– Incarcerated Worker, High Desert State Prison (Nevada)

COMPANIES RECEIVE TAX BREAKS

There are a variety of ways to make money by using prison labor. Some are obvious: paying workers pennies, rather than minimum or market rates, dramatically reduces costs. However, companies have found numerous additional methods to profit from the modern prison economy. For example, when British Petroleum used incarcerated workers to clean up the Deepwater Horizon oil spill in 2010, the wages paid by the company – to the extent they were paid at all – were recouped in the form of federal tax credits.[170] Oil leaked from the exploded offshore drilling platform for 87 days, and those "hired" reportedly worked up to twelve hours per day.[171] *Even if* British Petroleum had paid the state and federal minimum wage in 2010 – $7.25 per hour – it would have recouped all costs once each worker labored for ten days or 120 hours.

FOSTER FARMS: DISCOUNTED PAYROLL IN LOUISIANA

The Work Opportunity Tax Credit (WOTC) is a federal tax credit created by the Small Business Job Protection Act of 1996.[172] A company that employs an incarcerated worker participating in a work release program is eligible to receive a 25 percent tax credit on the employee's first year of wages if the employee works at least 120 hours, or a 40 percent credit if the hours worked increase to 400, up to $2,400 per employee.[173] To qualify for this credit, a company must hire "qualified ex-felons," which includes incarcerated individuals (who have been convicted of a felony) on work release.[174] There is no limit to the number of targeted individuals that a corporation can hire, or to the number of credits the corporation can claim.[175]

Foster Farms, a Louisiana chicken processing plant that employed more than 100 incarcerated workers in 2017, was credited $240,000 under the WOTC.[176] The incarcerated workers were paid $7.25 per hour, with individuals retaining less than 40 percent of the pay.[177] In 2017, Foster Farms paid entry-level free workers $12.70 per hour.[178] By using prison labor – and by leveraging the WOTC – Foster Farms likely saved nearly 50 percent of the payroll costs it would have ordinarily incurred.[179]

A Colorado Foster Farms processing plant is where the first case of human bird flu in the United States originated in April 2022 – contracted by an incarcerated worker while he performed "culling" (selective slaughtering) as part of a work release program.[180]

"MADE IN U.S.A." OR **"MADE IN U.S. PRISONS"**?

Tax credits are not the only federal incentive provided to private industry entities that employ, or otherwise utilize the labor of, incarcerated workers. Under federal law, private industry actors may contract with Federal Prison Industries, Inc., which operates under the trade name UNICOR, to manufacture, produce, mine, or assemble goods "that are currently, or would otherwise be, produced outside the United States."[181] UNICOR has promoted this reshoring initiative by emphasizing the benefits companies can accrue by producing U.S.-made goods, including the:

> Ability to mobilize, collaborate and convene without the worry of transoceanic flights, significant time zone differences and communications challenges… Manufacturing and surge capacity to meet the most challenging demands and cyclical markets… Marketing advantages from made, produced, or assembled in the USA labeling.[182]

Numerous companies have recognized these benefits,[183] with the shift towards using incarcerated workers becoming increasingly common. As early as 2015, the Bureau of Prisons claimed UNICOR had "served as a contract manufacturer for over 30 companies on jobs that had been or would go overseas" and employed nearly 1,000 incarcerated individuals in repatriated jobs.[184]

It is unsurprising that this program is popular. Companies follow cost savings, and savings are found most regularly where labor protections are either weak or weakly enforced. UNICOR pays incarcerated workers between $0.23 and $1.15 per hour – so, reshoring is certainly cost effective.[185] Companies that repatriate jobs by partnering with UNICOR are also eligible for a nine percent income tax deduction under the Domestic Production Activities Deduction.[186]

Reshoring is also highly marketable. A 2020 University of Chicago Booth School of

Business study found that screen protectors with the "Made in USA" label sold for 28 percent more than those without.[187] This market phenomenon is hardly new, and companies have gone to extraordinary lengths to take advantage. In 1998, Shearwood Flemming and Charles Ervin – while both were incarcerated at the maximum-security Richard J. Donovan State Correctional Facility outside San Diego – spent 45 days in solitary confinement after telling reporters they were made to switch "Made in Honduras" labels with "Made in USA" labels on garments that were partially produced within the prison for Mecca, Seattle Cotton Works, and Lee Jeans.[188] Flemming and Ervin called the operation a "sweatshop behind bars."[189]

UNICOR

UNICOR is a wholly owned U.S. Government corporation created by Congress in 1934.[190] With a few exceptions, UNICOR is restricted to selling goods to the federal government.[191] However, corporations can partner with UNICOR on contracts to provide goods or services to public entities or nonprofits, or they can purchase from or subcontract with UNICOR when competing for government contracts.[192] UNICOR's biggest customer is the Department of Defense, accounting for 56 percent of its total revenue.[193] In fiscal year 2021, UNICOR reported net sales totaling $404,065,000 with earnings of $43,732,000.[194] Yet for each dollar that UNICOR earns, only $0.04 is paid to incarcerated workers.[195]

While UNICOR has historically produced goods for the federal government, more recently it has expanded its partnerships with the private sector. The UNICOR website boasts that "just about any company can team with UNICOR to take advantage of our modern manufacturing capabilities, diverse product line, talented labor pool, and nationwide locations."[196]

"Utilizing incarcerated people that work for low or no pay, instead of low-wage foreign workers that labor in unsafe working conditions, is a cynical channeling of the rising awareness of the domestic American worker's plight in the age of globalization."

– Lan Cao, Chapman University Betty Hutton Williams Endowed Professor in International Law and Director of the International Law Program (2018)[197]

COMPANIES & PRISONS FORM JOINT VENTURES

"Joint ventures" between a private entity and state prison system are authorized via the Prison Industry Enhancement Certification Program (PIECP),[198] which Congress enacted in 1979. PIECP allows companies to establish commercial partnerships with certified state departments of corrections and be exempt from restrictions on the interstate sale of prison-made goods.[199] Statutorily, PIECP-workers must be paid at least the federal or state minimum wage, whichever is higher, unless the worker is in a "training period."[200] Some private industry-prison ventures have been criticized for undercutting these wage requirements by implementing extremely long training periods or by moving workers to new positions once a training period ends (where they then begin a new training period).[201] Companies have also avoided paying required wage rates by delineating between workers who are involved in final assembly of a product – who are owed PIECP wages – and those inmates involved in the production of *pieces* of a product.[202]

FLORIDA'S PRIDE IS KNOWN TO **SKIRT THE RULES**

In 2010, Florida's PIECP-certified state program – known as "PRIDE" – was criticized for requiring incarcerated workers to complete an *initial* 480-hour training course, before completing three more training "levels" over the course of two years.[203] Only after these trainings did the worker have "the potential of making the prevailing wage."[204] At any time during the four-tiered training program the worker could be (and often was) moved to another position to begin training on different equipment, further extending the training period and the period of depressed wages.[205]

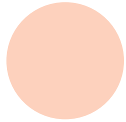
Like other incarcerated worker programs, including those focused on maintaining internal facilities, wages paid via a PIECP-authorized "joint venture" are subject to deductions for taxes, "reimbursement" to the state for "reasonable room and board charges," court-ordered and voluntary family support, and contributions to victim funds of between five and twenty percent of gross wages.[206] In aggregate, deductions cannot exceed 80 percent of gross wages.[207] Some states then require mandatory

savings accounts or have other forms of withholding net wages from workers until their release from incarceration.[208] While those who are released from prison may benefit from a savings account, these same individuals likely struggle to purchase basic goods while in prison, including soap, telephone time, and tampons.[209]

HENDERSON CONTROLS, INC.: LOBBYING FOR "OFF-SITE" PRISON LABOR IN TEXAS

In 2023, 52 incarcerated individuals from Lockhart Correctional Facility in Texas were employed at Henderson Controls, Inc. to produce air conditioning parts and brass heating valves.[210] Henderson Controls has utilized incarcerated workers for many years – and lobbied for its legal right to do so.[211] In 2008, amidst political discussion in Texas about the sustainability of "off-site" prison labor, Henderson Controls hired Ray Allen to lobby on its behalf.[212] Allen was one of the principal architects of the 1993 Prison Industries Act, which certified Texas under the federal PIECP.[213]

See Recommendation 13: Companies must certify that all corporate lobbying activities are consistent with the company's internal "no use of prison labor" policy. (*See also Recommendation* 10.)



WHERE WE'RE GOING:
BREAKING FREE – ONE CLAIM, LEGISLATIVE ACTION, AND CORPORATE POLICY AT A TIME

This report is a state-of-play and an immediate call for remedy. The recommendations made throughout the following pages are deliberately focused on the here and now: on steps that can be taken today, this year, or this decade, and which – if taken – will measurably improve the quality of work and life for incarcerated individuals, even if inherent (and historical) injustices remain throughout the U.S. criminal justice system. Our goal is to provide practical and strategic guidance to legal practitioners, advocates, legislators, and corporate actors fighting against the existence of, and profiting from, forced labor in the United States.

In the following pages, we describe the litigation opportunities that appear to be open in 2024; several federal policy proposals (those on the table and those not) that we recommend continue to be urgently advocated for and enacted; and internal policies and contracting behaviors that should be adopted and/or implemented by corporations dedicated to eliminating the use of prison labor in their domestic supply chains.

LITIGATION OPPORTUNITIES

With the stated purpose of introducing "new potency in the Thirteenth Amendment's guarantee of freedom,"[214] the Trafficking Victims Protection Act (TVPA) was enacted by Congress in 2000, and reauthorized as the Trafficking Victims Protection Reauthorization Act (TVPRA) in 2003 (and most recently, in 2019).[215] The TVPRA criminalizes involuntary servitude, forced labor, and trafficking, and provides a *civil* private right of action to victims.[216]

However, civil actions under the TVPA and TVPRA by incarcerated individuals – alleging a violation of involuntary servitude, forced labor, or trafficking – are typically stumped by a number of barriers, not the least of which is the Thirteenth Amendment itself. The

TVPA and the TVPRA were enacted pursuant to Congressional authority created by the Thirteenth Amendment,[217] and have thus been interpreted by most courts as implementing the prohibition – **and the exception** – articulated by the Thirteenth Amendment.[218] In other words, the federal crimes of involuntary servitude, forced labor, and trafficking might carry with them an exception for anyone convicted of a crime.

CRIMES & CIVIL CAUSES OF ACTION CREATED BY THE **TVPA AND TVPRA**[219]

Under **18 U.S.C. § 1584**, it is unlawful to knowingly and willfully hold to involuntary servitude or sell into any condition of involuntary servitude, any other person for any period of time.[220]

Under **18 U.S.C. § 1589**, it is unlawful to knowingly provide or obtain the labor or services of a person by means of force, threats of force, physical restraint or threats of physical restraint, serious harm or threats of serious harm, abuse or threatened abuse of law or the legal process, or any scheme, plan, or pattern intended to cause someone to believe they would suffer serious harm. It is also unlawful to knowingly benefit from participation in a venture which has engaged in the above activities.[221]

Under **18 U.S.C. § 1590**, it is unlawful to knowingly recruit, harbor, transport, provide, or obtain by any means, any person for labor or services that is in violation of any provisions of the TVPA or TVPRA.[222]

Under **18 U.S.C. § 1595**, a victim of a violation of the TVPA or TVPRA may bring a civil action against the perpetrator (including a person that knowingly benefits – or attempts or conspires to benefit – financially or otherwise from participation in a violating venture) in an appropriate district court of the United States.[223]

OTHER BARRIERS TO SUCCEEDING ON FEDERAL CLAIMS: **PRISON LITIGATION REFORM ACT**

The Prison Litigation Reform Act (PLRA) was enacted in 1996 to eliminate "frivolous" lawsuits by incarcerated individuals in federal court.[224] The federal

law requires that all "available" administrative remedies be exhausted before a civil action can be brought by an incarcerated individual,[225] and failure to exhaust these remedies is an affirmative defense available to defendants.[226] The U.S. Supreme Court has made clear that "Congress meant to require procedural exhaustion regardless of the fit between a prisoner's prayer for relief and the administrative remedies possible"[227] and that remedies must be exhausted regardless of whether they are "plain, speedy, and effective."[228] The PLRA also requires civil actions by incarcerated individuals to include "a prior showing of physical injury or the commission of a sexual act," excluding cases based solely on mental or emotional injuries.[229]

Incarcerated plaintiffs must also pay full filing fees – even when filing *in forma pauperis*, which typically excuses indigent plaintiffs from this financial burden.[230] Filing fees are generally about $400.[231] For Black households with one or more incarcerated family members, $400 represented 36 percent of median household wealth in 2019.[232] This is a tremendous expense and presents a significant barrier to filing a claim. Latinx and white households with at least one incarcerated family member fare better – with $400 representing 12.5 and 2.6 percent of median household wealth in 2019, respectively[233] – but the barrier to filing for those households remains high.

Finally, the PLRA imposes limits on attorneys fees, creating a lack of available representation for incarcerated individuals, no matter the strength of their claim.[234] The PLRA, and its state equivalents, have dramatically reduced the number of claims – frivolous and not – by incarcerated individuals in state and federal courts.[235] Between 1995 and 2001, so-called "prisoner lawsuits" declined by 43 percent in federal courts, despite the prison population rising by 23 percent in the same period.[236] By 2006, lawsuits had declined a total of 60 percent since passage of the PLRA.[237]

FORCED LABOR & TRAFFICKING CLAIMS IN STATES WITH NO SLAVERY EXCEPTION

As the state constitutional landscape evolves, litigation in state courts is likely to become more viable. A 2022 case in Colorado state court – ultimately dismissed – offers hints as to where advocates and legal practitioners should look for opportunities. This case, as well as two recent federal cases (in Indiana and California) and the political

momentum in other states to eliminate constitutional allowance for forced labor and involuntary servitude, is indicative of a widening legal landscape. Now is the time to continue, and accelerate, bringing strategic challenges.

See Recommendation 7: All states must eliminate their constitutional exception to the prohibition of slavery and involuntary servitude for convicted persons.

Lamar v. Williams (Colorado Court of Appeals, 2022)[238]

> **Absent change by Congress**, we hold that… the term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of **physical restraint or physical injury**, or by the use or threat of coercion through law or the legal process.[239] (Emphasis added.)

This statement – announcing the U.S. Supreme Court's holding that involuntary servitude under 18 U.S.C. § 1584 and 18 U.S.C. § 1595 (the federal prohibition of involuntary servitude and civil right of action created by the TVPA and TVPRA) requires the use or threat of **physical** harm – was made in 1988 in *United States v. Kozminski*, and cited in 2022 by the Colorado Court of Appeals in *Lamar v. Williams*.[240]

In *Lamar*, the court uses *Kozminski* to affirm the district court's dismissal of claims alleging involuntary servitude against the Colorado Department of Corrections by Andrew Lamar, an incarcerated individual in Colorado at the time the case was filed.[241] For $0.80 per day, Lamar worked up to thirteen hours per day, up to four days per week, operating the prison's food service.[242] For each 52-hour week worked, Lamar earned $3.20.[243] Refusal to work *was* an option, in the most literal sense. He could refuse, but doing so meant foregoing opportunities to earn time off his sentence and foregoing certain "privileges" (such as access to food at non-meal times and access to certain technologies, including those that help incarcerated individuals maintain contact with the free world and relationships with family members).[244] But, as the court made clear in its opinion and its reliance on *Kozminski*, Lamar suffered no direct physical harm for refusing to work and thus was not subjected to involuntary servitude.[245]

In 2000, in response to *Kozminski*, Congress enacted the TVPA,[246] which specifically declares that prohibitions on involuntary servitude are "intended to reach cases in which persons are held in a condition of servitude through **nonviolent coercion**."[247]

Indeed, since 2000, the federal criminal definition of "forced labor" includes work that is performed "by means of serious harm or threats of serious harm, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances."[248] So why, in 2022 – when at least four federal Courts of Appeal have recognized *Kozminski* to be superseded by statute[249] – was *Lamar* decided based on a lack of physical harm?

The answer to this question likely comes down to confusion over precedent. *Kozminski* interpreted a federal statute that was later superseded by subsequent federal legislation, while *Lamar* interpreted the legality of labor conditions in a state prison under a state law which prohibits involuntary servitude.[250] Andrew Lamar lost his case when the court relied on an erroneous interpretation of the type and level of coercion sufficient for creating conditions of involuntary servitude – looking to *Kozminski*, but not to Congress' actions **in response to** *Kozminski*.

Critically, however, the court also reviewed Lamar's claim under the Colorado State Constitution, which – since 2018, when voters elected to amend the text of the state's Thirteenth Amendment equivalent – prohibits involuntary servitude as punishment for a crime.[251] The court may have erred in its ultimate analysis, but it was correct to reach the merits of the case – the elimination of Colorado's slavery exception opens that door.

Colorado State Constitution, Article II § 26: Slavery prohibited. There shall never be in this state either slavery or involuntary servitude.[252]

Colorado Code § 18-3-503: (1) A person who knowingly sells, recruits, harbors, transports, transfers, isolates, entices, provides, receives, or obtains by any means another person for the purpose of coercing the other person to perform labor or services commits human trafficking for involuntary servitude.[253]

Figgs v. GEO Group, Inc. (Southern District of Indiana, 2019)[254]

In *Figgs v. GEO Group*, multiple incarcerated workers brought an action under 18 U.S.C. § 1589 and 18 U.S.C. § 1595 (the federal prohibition of forced labor and civil right of action created by the TVPA and TVPRA) against the privately-owned prison in which they lived and worked.[255] The claim survived a motion to dismiss when the Southern District Court in Indiana held that the complaint "clearly allege[d]" a scheme whereby

Plaintiffs are required by force and physical restraint to work and are threatened with serious harm—long hours of solitary confinement—if they refuse to work."[256]

In *Figgs*, the plaintiffs worked for no wages,[257] were "routinely chained and shackled when working," and faced weeks of solitary confinement for refusal to work or for suffering an injury while working.[258]

The *Figgs* court was persuaded by a 2015 Colorado case against the same private prison company: *Menocal v. GEO Group, Inc.*[259] In *Menocal*, the court rejected GEO Group's argument that forcing immigrant detainees to labor for no payment was acceptable under the "civic duty exception" doctrine announced by the Fifth Circuit in *Channer v. Hall* in 1997.[260] Under *Channer*, the Thirteenth Amendment permitted the government to "compel its citizens" to "perform certain civic duties," including "housekeeping tasks."[261] However, both the *Menocal* and *Figgs* courts agreed there is "no authority for… applying such an exception to a private, for-profit corporation under contract with the government."[262]

Ruelas v. County of Alameda **(Northern District of California, 2021)[263]**

In *Ruelas v. County of Alameda*, the plaintiffs – who included individuals post-conviction, detained pre-trial, and awaiting deportation – challenged the conditions of their labor preparing food for a private company, Aramark.[264] Only the non-convicted plaintiffs participated in the claims under 18 U.S.C. § 1584, 18 U.S.C. § 1589, and 18 U.S.C. § 1595 (the federal prohibitions of involuntary servitude and forced labor, and civil right of action, created by the TVPA and TVPRA) because under federal and California law, convicted workers are excepted from prohibitions of involuntary servitude, forced labor, and trafficking.[265] Despite this limitation, the court's analysis of Aramark's primary offender liability for the alleged violations is worth paying attention to.

The plaintiffs worked in the Santa Rita Jail kitchen under the supervision of corrections officers, but for the explicit purpose of preparing food for Aramark to sell commercially.[266] The plaintiffs reported that when they refused to work – including because they were sick or injured – they were threatened with "lengthier jail sentences," solitary confinement, and termination of employment.[267] Sometimes these threats occurred in front of Aramark employees and sometimes Aramark employees allegedly threatened to "report" the detained workers to officers with the power to punish them.[268] The court held:

> Even though Aramark does not technically have the authority to place prisoner-employees in solitary confinement, Plaintiffs sufficiently allege that Aramark obtains Plaintiffs' labor by threats of physical restraint. That the physical restraint would be imposed by the County rather than Aramark does not change the analysis… no matter who makes the threats, they lead to Plaintiffs providing labor for fear that they will be placed in solitary confinement.[269]

The *Ruelas* court also held that Aramark – because it received a financial benefit, helped schedule shifts and assign tasks, and "observed the Sheriff's deputies' supervision" – could be liable as a "venture offender" under the TVPA and TVPRA.[270]

The combined lesson for practitioners from *Lamar*, *Figgs*, and *Ruelas* must be that, in jurisdictions where convicted and incarcerated workers are constitutionally protected from forced labor, there is a viable opportunity not only to reach the merits of a civil claim, but also to hold private industry accountable for its role facilitating and benefiting from the violating labor conditions.

See Recommendation 14: Advocates and lawyers should pursue civil claims by incarcerated workers, alleging involuntary servitude, forced labor, or trafficking, against companies that contract for or employ prison labor in states that have amended their constitutions to prohibit slavery post-conviction.

TWO CASES **TO WATCH**:[271]

Lilgerose v. Polis (Colorado District Court, 2022)[272]

Unlike in *Lamar*, which alleged the existence of involuntary servitude in Colorado state prisons, plaintiffs Richard Ligerose and Harold Mortis – incarcerated individuals in the Fremont Correctional Facility in Colorado – have alleged that Colorado laws requiring incarcerated individuals to work are "unconstitutional on their face" because of the "inherently coercive conditions in prison."[273]

The defendants in *Lilgerose* have argued that involuntary servitude cannot exist if the relevant individual is given a choice not to work, even if refusal will result in negative consequences.[274] They argue that because incarcerated individuals are not entitled to "privileges" or to the accrual of good/earned time against their

sentences, the loss of these cannot constitute punishment or coercion. This argument runs afoul of federal and international thresholds for coercion.

> *"The threat of lost or withheld good time and earned time coerces people incarcerated in CDOC to work, for fear of spending more time in prison than they otherwise would. In practice, the withholding or deducting good time and earned time results in an individual being confined in prison for a longer period of time. Defendants utilize these policies and practices specifically to compel the labor of Plaintiffs and others incarcerated in CDOC."*
>
> – *Lilgerose v. Polis* First Amended Complaint (April 2022)[275]

See Recommendation 9: All states must enact legislation prohibiting prisons from mandating work, amend laws to prohibit punishment for refusing to work, and codify that the loss of "privileges" constitutes punishment.

Robert Earl Council v. Ivey (U.S. District Court for the Middle District of Alabama, 2023)[276]

In December 2023, ten incarcerated workers, the Union of Southern Service Workers, the Retail, Wholesale and Department Store Union, and the Woods Foundation filed a complaint against Alabama's governor, state attorney general, and chair of the Board of Pardons and Paroles, as well as the City of Montgomery and several fast food franchisees of McDonalds, KFC, Wendy's, and Burger King.[277]

The complaint alleges forced labor under the 18 U.S.C. § 1589 and 18 U.S.C. § 1595 (the federal prohibition of forced labor, and civil right of action, created by the TVPA and TVPRA); involuntary servitude under the Alabama Constitution (which was amended to prohibit involuntary servitude for convicted persons in 2022); and conspiracy to "defeat the proper and lawful operation of the State's parole system" in violation of the Ku Klux Klan Act of 1871 by denying parole to keep incarcerated workers "imprisoned so they can be exploited as members of the

State's captive labor force.[278] The lawsuit calls the percentage of worker wages collected by the state (as reimbursement for the costs of incarceration) a "labor-trafficking fee."[279]

> *"The governor, the attorney general, the parole board, the private employers, the public employers are all participating in this enterprise that is intended to result in economic benefit for all of them."*
>
> – B.J. Chisholm, one of the lead attorneys representing the plaintiffs[280]

PROPOSED LEGISLATIVE REFORMS

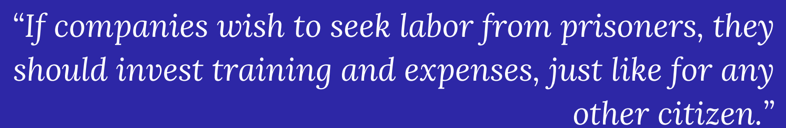
The movement to eliminate the Thirteenth Amendment's provision allowing slavery and servitude for duly convicted persons – the last constitutional vestige of slavery in the United States – has gained momentum in recent years.[281] Recent campaigns have resulted in successful ballot measures to remove similar provisions in seven state constitutions,[282] making the enslavement or involuntary servitude of incarcerated individuals illegal – in theory, if not yet in practice – in those states. These legislative changes are a necessary, but insufficient, step toward unraveling the U.S. justice system's entrenched relationship to slavery, the plantation economy, and capitalism. Before, and after, this step is taken, there are also other legislative reforms to pursue.

AMENDMENTS TO THE FAIR LABOR STANDARDS ACT (FLSA) AND THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

Incarcerated workers must be entitled to the same protections as free workers. This includes the right to organize and bargain collectively, protection from any form of forced or compulsory labor, protection from discrimination, the right to a safe and

healthy working environment, and minimum wage and maximum hour protections. Enacting the Fair Wages for Incarcerated Workers Act and the Correctional Facilities Occupational Safety and Health Act – both introduced to the 118th Congress in February 2023 by Senator Cory Booker (D-NJ) and Congressman Emmanuel Cleaver (D-MO-5)[283] – is an important first step for Congress.

Together, these bills would amend the Fair Labor Standards Act (FLSA) by ensuring incarcerated workers are paid the federal minimum wage for their labor and eliminating wage deductions for room and board reimbursement and for "court-imposed fees,"[284] and amend the Occupational Safety & Health Act (OSHA) by extending workplace safety and health protections to incarcerated workers in federal, state, and local facilities.[285] These are urgent changes that must be made. As this report has shown, incarcerated individuals are arguably the most unprotected class of workers in the United States.



"If companies wish to seek labor from prisoners, they should invest training and expenses, just like for any other citizen."

– Incarcerated Worker, Federal Correctional Institution, Danbury (Connecticut)

See Recommendation 2: Congress must extend the Occupational Safety and Health Act and the Fair Labor Standards Act to protect incarcerated workers.

AMENDMENTS TO THE PRISON LITIGATION REFORM ACT (PLRA) AND THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (CRIPA)

The Combating Workplace Discrimination in Correctional Facilities Act was also introduced in the 118th Congress by Senator Cory Booker (D-NJ) and Congressman Emmanuel Cleaver (D-MO-5) in February 2023.[286] The bill would, if enacted, amend the Prison Litigation Reform Act (PLRA) by eliminating the requirement that incarcerated individuals exhaust all administrative remedies before bringing suit against prison facilities and corrections officers, and amend the Civil Rights of Institutionalized Persons Act (CRIPA) by prohibiting work mandates in federal prisons and prohibiting the Bureau of Prisons from disciplining incarcerated individuals for refusal to work.[287]

We support these changes in their entirety. However, we also urge advocates and policymakers to go further:

- It is insufficient to eliminate only the PLRA's requirement that incarcerated litigants exhaust all administrative remedies. Federal and international law have – in a variety of instruments – codified the social and medical understanding that mental and psychological harm is dangerous, destructive, and often leads to physical harm, regardless of whether those physical effects are visible to the average observer.[288] A perfect example of this is the use of solitary confinement in prisons. Forced solitary existence – often imposed in tiny rooms without access to natural light or room to move – has debilitating psychological, neurological, and physiological effects.[289] This can legally be imposed – without civil recourse – on an incarcerated individual, including as punishment for refusing to work a mandated job, because it does not always include an obvious, visible "prior showing of physical harm."[290] This a policy travesty that must be immediately corrected.[291]

***See Recommendation 5*:** Congress must remove from the Prison Litigation Reform Act the requirement that incarcerated plaintiffs exhaust all administrative remedies before filing federal claims and the requirement that claims be based on prior showings of physical or sexual harm.

- It is likewise insufficient merely to prohibit work mandates and forbid punishment for refusal to work. Even in states where the constitutional exception to the prohibition of slavery and involuntary servitude has been eliminated, work under the banner of "rehabilitation" is often considered permissible.[292] The "civic duty exception," described earlier in this section, also creates an avenue for incarcerated individuals to be forced to perform "housekeeping tasks" for little or no wage and without agency or choice.[293] Moreover, proponents of the status quo argue that the loss of "privileges" – including the loss of opportunities to shorten one's prison sentence – as not constituting punishment.[294] CRIPA must be amended to define work in the broadest possible terms, including work that may have a rehabilitative effect or that contributes to the maintenance of prison facilities. It must also be amended to define "punishment" as any form of disciplinary action, including the loss of privileges.

***See Recommendation 6*:** Congress must amend the Civil Rights of Institutionalized Persons Act to define work in the broadest possible terms, including work that may have a rehabilitative effect or that contributes to the maintenance of prison facilities.

THE PROPOSED EXPANSION OF PIECP ONLY THROWS FUEL ON THE FIRE

Senator Booker and Congressman Cleaver also introduced the Ensuring Work Opportunities in Correctional Facilities Act in February 2023.[295] This bill "advances job and educational opportunities in prisons to prepare returning citizens to successfully reenter society and to reduce recidivism" by, among other things, increasing the funding for and number of programs under PIECP.[296]

In 2024, employment in a private industry-prison joint venture is often the only avenue available for an incarcerated individual to earn the minimum wage. These jobs are thus coveted. If we narrowly focus on just this fact, then expanding the PIECP program is advantageous to incarcerated workers. However, exploitation is frequently justified by facts such as this. When an individual is stripped of protection and rights, their "choice" to participate in the relationship that provides the *best chance at survival* does not indicate an absence of exploitation, but rather that the exploitative scheme was successful.

We support higher wages and the opportunity to build marketable skills for incarcerated individuals, but reject the idea that expanding opportunities for corporations to profit from the U.S. prison system could ever be an adequate answer. Our work combating forced labor spans jurisdictions, geographies, and sectors, but generally one pattern holds true: where corporations are allowed to benefit from the existence of vulnerable labor groups, more and more egregious exploitation will follow.

At the most basic level, the incentives created will be perverse. Any entity or actor that benefits from a cheap, captive labor force is incentivized to want that labor force to grow. The United States already incarcerates more people per capita than any other country in the world.[297] It is irresponsible to throw fuel on that fire.

WHEN AN INDIVIDUAL IS STRIPPED OF PROTECTION AND RIGHTS, THEIR "CHOICE" TO PARTICIPATE IN THE RELATIONSHIP THAT PROVIDES THE BEST CHANCE AT SURVIVAL DOES NOT INDICATE AN ABSENCE OF EXPLOITATION, BUT RATHER THAT THE EXPLOITATIVE SCHEME WAS SUCCESSFUL.

AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT (NLRA)

The extension of wage protections under the FLSA, safety protections under OSHA, and civil rights protections under the Civil Rights Act of 1964 and CRIPA are far more likely to create lasting impact if incarcerated individuals are also granted the right to organize and bargain collectively. The stated intent of the NLRA, which protects the right of association for most free workers in the United States, is to "eliminate the causes of certain substantial obstructions to the free flow of commerce" by protecting the "right of employees to organize and bargain collectively."[298] This right "safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest."[299]

THE EXTENSION OF WAGE, SAFETY, AND CIVIL RIGHTS PROTECTIONS FOR INCARCERATED INDIVIDUALS ARE FAR MORE LIKELY TO CREATE LASTING IMPACT IF THESE INDIVIDUALS ARE ALSO GRANTED THE RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY.

So long as U.S. prison industries exist, they will be connected – and capable of impacting – the domestic and global economy. The NLRA was enacted, at least partially, to mitigate the risk that the free flow of commerce is interrupted by worker dissatisfactions and employer violations of labor standards, and to create structures by which these dissatisfactions and violations are negotiated and resolved.[300] Withholding these rights – these mitigating structures – from incarcerated workers directly jeopardizes the goal of the NLRA. Far more importantly, it withholds core international legal rights from a class of U.S. workers.[301]

See Recommendation 3: Congress must extend the National Labor Relations Act to protect incarcerated workers.

PROPOSED CORPORATE POLICIES

Companies must adopt internal policies against the use of prison labor throughout their supply chains, and they must effectuate those policies by incorporating them into all Buyer-Supplier contracts. This type of corporate action is unlikely to occur on a widespread basis without state and federal regulations, but state and federal regulations are likewise unlikely to be enacted so long as corporate profits – and thus market incentives – remain tethered to U.S. prison industries.

See Recommendation 11: Companies must implement robust audit and due diligence mechanisms for ridding their supply chain of prison labor.

We will continue to pressure policymakers to enact protections for incarcerated workers and impose penalties on companies for exploiting incarcerated workers. But corporate actors do not need to wait for legislation; they can decide to be the first-movers. Below we have provided sample internal policy language and contract language, to be adapted to fit the needs of particular companies, buyers, and suppliers.

"Companies that do not use prisoner labor, but their competitors do, should be encouraged to label their product as prison labor free."

– Incarcerated Worker, Robertson Unit (Texas)

INTERNAL 'NO USE OF PRISON LABOR' POLICY

See Recommendation 10: Companies must adopt internal policies against the use of prison labor throughout their supply chain and create transparency apparatuses.

1. No Prison Labor in Supply Chain.

1.1 In no tier of [Company]'s direct or indirect supply chain shall the labor of incarcerated individuals be employed, contracted for, or used in the production, manufacture, or assembly of goods or parts of goods, the production or cultivation of raw materials, or the performance of services.

1.2 Contracting clauses: [Company] and each of [Company]'s employees shall ensure that each contract entered into for the procurement of goods or materials or the performance of services includes a clause that requires the contractor –

- 1.2(a) to certify to [Company] that the contractor has identified 100 percent of its direct and indirect supply chain and determined that no good or service furnished or conducted under the contract is produced or performed with prison labor;
- 1.2(b) to cooperate in providing reasonable access to records, persons, or premises if requested by [Company] for the purpose of determining whether any product furnished or service conducted under the contract is produced or performed with prison labor; and
- 1.2(c) to acknowledge that the prohibition of prison labor under the contract is intended to benefit and protect not only [Company] and the contractor, but also incarcerated workers who may be involved in the production of goods or performance of services under the contract, and to agree to recognize any such incarcerated worker who is injured or suffers damages, including but not limited to physical injuries, non-payment of the minimum wage, and discrimination, as an intended third-party beneficiary to the contract.

1.3 Contract termination and supplier suspension: [Company] shall terminate a contract in the event a violation of provision 1.1(a) is found and shall suspend the violating contractor from eligibility for contracting with [Company] for a period not less than three years.

- 1.3(a) Right to cure: If the contractor proactively identifies a violating subcontractor within its direct supply chain and terminates the subcontract within 30 days of the initial identification, [Company] may, at [Company]'s discretion, decline to terminate the contract. This “safe harbor” is available to each contractor only once every three years.

See Recommendation 12: Companies must implement contractual provisions in buyer-supplier contracts prohibiting the use of prison labor, mandating contract termination upon discovery of a violation, and granting third-party beneficiary rights to incarcerated workers in all buyer-supplier contracts.

Model Policy Language[302]

1. *No Prison Labor.*

1.1 Supplier acknowledges and agrees to the terms of the [Buyer's No Use of Prison Labor Internal Policy]. This Agreement obligates Supplier to comply with [the Buyer's Policy/Policies] and prohibits Supplier from contracting with, purchasing from, or otherwise entering into an agreement, partnership, or transaction with a local, state, federal, or foreign department of corrections or penitentiary, or a state, federal, or foreign correctional industries program or entity.

1.2 Third-party beneficiaries: Supplier acknowledges and agrees that the terms of the [Buyer's No Use of Prison Labor Internal Policy] are intended to benefit and protect not only Buyer and Supplier, but also incarcerated workers in and impacted by Buyer's supply chain.

- 1.2(a) Any incarcerated worker who is injured or suffers damages, including but not limited to physical injuries, non-payment of the minimum wage, and discrimination, following breach of [the Buyer's Policy/Policies] is an intended third-party beneficiary to this Agreement.
- 1.2(b) All third-party beneficiaries to this Agreement have the right to enforce the relevant provisions of the [Buyer's No Use of Prison Labor Internal Policy] against Supplier.
- 1.2(c) Assignment of rights: Third-party beneficiaries may assign their rights to a labor union, nongovernmental organization, or other organization(s) providing legal assistance they select.

1.3 Notice to subcontractors: Supplier shall provide a notice to all subcontractors, describing the rights and responsibilities described herein. This notice may be contained within or attached to an agreement or purchase order. If the notice is not a part of a commercial contract, Supplier shall require that subcontractors sign the notice to confirm acceptance and a commitment to compliance.

- 1.3(a) Contract termination and supplier suspension: Supplier shall terminate a subcontract in the event a violation of provision 1.3 is found and shall suspend the violating subcontractor from eligibility for contracting with Supplier for a period not less than three years.

1.4 Non-obstruction: Supplier shall not obstruct the efforts of Buyer or its designees to inspect for compliance, in accordance with the [Buyer's No Use of Prison Labor Internal Policy]. Buyer reserves the right to designate inspectors, auditors, and evaluators to conduct inspections on Supplier's operations at its discretion, and Supplier agrees to provide access to facilities, books and records upon reasonable notice.

1.5 Whistleblowers: Supplier or any party acting on behalf of Supplier shall not retaliate against any person who considers making or makes an internal report of violations of the [Buyer's No Use of Prison Labor Internal Policy], considers making or makes an external report of violations to Buyer or its designees, brings or participates in any legal action against Supplier related to any issue including violations of the [Buyer's No Use of Prison Labor Internal Policy], or assists in an investigation pertaining to possible violations. Retaliation encompasses any action that would dissuade a reasonable person from taking any action referenced in this paragraph.

CONCLUSION

The eggs you crack, the gas you put in your car, the cotton in your t-shirt, the soy in your latté, the customer-service department of your favorite retailer – all of these may have been produced or staffed by individuals without the right to organize, to earn the minimum wage, to demand protective gear or safety training, or to call in sick. This is true around the world: global capitalism depends on various degrees of exploitation. Profit is, by definition, a skim off the top – and it is too often skimmed *from* someone *for the benefit of* someone else.

The United States, despite its role as both the primary engine and advocate of global capitalism, is often a leader in movements to penalize and disincentivize systemic labor violations. Yet the gap between the United States' treatment of human rights and labor violations by others and the blind spot it has for its own barbaric and race-based systems of labor exploitation is seismic.

While *Ruffin* – the 1871 U.S. Supreme Court case declaring incarcerated individuals "slaves of the state" – is hardly canonical, it has never been explicitly overturned.[303] How could that be, in 2024? More importantly, what can be done to finally make it not so?

The exception to the prohibition of slavery and involuntary servitude under the Thirteenth Amendment must be removed. Until that happens, states must continue to remove their own exceptions to this prohibition. Federal and state legislation protecting workers must – in every way – be extended to incarcerated individuals. Companies must become first-movers by refusing to tolerate industry-prison ventures in their own supply chains and by incorporating that commitment into their contracting practices. Finally, advocates and lawyers must continue to leverage constitutional changes 158 years in the making: it is time, as demonstrated by recent cases, to bring more strategic claims in states that have already moved beyond the Thirteenth Amendment's slavery exception.

As we researched this report, we read letters from several dozen currently incarcerated workers, all of whom were asked to respond to this question: **Should companies be allowed to use, benefit, or profit from incarcerated labor?**

The answers, like the individuals, varied. Generally, however, a central – and unsurprising – theme emerged from the answers: **private wealth generated from labor performed without dignity is unacceptable**. One incarcerated worker in Illinois – who makes $0.20 per hour – put his answer this way: "*Only if the incarcerated men and women are able to unionize, negotiate the terms, and have all the protections that workers in free society receive.*"

All the protections that workers in free society receive. Why would we settle for anything less?

APPENDIX: INTERNATIONAL LEGAL INSTRUMENTS PROHIBITING AND/OR REGULATING INCARCERATED LABOR

Customary international law – the "law of nations" – describes a canon of "general and consistent" behavior by states that carries with it a "sense of legal obligation."[304] There are certain norms that rise to the level of law regardless of whether they are articulated in legal instruments, signed, or ratified.[305] In 1900, the U.S. Supreme Court addressed the role of customary international law in its seminal ruling, *The Paquete Habana*:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. **Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.** (Emphasis added.)[306]

A sub-category of customary international law concerns *jus cogens* norms, which "stand in a higher category and which cannot be set aside or modified"[307] based on consistent use or sense of legal obligation – in other words, they stand even if no one is standing for them. They stand not as a last resort of the law, but as the *most lasting* resort.

The prohibition of slavery and trafficking in persons are undoubtedly *jus cogens* norms.[308] The international prohibition of forced labor is likewise so well established that it reaches the status of customary international law. Indeed, the United States recognizes, practices, and has codified the prohibition of forced labor in numerous federal statutes, including those that specifically penalize prison labor as a form of forced labor when it occurs in foreign jurisdictions.[309] The Thirteenth Amendment – and the collection of federal and state laws that are permissible under it – exists in stark violation of treaties ratified by the United States, customary international law, and *jus cogens* norms.

THE CONVENTION TO SUPPRESS THE SLAVE TRADE AND SLAVERY (SAVERY CONVENTION), SIGNED BY THE UNITED STATES IN 1929

The 1926 Slavery Convention adopted the first internationally agreed-upon definition of slavery, defining it as the "status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[310] In Article 5, parties to the Convention also agreed "to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery."[311] In 1929, the United States signed the Slavery Convention subject to "its policy of opposition to forced or compulsory labour except as punishment for crime of which the person concerned has been duly convicted."[312]

In 1956, the United States ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Supplementary Convention on the Abolition of Slavery), which builds upon the 1926 Slavery Convention by introducing the concept of "institutions and practices similar to slavery [...] whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention."[313]

INTERNATIONAL LABOUR ORGANIZATION'S (ILO) ABOLITION OF FORCED LABOUR CONVENTION NO. 105, RATIFIED BY THE UNITED STATES IN 1991

The ILO Abolition of Forced Labour Convention (No.105), which the United States ratified in 1991, obligates each ratifying Member State "to suppress and not to make use of any form of forced or compulsory labour," including "as a means of racial, social, national or religious discrimination."[314]

In a report released in September 2023, the U.N. International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement excoriated the United States for the "shocking" violations of basic human rights and "staggering" racial disparities in its criminal justice system:[315]

> The Mechanism is 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. Further, it received information stating that workers in prison are assigned hazardous work in unsafe conditions without the training or protective gear needed, and, if they refused to work, even for a medical condition or disability, they are punished accordingly.[316]

ILO FORCED LABOUR CONVENTION, NO. 29

The ILO Forced Labour Convention (No. 29) prohibits forced or compulsory labor, defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[317] As a member of the ILO, the United States is bound by No. 29 regardless of its decision – thus far – to neither sign nor ratify the convention. The ILO Declaration on the Fundamental Principles and Rights to Work "[d]eclares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize [...] the principles concerning the fundamental rights which are the subject of those Conventions," including "the elimination of all forms of forced or compulsory labour."[318]

No. 29 includes notable exceptions to its prohibition of forced labor – none of which excuse the U.S. prison labor system. Under No. 29, incarcerated individuals may be subject to compulsory labor if "the said work or service is carried out under the supervision and control of a public authority" and the worker "is **not hired to or placed at the disposal of private individuals, companies or associations**."[319] (Emphasis added.)

The ILO stresses the requirement of free consent for prison labor to be acceptable under Convention No. 29.[320] A key indicator for free consent is whether the conditions of employment are comparable to those of free labor relationships.[321]

DETERMINING WHETHER FORCED LABOR IS PRESENT **USING THE ILO INDICATORS**

Based on guidance issued by the ILO's Special Action Programme to Combat Forced Labor, assessing whether specific "indicators" of forced labor are present in a given situation or for a particular worker can help establish whether an instance meets the threshold of forced labor. Eleven indicators are identified within the ILO's guidelines, however the "presence of a single indicator in a given situation may in some cases imply the existence of forced labour... in other cases you may need to look for several indicators which, taken together, point to a forced labour case."[322]

Several indicators of forced labor are present within U.S. prison industries.[323] Indicators such as abuse of vulnerability, restriction of movement, and isolation are inherent in a system of incarceration and cannot be sufficiently mitigated so as to eliminate the risk of forced labor. Other indicators, such as intimidation and threats, withholding of wages, abusive working and living conditions, and excessive overtime are not necessarily embedded in a carceral system of control and yet are found, to varying degrees, in many U.S. jails and prisons.

The following indicators apply to many incarcerated workers in the United States, underscoring that the risk of forced labor in U.S. prison industries is high:

- Abuse of vulnerability
- Restriction of movement
- Isolation
- Intimidation and threats
- Withholding of wages
- Abusive working and living conditions
- Excessive overtime

SECTION 307 OF THE TARIFF ACT OF 1930

The United States is no stranger to this analysis. Section 307 of the Tariff Act of 1930 (Section 307) prohibits the importation of all goods produced with forced or prison labor into the United States[324] – and Customs and Border Protection (CBP), the federal agency that implements Section 307, utilizes the ILO's indicators of forced labor to determine whether violating imports should be stopped at the U.S. border.[325]

Under this standard, CBP has determined that forced labor exists within the supply chains of tobacco from Malawi, rubber gloves from Malaysia, sugar produced in the Dominican Republic, and others.[326] And yet, if these supply chains moved to the United States and set up shop within domestic prison industries, utilizing incarcerated labor would carry no penalty whatsoever. As a global leader in combating forced and prison labor in foreign supply chains, allowing prison labor at home demonstrates the hypocrisy inherent in U.S. domestic policy.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) – signed by not yet ratified by the United States – recognizes the "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."[327] Moreover, clarification issued by the Committee on Economic, Social and Cultural Rights, which has authority to regulate the implementation of the ICESCR, confirms that forced or compulsory prison labor violates the state obligation to refrain "from denying or limiting equal access to decent work for all persons... including prisoners."[328]

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OF PUNISHMENT, RATIFIED BY THE UNITED STATES IN 1988

In 1984, the United Nations adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[329] The United States ratified the convention in 1988.[330] In addition to prohibiting state use of torture, CAT creates an affirmative state obligation to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture"[331] from being perpetrated upon individuals "deprived of their liberty" or "otherwise under the factual power or control of the person responsible for the treatment or punishment."[332]

When a violation of CAT occurs, states must educate public officials and agents on the prohibited conduct, review the conditions of detention; and ensure that violations are investigated.[333]

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, RATIFIED BY THE UNITED STATES IN 1992

The 1966 International Covenant on Civil and Political Rights (ICCPR) prohibits forced or compulsory labor, exempting “hard labour in pursuance of a sentence to… punishment by a competent court.”[334] However, the ICCPR demands that incarcerated individuals “shall be treated with humanity and respect for the inherent dignity of the human person” and that all treatment must have the “essential aim” of “reformation and social rehabilitation.”[335] The United States ratified the ICCPR in 1992.[336]

ENDNOTES

[1] These quotations are shared with permission. In order to maintain authenticity and minimize the risk of mischaracterizing the views of those quoted, spelling or other errors have not been corrected. While permission was granted to use each speaker's name, we have elected not to do so in order to ensure the safety of those concerned.
[2] *See* The Convention to Suppress the Slave Trade and Slavery Convention, September 25, 1926, https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention [*hereinafter* The Slavery Convention]; International Labor Organization, Abolition of Forced Labour Convention, 1957, No. 105, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105 [hereinafter Abolition of Forced Labour Convention, No. 105]; International Labor Organization, Forced Labour Convention, 1930, No. 29, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029 [*hereinafter* Forced Labour Convention, No. 29]; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment, Gen. Assem. Res. 39/46, December 10, 1984, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading [*hereinafter* Torture Convention]; International Covenant on Economic, Social and Cultural Rights, Gen. Assem. Res. 2200A (XXI), December 16, 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights [*hereinafter* ICESCR]; International Covenant on Civil and Political Rights, Gen. Assem. Res. 2200A (XXI), December 16, 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights [*hereinafter* ICCPR].
[3] U.S. Constitution, 13th Amend.
[4] *Convicted: How Corporations Exploit the Thirteenth Amendment's Loophole for Profit*, Corporate Accountability Lab, November 2022, 24-37 [*hereinafter* Convicted].
[5] Ibid, at 11-15, 17-23.
[6] *See generally* Nazgol Ghandnoosh, *One in Five: Ending Racial Inequity in Incarceration*, The Sentencing Project, October 11, 2023, https://www.sentencingproject.org/reports/one-in-five-ending-racial-inequity-in-incarceration/; *Inmate Ethnicity*, Federal Bureau of Prisons, January 13, 2024, https://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp; *Native Incarceration in the* U.S., Prison Policy Initiative, accessed January 23, 2024, https://www.prisonpolicy.org/profiles/native.html. In 2021, according to the Bureau of Justice Statistics, 763 of every 100,000 Indigenous people were incarcerated, compared to the national average of 350 of every 100,000 people. E. Ann Carson, *Prisoners in 2021 – Statistical Tables*, U.S. Department of Justice, Office of Justice Programs, December 2022, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/p21st.pdf. Significant data gaps remain for understanding Latinx representation in U.S. state and federal prisons, but those data points that are consistently collected – including that approximately 50 percent of federal drug cases are brought against Latinx people, who make up only roughly seventeen percent of the U.S. population – suggest that Latinx people suffer disproportionately from U.S. mass incarceration. Colin Hernandez, *We Need More Data to Understand the Impact of Mass Incarceration on Latinx Communities*, Vera, October 4, 2019, https://www.vera.org/news/we-need-more-data-to-understand-the-impact-of-mass-incarceration-on-latinx-communities.
[7] *See, e.g.*, 18 U.S.C. 1761(c); A.R.S. § 31-254(E).
[8] *Captive Labor: Exploitation of Incarcerated Workers*, American Civil Liberties Union & the University of Chicago Law School Global Human Rights Clinic, June 15, 2022, 27 [*hereinafter* Captive Labor].
[9] Ibid. Roughly 800,000 individuals in state and federal prisons work, and of those 800,000 individuals, about five percent work in "private sector" positions.

[10] *See Policy Blueprint For Ending Carceral Profiting*, Worth Rises & Color for Change, February 2023.
[11] Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, September 10, 1998, https://colorlines.com/article/masked-racism-reflections-prison-industrial-complex/.
[12] *Captive Labor*, *supra* note 8, at 48; Natalie Hurst, *Prisoners Are Not For Sale: Incarcerated Workers Deserve Employee Status*, University of Cincinnati Law Review Blog, November 24, 2020; Sessi K. Blanchard, *Labor Law Doesn't Apply If You're in Prison*, Truthout, March 30, 2019, https://truthout.org/articles/labor-law-doesnt-apply-if-youre-in-prison/; Keri Blakinger, *Some prison labor programs lose money — even when prisoners work for pennies*, NBC News, September 2, 2021, https://www.nbcnews.com/news/us-news/some-prison-labor-programs-lose-money-even-when-prisoners-work-n1278326; *see e.g.*, Fla. Stat. Ann. § 946.002(5) (categorically excluding incarcerated individuals from workers' compensation); *Vereen v. North Carolina Dept. of Correction*, 168 N.C. App. 588, 608 S.E.2d 412 (2005) (holding that when a state does extend workers' compensation to incarcerated workers, tort suits are then barred); *Koprowski v. Baker*, 822 F.3d 248 (6th Cir. 2016) (finding that an incarcerated worker must show the injury was caused by "deliberate indifference").
[13] U.S. Constitution, 13th Amend.
[14] *See generally* Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010) [*hereinafter* The New Jim Crow]; Ibram X. Kendi, *Stamped From the Beginning: The Definitive History of Racist Ideas in America* (Bold Type Books, 2017) [*hereinafter* Stamped From the Beginning]; Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans From the Civil War to World War II* (Anchor Books, 2008) [*hereinafter* Slavery By Another Name]; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (University of California Press, 2007).
[15] *See Economics of Incarceration*, Prison Policy Initiative, accessed November 6, 2023, https://www.prisonpolicy.org/research/economics_of_incarceration/; Dani Anguiano, *US prison workers produce $11bn worth of goods and services a year for pittance*, The Guardian, June 15, 2022, https://www.theguardian.com/us-news/2022/jun/15/us-prison-workers-low-wages-exploited; *What is agriculture's share of the overall U.S. economy?*, U.S. Department of Agriculture, Economic Research Service, accessed November 6, 2023, https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58270; L.B. Wright, *The American Prison System: It's Just Business*, Fordham Journal of Corporate & Financial Law, December 9, 2018, https://news.law.fordham.edu/jcfl/2018/12/09/the-american-prison-system-its-just-business/; *see also The New Jim Crow*, *supra* note 14; *Stamped From the Beginning*, *supra* note 14.
[16] *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871).
[17] Ibid.
[18] *See e.g. Shaw v. Murphy*, 532 U.S. 223, 228 (2001) (citing *Ruffin* and finding: "Indeed, for much of this country's history, the prevailing view was that a prisoner was a mere 'slave of the State,' who 'not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords him'… In recent decades, however, this Court has determined that incarceration does not divest prisoners of all constitutional protections… We nonetheless have maintained that the constitutional rights that prisoners possess are more limited in scope than the constitutional rights held by individuals in society at large.").
[19] *See The New Jim Crow*, *supra* note 14, at 39.
[20] *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871).
[21] Hague Convention, July 29, 1899.
[22] Universal Declaration of Human Rights, December 10, 1948.
[23] Geneva Convention on Prisoners of War, July 27, 1929.
[24] The Slavery Convention, *supra* note 2; ICCPR, *supra* note 2; Abolition of Forced Labour Convention, No. 105, *supra* note 2; Torture Convention, *supra* note 2.

[25] *See* The Slavery Convention, supra note 2; Abolition of Forced Labour Convention, No. 105, supra note 2; Forced Labour Convention, No. 29, *supra* note 2; Torture Convention, *supra* note 2; ICESCR, *supra* note 2; ICCPR, *supra* note 2.
[26] Genevieve LeBaron, *Rethinking Prison Labor: Social Discipline and the State in Historical Perspective*, WorkingUSA: The Journal of Labor & Society (Vol. 15, 2012), 340 [*hereinafter Rethinking Prison Labor*].
[27] Matthew Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866–1928* (Columbia: University of South Carolina Press, 1996), 58; *see also Rethinking Prison Labor*, *supra* note 26, at 337-38 (*citing One Dies, Get Another*; *referencing generally* Martha A. Myers, *Race, Labor and Punishment in the New South* (Ohio State University Press, 1998); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (Verso, 1996).
[28] *Slavery By Another Name*, *supra* note 14, at 90.
[29] Ibid.
[30] *See Rethinking Prison Labor*, *supra* note 26, at 337-41.
[31] David Oshinsky, *Worse than slavery: Parchman Farm and the Ordeal of Jim Crow Justice*, (Simon & Schuster, 1996), 61 [*hereinafter Worse than slavery*]; *see also Rethinking Prison Labor*, *supra* note 26, at 339 (*citing* Oshinsky).
[32] Ibid; *see also see also Rethinking Prison Labor, supra* note 26, at 339 (citing Oshinsky).
[33] *See Prison Labor and The Private Sector: The Corporate Exploitation of Prison Labor Reaches Deep into the Supply Chain*, Worth Rises, December 9, 2021, https://worthrises.org/blogpost/the-corporate-exploitation-of-prison-labor-reaches-deep-into-the-supply-chain; *see also Rethinking Prison Labor*, *supra* note 26, at 337-41.
[34] McLennan, R., *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (Cambridge University Press & Assessments, 2008), 90; *Rethinking Prison Labor*, *supra* note 26, at 334. $46.49 billion (in 2024) is equivalent to $1.47 billion in 1885. US GDP in 1885 was roughly $15.76 billion (as reported on Our World In Data, which lists 1885 GDP as $365.4 billion in 2011 dollars). $1.47 billion is approximately 10 percent of $15.76 billion. If this calculation is done based on 2008 dollars/inflation (rather than 2024), which is when the relevant source was written, the percentage is closer to 13 percent of GDP. As this difference in years leaves room for ambiguity, we chose to say "more than 10 percent." *Our World In Data, GDP*, 1820-2018, https://ourworldindata.org/grapher/gdp-world-regions-stacked-area?country=~USA; *The Inflation Calculator*, https://westegg.com/inflation/; *see also Inflation Calculator*, https://www.in2013dollars.com/.
[35] Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, Prison Policy initiative, March 14, 2023, https://www.prisonpolicy.org/reports/pie2023.html.
[36] *See* Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, Brennan Center for Justice, May 10, 2021, https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs; Alexander M. Stpehns, *Reagan's war on drugs also waged war on immigrants*, The Washington Post, October 27, 2021, https://www.washingtonpost.com/outlook/2021/10/27/reagans-war-drugs-also-waged-war-immigrants/.
[37] *Growth in Mass Incarceration*, The Sentencing Project, accessed January 23, 2024, https://www.sentencingproject.org/research/
[38] *Captive Labor*, *supra* note 8.
[39] Theierry Godard, The Economics of the American Prison System, SmartAsset, May 30, 2023, https://smartasset.com/mortgage/the-economics-of-the-american-prison-system.
[40] 18 USC § 1761(a).
[41] 18 USC § 1761 et seq; The Justice System Improvement Act of 1979 (Public Law 96-157, Sec. 827); The Crime Control Act of 1990 (Public Law 101-647); UNICOR: Program Details, Federal Bureau of Prisons, accessed January 23, 2024, https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp;

Customer and Private Sector Frequently Asked Questions, UNICOR, accessed January 23, 2024, https://www.unicor.gov/FAQ_Market_Share.aspx; State and Local Government Customers, UNICOR, accessed January 23, 2024, https://www.unicor.gov/FSACustomers.aspx; Commercial Customers, UNICOR, accessed January 23, 2024, https://www.unicor.gov/CommercialCustomers.aspx; About PIECP, National Correctional Industries Association, https://www.nationalcia.org/about-piecp.

[42] Services encompass a broad range of activities, from cleaning meat packing plants to working in call centers to sorting used casino card decks. *See, e.g.*, Joseph Neff, *North Carolina Prisoners Still Working in Chicken Plants, Despite Coronavirus Fears*, The Marshall Project, March 19, 2020, https://www.themarshallproject.org/2020/03/19/north-carolina-prisoners-still-working-in-chicken-plants-despite-coronavirus-fears (explaining that incarcerated workers provide cleaning services for a sub-contractor at a Tyson plant in North Carolina); *Call Center*, Arizona Correctional Industries, accessed January 23, 2024, https://aci.az.gov/labor-partnerships/call-center/.

[43] *Worse than Slavery*, *supra* note 31, at 64 (citing a newspaper report from the 1880s).

[44] Ibid; *see also Rethinking Prison Labor*, *supra* note 26.

[45] In the late nineteenth century, Joseph Brown rented incarcerated workers in the state of Georgia for less than seven cents per day. In 2024, an incarcerated individual in a federal prison working for UNICOR makes at most $1.15 per hour; assuming an 8-hour work day, this values a worker's labor at $9.20 per day. Many incarcerated workers in state and federal prison working to maintain internal facilities make as little as $0.10 per hour (and in at least six states some workers are paid nothing); assuming an 8-hour work day, this values a worker's labor at $0.80 per day. Based on the Consumer Price Index statistics from Historical Statistics of the United States (for data before 1975) and the annual Statistical Abstracts of the United States (for data post 1975), $9.20 today (January 2024) is equivalent to $0.29 in 1894 and $0.80 is equivalent to $0.03 in 1894 (the year of Joseph Brown's death). *See Rethinking Prison Labor*, *supra* note 26, at 339; *The Legacy of Slavery is Why Prisoners make 10 Cents an Hour*, Freedom United, September 2, 2019, https://www.freedomunited.org/news/the-legacy-of-slavery-is-why-prisoners-make-10-cents-an-hour/; *What People Really Make (and Spend) Behind Bars*, The Marshall Project, August 16, 2022, https://www.npr.org/sections/money/2022/08/16/1117123303/what-people-really-make-and-spend-behind-bars; *The Federal Bureau of Prisons' Inmate Financial Responsibility Program*, Report No. I-2000-023, U.S. Dep't of Justice Office of the Inspector General, 2000, https://oig.justice.gov/reports/BOP/e0023/intro.htm#:~:text=The%20purpose%20of%20the%20IFRP,BOP%20institutions%2C%20including%20contract%20facilities; *Inflation Calculator*, https://www.in2013dollars.com/.

[46] These details were gathered from the letter written to us by the relevant incarcerated worker. *See e.g.*, NEVADA FOCUS: *Working inmates earn respect, cash while paying their debt*, Nevada Appeal, December 20, 2001, https://www.nevadaappeal.com/news/2001/dec/20/nevada-focus-working-inmates-earn-respect-cash-whi/.

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[49] 18 USC § 1761(b).

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[217] *See, e.g.*, *Joseph v. Signal Int'l L.L.C.*, 2015 WL 1262286, 1 (E.D. Tex. 2015) ("Moreover, 18 U.S.C. §§ 1589 and 1590, which were passed pursuant to Congress's powers under the Thirteenth Amendment, seek to outlaw modern manifestations of slavery and involuntary servitude.")
[218] *See, e.g.*, *Fletcher v. Williams*, 2022 WL 3153906, 5 (D. Colo. 2022) (Mag. Report & Rec.) ("[Plaintiffs cannot use a federal statute enacted to implement the federal Thirteenth Amendment [(The TVPRA)] to criminalize behavior the Amendment plainly permits."); *Crowe v. Director*, TDCJ-CID, 2018 WL 7814730, 2 (Mag. Report & Rec.) ("Accordingly, because requiring an inmate to work without pay is not a constitutional violation, Crowe's complaints about involuntary servitude and slave labor are frivolous. . . . [18 U.S.C. § 1589 was] passed pursuant to Congress's powers under the Thirteenth Amendment ... to outlaw modern manifestations of slavery and involuntary servitude.") (citations omitted); *Pierce v. Livingston*, 728 Fed.Appx. 370, 371 (5th Cir. 2018) (holding that compensation for prisoner labor "is discretionary and unless some specific kind of outlawed discrimination is shown the state has the right to make reasonable rules as to whether or not it will pay prisoners and under what circumstances prisoners will be paid."); *Manley v. Indiana Dept. of Correction*, 2015 WL 4077243, 1 (N.D. Ind. 2015) ("Though 18 U.S.C. § 1595 provides a private right action to enforce 18 U.S.C. § 1581—which prohibits slavery (or peonage as the statute refers to it)—Manley is a prisoner and as the Thirteenth Amendment states that 'punishment for a crime whereof the party shall have been duly convicted' is not prohibited.")
[219] These descriptions are very close paraphrases of the relevant federal statutes.
[220] 18 U.S.C. § 1584. Full Text: (a) Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.
[221] 18 U.S.C. § 1589. Under this statute subsection (c): (1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action; (2): The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

[222] 18 U.S.C. § 1590. Full Text: (a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.
[223] 18 U.S.C. § 1595. Full Text: (a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.
[224] *See* The Prison Litigation Reform Act, 42 U.S.C. § 1997e. The statute also includes a "three strikes provision," which bars individuals from bringing more than three actions that are deemed by a judge to be frivolous or malicious, to lack "a claim upon which relief can be granted," or to "seek monetary relief from a defendant who is immune from such relief." 28 U.S.C. §1915(g); 42 U.S.C.A. § 1997e. There is an imminent danger exception to the three-strikes rule.
[225] 42 U.S.C. § 1997e(a). Administrative remedies includes "published grievance procedures, medical grievance procedures, or emergency grievance procedures." *See Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). *See also* Josh Kurtzman, *Overcoming the Exhaustion Requirement of the Prisoner Litigation Reform Act*, American Bar Association, Young Advocates, January 7, 2016, http://apps.americanbar.org/litigation/committees/youngadvocate/articles/winter2016-0116-overcoming-exhaustion-requirement-prisoner-litigation-reform-act.html.
[226] *Jones v. Bock*, 549 U.S. 199, 204, 216 (2007); *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). The PLRA applies to all prisoners, defined as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." See 42 U.S.C. §1997e(h). Under this definition, the PLRA covers all juveniles who are incarcerated, a fact that Human Rights Watch has strongly condemned for being an "especially formidable barrier to justice for incarcerated children, particularly in light of court rulings that efforts to exhaust on their behalf by parents or other adults do not satisfy the PLRA." No Equal Justice: The Prison Litigation Reform Act in the United States, Human Rights Watch, 2, June 2009 [*hereinafter* No Equal Justice].
[227] *Booth v. Churner*, 532 U.S. 731, 732 (2001).
[228] *Porter v Nussle*, 534 U.S. 516, 524 (2002). However, a remedy is unavailable, and thus not required to be "exhausted," when "it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates," it is "so opaque that it becomes, practically speaking, incapable of use," or when "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." Ross v. Blake, 578 U.S. 632, 643-44 (2016).
[229] 42 U.S.C. § 1997e(e).
[230] 28 U.S.C. § 1915(b); *see also Bruce v. Samuels*, 136 S. Ct. 627 (2016).
[231] Amy Howe, *Argument preview: Filing fees and payments under the Prison Litigation Reform Act*, SCOTUSblog, November 3, 2015, https://www.scotusblog.com/2015/11/argument-preview-filing-fees-and-payments-under-the-prison-litigation-reform-act/.
[232] Christian E. Weller, et al., *America's Broken Criminal Legal System Contributes to Wealth Inequality*, CAP 20, December 13, 2022, https://www.americanprogress.org/article/americas-broken-criminal-legal-system-contributes-to-wealth-inequality/.
[233] Ibid.
[234] 42 U.S.C. § 1997e(d).

[235] *See generally* Margo Schlanger, *Trends in Prisoner Litigation as the PLRA Enters Adulthood*, 5 U.C. Irvine L. Rev. 153, 156–57 (2015); No Equal Justice, *supra* note 226.
[236] *No Equal Justice*, *supra* note 226.
[237] Ibid; *see also* Margo Schlanger, *supra* note 235. Many states have since instituted their own versions of the PLRA, limiting access to state courts as well. *See, e.g.*, Ala. Code 1975 T. 14, Ch. 15, Refs & Annos, AL ST T. 14, Ch. 15, Refs & Annos; Cal. Gov't. Code § 68511.3(e); Cal. Civ. Proc. Code § 391.
[238] *Lamar v. Williams*, Case No. 21CA0511, p. 8 (Colo. App. 2022), https://bloximages.newyork1.vip.townnews.com/coloradopolitics.com/content/tncms/assets/v3/editorial/6/10/610aaf12-1fec-11ed-a13b-732609e6b0bd/62ffd5b9e05be.pdf.
[239] *United States v. Kozminski*, 487 U.S. 931, 952 (1988).
[240] *See* ibid; *Lamar v. Williams*, Case No. 21CA0511 at 8.
[241] *Lamar v. Williams*, Case No. 21CA0511.
[242] Ibid, at 8.
[243] Ibid.
[244] Ibid; *see* 2022 Colo. Code § 17-22.5-405 (Colorado incarcerated individuals may have time deducted from their sentences for "consistent progress" on "Work and training, including attendance, promptness, performance, cooperation, care of materials, and safety").
[245] *Lamar v. Williams*, Case No. 21CA0511.
[246] Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq.; *see also Martinez v. Rodriguez*, 31 F.4th 1139, 1156 (9th Cir. 2022).
[247] 22 U.S.C. § 7102(b)(13).
[248] 18 U.S.C. § 1589(c)(2).
[249] *Martinez-Rodrigues v. Giles*, 31 F.4th 1139; *U.S. v. Kaufman*, 546 F.3d 1242 (10th Cir. 2008); *U.S. v. Bradley*, 390 F.3d 145 (1st Cir. 2004); *Kiwanuka v. Bakilana*, 844 F.Supp.2d 107 (D.D.C. 2012); *see also U.S. v. Marcus*, 487 F.Supp.2d 289 (E.D. NY 2007); *Samuel v. Signal Technologies, LLC*, 2015 WL 12765986 (E.D. Tex. 2015); *Lemery v. State*, 768 S.E.2d 800 (Ga.App. 2015).
[250] *See* Colo. Code § 18-3-503.
[251] Colo. Const., art. 2 § 26.
[252] Ibid.
[253] Colo. Code § 18-3-503.
[254] *Figgs v. GEO Group, Inc.*, Case No. 1:18-cv-00089-TWP-MPB (S.D. Ind. Mar. 29, 2019).
[254] Ibid.
[256] Ibid.
[257] Ibid, at 3.
[258] Ibid, at 5.
[259] Ibid.
[260] *Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997).
[261] Ibid, at 218-19.
[262] *Figgs v. GEO Group, Inc.*, Case No. 1:18-cv-00089-TWP-MPB at 4.
[263] *Ruelas v. County of Alameda*, 519 F.Supp.3d 636 (N.D. Cal. 2021).
[264] Ibid.
[265] Ibid.
[266] Ibid.
[267] Ibid, at 1.
[268] Ibid.
[269] Ibid, at 6.
[270] Ibid, at 7.

[271] These cases are ongoing, and the information provided in this report is up-to-date only through January 2024.
[272] *Lilgerose v. Polis* (Colorado District Court, 2022).
[273] Ibid.
[274] Ibid.
[275] *Lilgerose v. Polis* First Amended Complaint (April 2022).
[276] *Robert Earl Council v. Ivey* (U.S. District Court for the Middle District of Alabama, 2023).
[277] Ibid; Meg Anderson, *Prisoners are suing Alabama over forced labor, calling it a 'form of slavery'*, WBEZ Chicago, December 14, 2023, https://www.npr.org/2023/12/14/1219187249/prisoners-are-suing-alabama-over-forced-labor-calling-it-a-form-of-slavery [*hereinafter Prisoners are suing Alabama*].
[278] *Robert Earl Council v. Ivey* (U.S. District Court for the Middle District of Alabama, 2023).
[279] Ibid.
[280] *Prisoners are suing Alabama*, *supra* note 277.
[281] *See* Reynolds Taylor, *Ending Slavery in Some State Prisons is Not Good Enough. We Must #EndtheException For All*, Corporate Accountability Lab Blog, November 9, 2022, https://corpaccountabilitylab.org/calblog/2022/11/9/ending-slavery-in-some-state-prisons-is-not-good-enough-we-must-endtheexception-for-all.
[282] Ibid.
[283] *See Booker Introduces Package of Bills to End Unfair and Abusive Labor Practices in U.S. Correctional Facilities*, February 17, 2023, https://www.booker.senate.gov/news/press/booker-introduces-package-of-bills-to-end-unfair-and-abusive-labor-practices-in-us-correctional-facilities [*hereinafter* Booker, Cleaver Bill Package].
[284] Fair Wages for Incarcerated Workers Act of 2023, S.516 [*hereinafter* S.516].
[285] Correctional Facilities Occupational Safety and Health Act of 2023, S.518 [*hereinafter* S.518].
[286] Booker, Cleaver Bill Package, *supra* note 283.
[287] S.518.
[288] *See e.g.*, 18 U.S.C. § 1589(c)(2); *ILO Indicators of Forced Labor*, Special Action Programme to Combat Forced Labour, International Labour Organisation, accessed January 27, 2024, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46, December 10, 1984.
[289] Kayla James & Elena Vanko, *The Impacts of Solitary Confinement*, Vera Institute of Justice, April 2021, https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf; Justin D. Strong, *The body in isolation: The physical health impacts of incarceration in solitary confinement*, National Library of Medicine, 2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7546459/; Tianna Herring, *The research is clear: Solitary confinement causes long-lasting harm*, Prison Policy Initiative, December 8, 2020, https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/.
[290] 42 U.S.C. § 1997e; *see e.g.*, Gillian Brockell, *supra* note 67.
[291] The PLRA should also be amended to eliminate the burden of filing fees on indigent incarcerated plaintiffs and to allow for attorneys fees.
[292] *See Lamar v. Williams*, Case No. 21CA0511.
[293] *See Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997).
[294] *See generally Lilgerose v. Polis* (Colorado District Court, 2022) (Defendant's response to compliant).
[295] Booker, Cleaver Bill Package, *supra* note 283.
[296] Ibid.
[297] *United States Profile*, Prison Policy Initiative, accessed January 27, 2024, https://www.prisonpolicy.org/profiles/US.html.
[298] 29 U.S.C. § 151.

[299] Ibid.
[300] 29 U.S.C. § 151; *The Law*, National Labor Relations Board, accessed January 27, 2024, https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law.
[301] *See* Freedom of Association and Protection of the Right to Organise Convention (No. 87), 1948; Right to Organise and Collective Bargaining Convention (No. 98), 1949.
[302] This model language was first introduced in CAL's 2022 report, *Convicted: How Corporations Exploit the Thirteenth Amendment's Loophole for Profit.*
[303] *Shaw v. Murphy*, 532 U.S. 223, 228 (2001).
[304] *Customary International Law*, International Committee of the Red Cross, accessed January 27, 2024, https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law.
[305] Ibid.
[306] *The Paquete Habana*, 175 U.S. 677 (1900).
[307] Marjorie M. Whiteman, *Jus Cogens in International Law, With a Projected List*, 7 Ga. J. Intl. & ComparL. 609, 1977.
[308] *See* Evan Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, Yale Journal of Intl. L., Vol. 34:331, 2009.
[309] *See e.g.*, 19 U.S.C 1307.
[310] Slavery Convention art. 12, September 25, 1926, 60 L.N.T.S. 253.
[311] Ibid, at art. 5.
[312] United Nations Treaty Collection, accessed January 27, 2024, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18&clang=_en.
[313] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 18 U.S.T. 3201, 266 U.N.T.S. 3 (entered into force Apr. 30, 1957).
[314] Abolition of Forced Labour Convention, No. 105.
[315] Ibid, at 18, 24.
[316] Ibid, at 24.
[317] Forced Labour Convention, No. 29.
[318] *Declaration on Fundamental Principles and Rights at Work*, International Labor Organization, 1998, https://www.ilo.org/declaration/lang--en/index.htm.
[319] Forced Labour Convention, No. 29, art. 2(c).
[320] ILO Indicators of Forced Labor, *supra* note 288.
[321] Ibid.
[322] Ibid.
[323] Ibid.
[324] 19 U.S.C 1307. Although it has been on the books since 1930, Section 307 was rarely used until recently. Prior to 2016, the law had a gaping loophole; whether or not a good was produced with forced labor, it could not be prohibited from entering the United States if the country did not produce enough of that good for domestic consumption. In 2016, President Obama signed a trade enforcement bill that closed the "consumption demand" loophole.
[325] Ibid.
[326] *Withhold Release Orders and Findings List*, U.S. Customs and Border Protection, accessed January 27, 2024, https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings.
[327] International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3
[328] Committee on Economic, Social and Cultural Rights, General Comment No. 18, The Right To Work, 7, para. 23, February 6, 2006, UN Doc E/C.12/GC/18. The United States has signed, but not ratified the International Covenant on Economic, Social and Cultural Rights.

[329] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46, December 10, 1984.
[330] United Nations Treaty Collection, accessed January 27, 2024, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en.
[331] Azadeh Shahshahani & Kyleen Burke, *Deploying International Law to Combat Forced Labor in Immigration Detention Centers*, 37 Geo. Immigr. L.J. 57, 65, 2022. As with the ICCPR, the United States included a reservation to the ratification of CAT restricting the interpretation of "cruel, inhuman, or degrading treatment or punishment" to conduct prohibited by the "Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States." This reservation--like many other U.S. reservations to treaties--has been heavily criticized as a means to preclude the treaty from having any domestic effect.
[332] Ibid.
[333] Ibid.
[334] International Covenant on Civil and Political Rights, December 16, 1966, art. 8 para. 3 (a).
[335] Ibid, at art. 10 para. 1.
[336] FAQ: *The Covenant on Civil & Political Rights* (ICCPR), ACLU, July 11, 2023, https://www.aclu.org/documents/faq-covenant-civil-political-rights-iccpr.