



**STATEMENT OF**

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For a Hearing on

**An Examination of Prison Labor in America**

Before the

**United States Senate**

**Committee on the Judiciary**

**Subcommittee on Criminal Justice and Counterterrorism**

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

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

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

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

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

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

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

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

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

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

## **History of Incarcerated Labor in the United States**

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

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

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

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

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

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

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

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

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

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

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

Changes also occurred at the federal level. In 1979, Congress amended the Ashurst-Sumners Act to allow for the creation of “prison work pilot projects,” whereby prison workers could be employed under joint ventures between private companies and state correctional facilities to produce goods authorized for sale in interstate commerce. Under this program, the PIECP, prison laborers were to receive prevailing wages—that is, market wages<sup>38</sup>—subject to certain enumerated deductions. In this way, it was thought, private companies using prison labor would not displace companies that employed free workers, as both would be providing market wages to their workers.

## **Understanding Prison Labor**

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

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

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

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

**State prison industries**, also called “correctional industries,” constitute a second type of prison labor program that accounts for about 6.5 percent of prison jobs. The number of incarcerated workers employed in state prison industries programs has been dropping in recent years, from 91,043 in 2008<sup>47</sup> to 51,569 in 2021.<sup>48</sup> These are jobs in state-owned corporations that produce goods, services, and commodities sold to other government agencies. Many states require all state agencies, political units, and public institutions to purchase manufactured goods, including furniture, cleaning supplies, printed materials, and uniforms, from their state correctional industries.<sup>49</sup> Correctional industries programs are not limited to manufacturing, as states rely on incarcerated workers to provide a variety of services, such as data entry, repairing state-owned vehicles, and washing laundry for public hospitals and universities. For example, people incarcerated in New York and Oregon help staff the states’ Department of Motor Vehicles (DMV) call centers, fielding questions directed towards the department.<sup>50</sup>

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

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

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

In Florida, for instance, about 3,500 unpaid incarcerated workers work on state road crews and “community work squads,” required to provide labor for hundreds of state and municipal agencies and dozens of state colleges and nonprofits.<sup>54</sup> In North Carolina, nearly 1,000 incarcerated workers work on the state's roads for the state Department of Transportation and on manual labor jobs for other state and local government agencies.<sup>55</sup> In Arizona, 1,083 incarcerated people work on public works crews for the Department of Transportation and other state, local, and county entities through intergovernmental agreements with the corrections department.<sup>56</sup> These workers logged more than 1.8 million hours of work for the community during fiscal year 2020.<sup>57</sup> In Washington state, about 1,000 people work in similar community work programs through which incarcerated workers work on stream clean-up, land clearance, farming, and development of parks and recreation areas.<sup>58</sup> In Mississippi, each state prison provides incarcerated workers' labor for free to local towns and municipalities.<sup>59</sup> In Arkansas, incarcerated people on “inmate work crews” logged nearly half a million hours in regional maintenance alone in 2020.<sup>60</sup>

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

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

**Agricultural work** fits within multiple categories of prison labor. Some incarcerated workers engage in field labor for the maintenance of the prison, cultivating and harvesting crops to be eaten by the people incarcerated there. Others engage in farming or ranching work for prison industries programs or for private corporations through PIECP programs to produce livestock, crops, and other agricultural products for sale. Twenty-seven percent of public prisons have work programs in farming and agriculture.<sup>67</sup> Although only 2.2 percent of incarcerated workers are engaged in agricultural work in prisons nationwide, in some states, agricultural work constitutes a greater percentage of work assignments, such as in Arkansas, where 17 percent of job assignments for incarcerated people were in agricultural work in 2021.<sup>68</sup> Some of this agricultural work takes place outside prison walls, while in states including Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, and Texas, incarcerated workers work on penal plantations or prison farms, some of which are situated on land that was originally the site of slave plantations.

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

### **Paid in Pennies**

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

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

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

Incarcerated workers' wages remain stagnant for years, even decades. Incarcerated workers in New York state last received a pay increase in 1993.<sup>80</sup> Workers in South Dakota have been paid \$0.25 per hour for non-industry jobs for more than 20 years.<sup>81</sup> In Vermont, most incarcerated workers have been paid \$0.25 per hour since 1988, when the pay scale for non-industry jobs was last revised.<sup>82</sup> Workers in Illinois received a pay raise in 2021 for the first time in 11 years, an increase of merely 14 cents per day for general laborers, who are now paid \$0.85 to \$1.10 per day.<sup>83</sup>

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

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

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

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

### **Excluded from Basic Workplace Protections**

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

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

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

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

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

### **Dangerous Work Conditions and Preventable Injuries**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Prison Labor During the Pandemic**

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

At times, incarcerated workers had to perform work that put them at the highest level of exposure to the virus. In at least five states (Michigan, Missouri, New York, Oregon, and Texas), incarcerated workers participated in frontline health roles that put them at high risk of contracting COVID-19.<sup>132</sup> Incarcerated people working in prison laundries in Oregon and Missouri were tasked with cleaning bedsheets, towels, and gowns from hospitals treating COVID-19 patients.<sup>133</sup> In Texas, previously unpaid incarcerated workers were paid \$2 an hour to work in mobile morgues and transport bodies from the Medical Examiner's Office in El Paso.<sup>134</sup> In New York, workers who were tasked with digging mass graves were transitioned from an hourly wage of \$0.65 to \$6. The Rikers Island jail offered personal protective equipment as a "privilege" to any incarcerated worker tasked with digging mass graves.<sup>135</sup>

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

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

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

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

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

## **Dead-End Jobs**

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

Our research shows that better-paid prison industries jobs are declining, while maintenance jobs increasingly represent a larger share of work assignments. Vocational training programs are declining in prisons across the country, cut from state correctional budgets. The rate of participation in job training programs has fallen nationwide among people incarcerated in state prisons, according to analysis of the Bureau of Justice Statistics surveys of people in prisons conducted periodically between 1986 and 2016.<sup>152</sup>

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

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

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

### **Who Benefits from Prison Labor?**

This system serves a purpose, but not one consistent with basic human rights. Prison labor is designed to benefit primarily public entities that capitalize on a vulnerable population that is, at once, a captive labor force<sup>159</sup> and a captive consumer base.<sup>160</sup>

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

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

Prisons also provide a cheap and compliant labor force through correctional industries, the state-owned businesses that produce goods and services sold to other state entities. In fiscal year 2021, the federal government’s UNICOR prison industries program reported \$404 million in net sales of goods and services produced by the 16,315 federally incarcerated workers who are employed in the program.<sup>168</sup> In fiscal year 2020, Illinois’ correctional industries program sold over \$33.5 million worth of goods and services from incarcerated workers to its own state agencies, state universities, and local governments,<sup>169</sup> while California’s correctional industries program sold over \$191 million in manufactured goods, services, and agricultural products produced by incarcerated workers in fiscal year 2020–21.<sup>170</sup>

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

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

### **Prison Labor Masks the True Costs of Mass Incarceration**

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

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

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

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

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

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

## The Path Forward

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

To move in this direction, incarcerated workers should be paid a fair wage that enables them to save for the future, support their families, and sets them up for a successful reentry—97 percent of people in prison will return to their communities, and studies show that recidivism is reduced when returning citizens have savings<sup>180</sup> and stable employment.<sup>181</sup>

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

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

In the face of extreme obstacles—the Supreme Court has held that incarcerated people do not have a First Amendment right to form a union<sup>188</sup>—incarcerated workers have organized to demand improved pay and conditions. Incarcerated workers have formed the Incarcerated Workers Organizing Committee, a prisoner-led local of the Industrial Workers of the World that organized two national prison strikes in 2016 and 2018.<sup>189</sup> Incarcerated people in 17 states went on strike in August 2018 to call attention to various issues, including low wages, and called for work stoppages and an end to what the organizers call "prison slavery."<sup>190</sup> Strike organizers demanded that incarcerated workers be paid the prevailing wage for their labor, among other demands.

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

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

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

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

## **Key Recommendations**

### **End forced labor, without exceptions.**

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

### **End arbitrary and discriminatory allocation of jobs.**

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

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

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

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

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

**Protect incarcerated workers from injuries and hazards.**

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

**Permit incarcerated workers to join labor unions.**

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

**Ensure incarcerated workers have access to redress when their rights are violated.**

**Provide incarcerated workers with marketable skills and training and eliminate barriers to securing employment after release.**

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

**Appendix**

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

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<sup>1</sup> With more than 4 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in 50 states, Puerto Rico, and Washington, D.C., to safeguard everyone’s rights.

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

<sup>3</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, Survey of Prison Inmates, United States, 2016. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. This figure is based on the American Civil Liberties Union’s (ACLU) analysis of the published raw survey data.

<sup>4</sup> See, e.g., Wallace v. Robinson, 940 F.2d 243, 246-7 (7<sup>th</sup> Cir. 1991); Williams v. Meese, 926 F.2d 994, 998 (10<sup>th</sup> Cir. 1991).

<sup>5</sup> California Department of Corrections and Rehabilitation (CDCR), *Conservation (Fire) Camps*, <https://www.cdcr.ca.gov/conservation-camps/>.

<sup>6</sup> American Civil Liberties Union and University of Chicago Global Human Rights Clinic, *Captive Labor: Exploitation of Incarcerated Workers*, June 2022, [https://www.aclu.org/sites/default/files/field\\_document/2022-06-15-captivelaborresearchreport.pdf](https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf).

<sup>7</sup> U.S. CONST. amend. XIII (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction”).

<sup>8</sup> Genevieve LeBaron, *Rethinking Prison Labor: Social Discipline and the State in Historical Perspective*, 15 J. OF LAB. AND SOC’Y 327, 333 (2012).

<sup>9</sup> *Id.* at 334-35.

<sup>10</sup> *Id.* at 335.

<sup>11</sup> *Id.* at 334.

<sup>12</sup> *Id.* at 327.

<sup>13</sup> *Id.* at 338; Christopher R. Adamson, *Punishment after Slavery: Southern State Penal Systems, 1865-1890*, 30 SOC. PROBS. 555, 556 (1983).

<sup>14</sup> MATTHEW MANCINI, *ONE DIES, GET ANOTHER: CONVICT LEASING IN THE AMERICAN SOUTH, 1866-1928* (Columbia, SC: University of South Carolina Press, 1996); Andrea Armstrong, *Slavery Revisited in Penal Plantation Labor*, 35 SEATTLE U. L. REV. 835, 877 (2012).

<sup>15</sup> DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* 8, 56, 67 (New York: Anchor Books, 2008); Genevieve LeBaron, *Rethinking Prison Labor: Social Discipline and the State in Historical Perspective*, 15 J. OF LAB. AND SOC’Y 327, 337 (2012).

<sup>16</sup> *Id.* at 339.

<sup>17</sup> Heather Ann Thompson, *Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards*, 8 LAB.: STUD. IN WORKING-CLASS HIST. 15, 16 (2011); DAVID M. OSHINSKY, *WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE* (New York, Free Press, 1997).

<sup>18</sup> Stephen P. Garvey, *Freeing Prisoners’ Labor*, 50 STAN. L. REV. 339, 361-62 (1998).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Three Prisons Act, ch. 529, sec. 2, 26 Stat. 839 (1891).

<sup>22</sup> ALEX LICHTENSTEIN, *TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH* (New York: Verso, 1996).

<sup>23</sup> MITCHEL P. ROTH, *PRISONS AND PRISON SYSTEMS: A GLOBAL ENCYCLOPEDIA* (Westport, CT: Greenwood Press, 2006).

<sup>24</sup> Stanley E. Grupp, *Work Release in the United States*, 54 J. CRIM. L. AND CRIMINOLOGY 267 (1963).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Act of May 14, 1930, ch. 274 § 3, 46 Stat. 325 (1930).

<sup>29</sup> Heather Ann Thompson, *Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards*, 8 LAB.: STUD. IN WORKING-CLASS HIST. 15, 20 (2011).

<sup>30</sup> *Id.*

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- <sup>31</sup> *Labor Advances Platform Points*, N.Y. TIMES (June 11, 1928), <https://www.nytimes.com/1928/06/11/archives/labor-advances-platform-points-federation-will-ask-both-parties-for.html>.
- <sup>32</sup> Ashurst-Summers Act (Shipment in Interstate Commerce of Convict Made Goods), Pub. L. No. 74-215, 49 Stat. 494 (1935) (codified at 18 U.S.C. § 1761).
- <sup>33</sup> Heather Ann Thompson, *Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards*, 8 LAB.: STUD. IN WORKING-CLASS HIST. 15, 30-31 (2011).
- <sup>34</sup> Joe Hudson, *Contemporary Origins of Restorative Justice Programming: The Minnesota Restitution Center*, 76 FED. PROB.: J. OF CORR. PHIL. AND PRAC. (2012), [https://www.uscourts.gov/sites/default/files/76\\_2\\_9\\_0.pdf](https://www.uscourts.gov/sites/default/files/76_2_9_0.pdf).
- <sup>35</sup> E.g., Nevada in 1979 (1979 Nev. Stat. 743), California in 1984 (Cal. Penal Code § 6220), Mississippi in 1978 (Miss. Code § 99-37-19).
- <sup>36</sup> Joe Hudson, *Contemporary Origins of Restorative Justice Programming: The Minnesota Restitution Center*, 76 FED. PROB.: J. OF CORR. PHIL. AND PRAC. (2012), [https://www.uscourts.gov/sites/default/files/76\\_2\\_9\\_0.pdf](https://www.uscourts.gov/sites/default/files/76_2_9_0.pdf).
- <sup>37</sup> E.g., Patrick McGreevy, *State Restitution Centers Shut*, L.A. TIMES (Jan. 13, 2009), <https://www.latimes.com/archives/la-xpm-2009-jan-13-me-prison13-story.html>; Matt Clarke, *Texas Counties Give Up on Probationer Restitution Centers*, PRISON LEGAL NEWS (Mar. 15, 2010), <https://www.prisonlegalnews.org/news/2010/mar/15/texas-counties-give-up-on-probationer-restitution-centers/>.
- <sup>38</sup> Under 18 U.S.C. § 1761(c), prevailing wages are defined as “wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed.”
- <sup>39</sup> According to the Prison Policy Initiative in 2022, there are almost 2 million people held behind bars, including roughly 1,042,000 in state prisons, 547,000 in local jails, and 208,000 in federal prisons and jails. See, Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2022*, by Wendy Sawyer and Peter Wagner (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html>.
- <sup>40</sup> According to the Bureau of Justice Statistics prison census, 98.7 percent of state and federal public adult correctional facilities offer work programs for people incarcerated in those facilities, while 89.7 percent of private facilities offered such programs as of midyear 2019. The work programs measured include facility support services to maintain the prisons where workers are confined; prison industries; public work assignments; and farming or agriculture. U.S. Dep’t of Justice, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables* (Nov. 2021) at 13, <https://bjs.ojp.gov/content/pub/pdf/csfac19st.pdf>.
- <sup>41</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2020—Statistical Tables* (Dec. 2021) at 7, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>. See also Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2022*, by Wendy Sawyer and Peter Wagner (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html>.
- <sup>42</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. This estimate is based on ACLU analysis of the published raw survey data.
- <sup>43</sup> *Id.* This estimate is based on ACLU analysis of the published raw survey data, which revealed that 65.1 percent of survey respondents reported having a work assignment. We applied this percentage to the most recently published data on the state and federal prison population, which totaled 1,215,821 at yearend 2020, according to data from the Bureau of Justice Statistics published in December 2021, arriving at an estimated 791,499 incarcerated workers. U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2020—Statistical Tables* (Dec. 2021) at 7, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>.
- <sup>44</sup> The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Oct. 13, 2021), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- <sup>45</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. This figure is based on ACLU analysis of the raw survey data.
- <sup>46</sup> *Id.* These percentages are based on ACLU analysis of the raw survey data. Because some of these Bureau of Justice Statistics survey categories likely encompass a proportionately small percentage of workers engaged in work outside the prison on public works assignments, such as in forestry, groundskeeping, maintenance, or road maintenance, we estimate that the percentage of incarcerated people working to maintain the prisons is somewhat lower than their sum of 86.1 percent.
- <sup>47</sup> Data is for fiscal year 2008. National Correctional Industries Association (NCIA), *2009 NCIA Directory* (Baltimore, MD: NCIA, 2009).

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- <sup>48</sup> Telephone interview with Wil Heslop, interim executive director, National Correctional Industries Association (NCIA), Nov. 18, 2021, citing 2021 NCIA Directory.
- <sup>49</sup> Many states require their state agencies and entities to purchase goods and services from their correctional industry. *See, e.g.*, Wis. Stat. § 303.01 Va. Code Ann. § 53.1-59; *see also* Ill. Comp. Stat. 5/3-12-7 (2010). *See also* Illinois Correctional Industries, *FAQ: Frequently Asked Questions* (2015) <http://www.icicatalog.illinois.gov/documents/faq.pdf>.
- <sup>50</sup> Otak, *Coffee Creek Correctional Facility* (2020), <https://www.otak.com/about/projects/coffee-creek-correctional-facility/>; Todd Clear, Michael Riesig, and George Cole, *American Corrections* (Boston: Cengage Learning, 2019).
- <sup>51</sup> These states are Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- <sup>52</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables (Nov. 2021) at 3, 13, <https://bjs.ojp.gov/content/pub/pdf/csfac19st.pdf>. In 2005, the last year for which such data was made public, over half of these prisons were located in the South. Of 798 correctional facilities with public works programs in 2005, 447 were located in the South, 98 in the Northeast, 133 in the Midwest, and 120 in the West. U.S. Dep't of Justice, Bureau of Justice Statistics, Census of State and Federal Correctional Facilities, 2005 (Oct. 2008) at Appendix Table 16, <https://bjs.ojp.gov/content/pub/pdf/csfcf05.pdf>.
- <sup>53</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, Survey of Inmates in State Correctional Facilities, 2004 (Feb. 2007), <https://bjs.ojp.gov/data-collection/survey-inmates-state-correctional-facilities-sisfc>.
- <sup>54</sup> Ben Conark, *Work Forced: A Century Later, Unpaid Prison Labor Continues to Power Florida*, FLORIDA TIMES-UNION (May 26, 2019), <https://stories.usatodaynetwork.com/workforced/>.
- <sup>55</sup> North Carolina Department of Public Safety, *Fiscal Year 2019-2020 Annual Statistical Report* (2020) at 16-17, <https://files.nc.gov/ncdps/FY-2019-20-Annual-Statistical-Report.pdf>.
- <sup>56</sup> Arizona Department of Corrections Rehabilitation and Reentry, *Corrections at a Glance, February 2022* (Mar. 8, 2022), <https://corrections.az.gov/sites/default/files/REPORTS/CAG/2022/cagfeb-22.pdf>.
- <sup>57</sup> Total hours logged by incarcerated workers on community labor through their work on fire crews, public sector work crews, and Arizona Department of Transportation work crews was 1,829,348 in FY 2020. Arizona Department of Corrections, *Corrections at a Glance, June 2020* <https://corrections.az.gov/sites/default/files/REPORTS/CAG/2020/cagjune-20.pdf>.
- <sup>58</sup> Washington State Department of Corrections (WDOC), *Participation by Program Summary* (2020), <https://www.doc.wa.gov/docs/publications/reports/700-SR002-second-quarter.pdf>; WDOC, *Class IV Off-Site Work Crew*, Policy Document 700.400 (2019), <https://www.doc.wa.gov/information/policies/files/700400.pdf>.
- <sup>59</sup> Mississippi Department of Corrections, *Inmate Work Crews*, <https://www.mdcc.ms.gov/Institutions/Pages/Inmate-Work-Crews.aspx>.
- <sup>60</sup> Arkansas Division of Correction, *Annual Report Fiscal Year 2020* (2021) at 21, <https://doc.arkansas.gov/wp-content/uploads/2021/03/Division-of-Correction-FY20-Annual-Report-Board-of-Corrections-Approved-March-19-2021.pdf>.
- <sup>61</sup> J. Carlee Purdum and Michelle Meyer, *Prisoner Labor Throughout the Life Cycle of Disasters*, RISK, HAZARDS & CRISIS IN PUBLIC POLICY (May 12, 2020).
- <sup>62</sup> Jessica Lipscomb, *Unpaid Florida Prisoners Being Used to Clean Up After Hurricane Irma*, MIAMI NEW TIMES (Sept. 28, 2017) <https://www.miaminewtimes.com/news/unpaid-florida-prison-inmates-being-used-on-hurricane-irma-cleanup-labor-crews-9701867>; Polly Mosendz, *When Do You Move Prisoners Out of a Storm's Path?*, BLOOMBERG (Sept. 8, 2017), <https://www.bloomberg.com/news/articles/2017-09-08/when-do-you-move-prisoners-out-of-a-hurricane-s-path>.
- <sup>63</sup> Georgia Department of Corrections, *Fire Services and Life Safety*, <http://www.dcor.state.ga.us/Divisions/Facilities/FireServices>; Georgia Department of Corrections, *Fiscal Year 2020 Report* at 60, <http://www.dcor.state.ga.us/sites/default/files/sites/all/gdc/files/pdf/Research/Monthly/GDC%20FY2020%20Annual%20Report.pdf>; Georgia Department of Corrections, *2017 Fiscal Year Report* at 24, <http://www.dcor.state.ga.us/sites/default/files/sites/all/gdc/files/pdf/Research/Monthly/GDC%20FY2017%20Annual%20Report.pdf>; Erin Paige McGonigle, *First Responders, Second Priority: Georgia's Inmate Firefighter Program*

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and *International Human Rights Standards*, 48 *GEORGIA J. INTL. & COMP. L.* 189 (Apr. 11, 2021), <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2471&context=gjicl>.

<sup>64</sup> U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJS), *Prison Industry Enhancement Certification Program Brief* (2018). [https://www.bja.gov/Publications/PIECP-Program-Brief\\_2018.pdf](https://www.bja.gov/Publications/PIECP-Program-Brief_2018.pdf).

<sup>65</sup> Alfred C. Aman Jr. and Carol J. Greenhouse, *Prison Privatization and Inmate Labor in the Global Economy: Reframing the Debate Over Private Prisons*, 42 *FORDHAM URB. L. J.* 355, 388 (2014).

<sup>66</sup> As of the third quarter of 2021 ending on September 30, 2021, 4,860 incarcerated workers were employed through the Prison Industry Enhancement Certification Program (PIECP). See, National Correctional Industries Association, *Prison Industry Enhancement Certification Program (PIECP) Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending September 30, 2021* (Baltimore, MD: NCIA, March 2022), [https://www.nationalcia.org/files/ugd/569cf7\\_0ab8d011f21b4127b18d15c77d104f45.pdf](https://www.nationalcia.org/files/ugd/569cf7_0ab8d011f21b4127b18d15c77d104f45.pdf).

<sup>67</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables* (Nov. 2021) at 13, <https://bjs.ojp.gov/content/pub/pdf/csfacf19st.pdf>.

<sup>68</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], (Sept. 2021), <https://doi.org/10.3886/ICPSR37692.v4>. Percentage is based on ACLU analysis of the raw survey data. Arkansas Division of Correction, *Annual Report, Fiscal Year 2021* (Apr. 2022) at 48, <https://doc.arkansas.gov/wp-content/uploads/2022/04/ADC-FY2021-Annual-Report-BOC-Approved-4.29.2022.pdf>.

<sup>69</sup> Courtney A. Crittenden, Barbara A. Koons-Witt and Robert J. Kaminski, *Being Assigned Work in Prison: Do Gender and Race Matter?*, *FEMINIST CRIMINOLOGY* 1-23 (Sept. 2016), [https://www.researchgate.net/publication/308104933\\_Being\\_Assigned\\_Work\\_in\\_Prison\\_Do\\_Gender\\_and\\_Race\\_Matter](https://www.researchgate.net/publication/308104933_Being_Assigned_Work_in_Prison_Do_Gender_and_Race_Matter).

<sup>70</sup> Texas Department of Criminal Justice, *Frequently Asked Questions*, <https://www.tdcj.texas.gov/faq/cid.html> (stating “Inmates are not paid for their work”); Chris Tomlinson, *Prison Slave Labor Isn't Just a Problem in China. It Happens in Texas, Too*, *HOUSTON CHRONICLE* (Aug. 27, 2021) <https://www.houstonchronicle.com/business/columnists/tomlinson/article/Tomlinson-Prison-slave-labor-persists-in-Texas-16414140.php>; *Editorial: Unpaid Prison Labor is Wrong. End it Now*, *HOUSTON CHRONICLE* (Dec. 3, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-Unpaid-prison-labor-is-wrong-End-it-15771108.php>; Vicky Camarillo, *The Penal System Today is Slavery: Lawmakers Finally Start to Talk About Unpaid Labor in Texas Prisons*, *TEXAS OBSERVER* (May 10, 2019), <https://www.texasobserver.org/penal-system-slavery-unpaid-labor-texas/>. An exception to this policy was granted to incarcerated workers tasked with working in mobile morgues during COVID-19, who were paid \$2 an hour after refusing to work unpaid. Alana Rocha, *Incarcerated Texans Enlisted to Work in County Morgue as COVID-19 Deaths Overwhelm El Paso*, *TEXAS TRIBUNE* (Nov. 15, 2020), <https://www.texastribune.org/2020/11/15/coronavirus-texas-el-paso-inmates-morgue-deaths/>.

<sup>71</sup> Texas Legislative Budget Board, *Fiscal Note*, 86<sup>th</sup> Legislative Regular Session, In Re: HB3720 (Apr. 17, 2019) <https://capitol.texas.gov/tlodocs/86R/fiscalnotes/pdf/HB03720I.pdf#navpanes=0>; Vicky Camarillo, *The Penal System Today is Slavery: Lawmakers Finally Start to Talk About Unpaid Labor in Texas Prisons*, *TEXAS OBSERVER* (May 10, 2019), <https://www.texasobserver.org/penal-system-slavery-unpaid-labor-texas/>.

<sup>72</sup> In South Carolina, incarcerated people working in all institutional jobs, some correctional industries jobs, and on community labor crews are not paid any wage. As of June 2018, the most recent available data, these unpaid job assignments constituted more than 90 percent of the state's 14,786 incarcerated workers. See South Carolina Department of Corrections, *Inmate Pay*, § 3 (2014), <http://www.doc.sc.gov/policy/ADM-15-13.htm.pdf>; South Carolina Department of Corrections Letter to South Carolina Legislative Oversight Committee, *Inmate Work: Earning and Supervision Details, Policies, and Statutes* (May 24, 2019), <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/Statistics%20by%20type%20of%20inmate%20work%20-%20qualifications,%20number%20working,%20costs,%20etc..pdf>.

<sup>73</sup> See Appendix B for the wages paid to incarcerated workers in each state and in federal prisons, and see Appendix C for calculated average and hourly wages paid to incarcerated workers.

<sup>74</sup> Maine Department of Corrections, FOIA response document (on file with authors).

<sup>75</sup> Connecticut Department of Correction, *Administrative Directive: Inmate Assignment and Pay Plan*, Directive 10.1 (effective Oct. 22, 2015), <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad1001pdf.pdf>.

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<sup>76</sup> Kansas Department of Corrections, *Internal Management Policy & Procedure: Resident Work Assignments*, Policy 10-109A (effective Jan. 21, 2022), <https://www.doc.ks.gov/kdoc-policies/AdultIMPP/chapter-10/10-109a-resident-work-assignments.pdf/view>; Kansas Department of Corrections, *Internal Management Policy & Procedure: Programs and Services: Offender Work Assignments*, Policy 10-109J at 2 (effective Oct. 13, 2016), <https://www.doc.ks.gov/kdoc-policies/AdultIMPP/chapter-10/10-109j/view>.

<sup>77</sup> Jon Swartz, *Inmates vs. Outsourcing*, USA TODAY (July 6, 2004), [https://usatoday30.usatoday.com/money/economy/employment/2004-07-06-call-center\\_x.htm](https://usatoday30.usatoday.com/money/economy/employment/2004-07-06-call-center_x.htm); Otak, *Coffee Creek Correctional Facility* (2020), <https://www.otak.com/about/projects/coffee-creek-correctional-facility/>; Todd Clear, Michael Riesig, and George Cole, *American Corrections* (Boston: Cengage Learning, 2019)

<sup>78</sup> La. Rev. Stat. § 15:873.

<sup>79</sup> Arkansas Department of Corrections, Division of Corrections, *Inmate Handbook*, at 6 (March 2020) [https://doc.arkansas.gov/wp-content/uploads/2020/09/Inmate\\_Handbook\\_Updated\\_March\\_2020\\_Final\\_02\\_28\\_2020\\_pdf.pdf](https://doc.arkansas.gov/wp-content/uploads/2020/09/Inmate_Handbook_Updated_March_2020_Final_02_28_2020_pdf.pdf)

<sup>80</sup> Kate Lisa, *Campaign Launched to Raise Pay, Secure Labor Rights for Prisoners*, HUDSON VALLEY 360 (Jan. 17, 2022), [https://www.hudsonvalley360.com/news/nystate/campaign-launched-to-raise-pay-secure-labor-rights-for-prisoners/article\\_46dc9d5a-cbfe-5240-abfd-ddf3d0457da8.html](https://www.hudsonvalley360.com/news/nystate/campaign-launched-to-raise-pay-secure-labor-rights-for-prisoners/article_46dc9d5a-cbfe-5240-abfd-ddf3d0457da8.html); Joseph Spector, *Big Raise? Prison Inmates Could Get a Major Boost in their Wages in New York*, DEMOCRAT & CHRON. (Feb. 7, 2019), <https://www.democratandchronicle.com/story/news/politics/albany/2019/02/07/big-raise-prison-inmates-could-get-major-boost-minimum-wages-new-york/2799895002/>.

<sup>81</sup> South Dakota Department of Corrections, *Inmate Work Assignments and Pay*, Policy 1.5.A.1 (effective Jan. 4, 2019), at 4 (Revision Log), <https://doc.sd.gov/documents/Inmate%20Work%20Assignments%20and%20Pay142019.pdf>.

<sup>82</sup> Vermont Agency of Human Services, Department of Corrections, *Inmate Wage Plan*, Policy 394 (effective May 30, 1988), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/394-Inmate-Wage-Plan.pdf>.

<sup>83</sup> Illinois Department of Corrections, Administrative Directive 05.03.103, *Monetary Compensation for Assignments for Individuals in Custody* (July 1, 2021); Illinois Department of Corrections, Administrative Directive 05.03.103A, *Monetary Compensation for Inmate Assignments* (May 1, 1992, amended July 1, 2010).

<sup>84</sup> Nationally, incarcerated workers employed in the PIECP program earned \$10,034,501 in gross wages in the first quarter of 2021 and \$11,689,205 in the second quarter of 2021, of which \$5,947,107 and \$6,884,581 was deducted respectively. National Correctional Industry Association (NCIA), *Prison Industry Enhancement Certification Program Certification Program Certification & Cost Accounting Center Listing: Quarterly Report, Statistics for the Quarter Ending June 30, 2021*, (Baltimore, MD: NCIA, Dec. 2, 2021), <https://www.nationalcia.org/statistical-reports>, [https://4c99dc08-46a7-4bd9-b990-48103d668bb3.filesusr.com/ugd/569cf7\\_7722ec64545745f780ef9e63e75e7482.pdf](https://4c99dc08-46a7-4bd9-b990-48103d668bb3.filesusr.com/ugd/569cf7_7722ec64545745f780ef9e63e75e7482.pdf); NCIA, *Prison Industry Enhancement Certification Program Certification Program Certification & Cost Accounting Center Listing: Quarterly Report, Statistics for the Quarter Ending March 31, 2021*, (Baltimore, MD: NCIA, 2021), <https://www.nationalcia.org/statistical-reports>, [https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e\\_e0d06d60f81e41cab23b5ec50294401b.pdf](https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e_e0d06d60f81e41cab23b5ec50294401b.pdf).

<sup>85</sup> *Id.*; NCIA, *Prison Industry Enhancement Certification Program Certification Program Certification & Cost Accounting Center Listing: Quarterly Report, Statistics for the Quarter Ending December 31, 2020*, (Baltimore, MD: NCIA, 2021), <https://www.nationalcia.org/statistical-reports>, [https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e\\_581cb12b96244d80bf38ed972e18fef6.pdf](https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e_581cb12b96244d80bf38ed972e18fef6.pdf); NCIA, *Prison Industry Enhancement Certification Program Certification Program Certification & Cost Accounting Center Listing: Quarterly Report, Statistics for the Quarter Ending September 30, 2020* (Baltimore, MD: NCIA, 2020), <https://www.nationalcia.org/statistical-reports>, [https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e\\_e2b3759067374286b6578b24ea6ae87a.pdf](https://df1d6e07-2d3a-49dd-bb43-170ddf635f64.usrfiles.com/ugd/df1d6e_e2b3759067374286b6578b24ea6ae87a.pdf).

<sup>86</sup> Filiberto Nolasco Gomez, *An Update on Prison Labor in Minnesota*, WORKDAY MINNESOTA (Jan. 5, 2022), <https://workdayminnesota.org/an-update-on-prison-labor-in-minnesota/>.

<sup>87</sup> Fla. Stat. § 946.522-3 (“The trust fund shall consist of moneys authorized to be deducted pursuant to 18 U.S.C. § 1761(c) and the applicable federal guidelines, to be appropriated by the Legislature, and moneys deposited by the corporation authorized under this part to manage and operate correctional work programs. The appropriated funds shall be used by the corporation for purposes of construction or renovation of its facilities or for the expansion or establishment of correctional work programs as described in this part or for prison industries enhancement (PIE) programs as authorized under s. 946.523.”).

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

<sup>89</sup> Prison Policy Initiative, *Following the Money of Mass Incarceration*, by Peter Wagner and Bernadette Rabuy (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html>; Nicole Lewis and Beatrix Lockwood, *The Hidden Cost of Incarceration*, THE MARSHALL PROJECT (Dec. 17, 2019) <https://www.themarshallproject.org/2019/12/17/the-hidden-cost-of-incarceration>.

<sup>90</sup> Ella Baker Center for Human Rights, *Who Pays: The True Costs of Incarceration on Families* (Sept. 2015), <http://whopaysreport.org/who-pays-full-report/>. See also Connecting Families New York, *Connecting Families Fact Sheet*, [https://nyconnect.org/wp-content/uploads/2021/12/21-12\\_CJ\\_ConnectingFamilies\\_Factsheet\\_v5.pdf](https://nyconnect.org/wp-content/uploads/2021/12/21-12_CJ_ConnectingFamilies_Factsheet_v5.pdf).

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

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

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

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

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

<sup>95</sup> For example, Arizona Revised Statutes provide that in the employ of the state, the term “employment” does not apply to services performed by “inmate[s] of a custodial or penal institution.” See Ariz. Rev. Stat. Ann. § 23-615 (B)(6). The Michigan Supreme Court and Court of Appeals have held that there is no employer/employee relationship between incarcerated individuals and the state since the relationship is custodial and rehabilitative. See, *Thompson v. Bronk*, 126 Mich 455, 456-457; 85 NW 1084 (1901); *Cadeau v. Boys’ Vocational School*, 359 Mich 598, 608-609; 103 NW2d 443 (1960); *Green v. Department of Corrections*, 30 Mich App 648; 186 NW2d 792; aff’d 386 Mich 459; 192 NW2d 491 (1971); *Prisoners’ Labor Union at Marquette v. Department of Corrections*, 61 Mich App 328; 336; 232 NW2d 699; lv den 394 Mich 843 (1975). New York State’s Department of Labor Public Employee Safety and Health Field Operations Manual excludes incarcerated people from the definition of public employees, even though the Consolidated Laws of New York do not explicitly exclude them from the definition of employee. New York State Department of Labor, *Public Employee Safety and Health Field Operations Manual* (2021), <https://dol.ny.gov/system/files/documents/2021/04/peshfom.pdf>; N.Y. Lab. Law § 27-a (McKinney). Virginia Occupational Safety and Health (VOSH) interprets the exclusion of incarcerated individuals as employees under the Virginia Minimum Wage Act, § 40.1-28.9 to extend to VOSH. However, it considers VOSH to be responsible for prisoners employed by a public employer in a work-release program. Virginia Department of Labor and Industry, Virginia Occupational and Health Program, *VOSH Administrative and Regulations Manual* (Sep. 21, 2006), [https://www.vaasphalt.org/wp-content/uploads/2012/10/DOLI\\_Admin\\_Regs\\_Manual\\_hitching\\_ride\\_on\\_paver\\_issue.pdf](https://www.vaasphalt.org/wp-content/uploads/2012/10/DOLI_Admin_Regs_Manual_hitching_ride_on_paver_issue.pdf). In California, unlike other states, California Division of Occupational Safety and Health Administration (Cal/OSHA) may make recommendations to the Department of Corrections to improve the safety of the working conditions and work areas of state prisoners. Cal/OSHA may also conduct hearings and adopts special orders, rules, or regulations if the Department of Corrections and Rehabilitation fails to comply with recommendations. Cal. Code Regs. tit. 8, § 344.46.

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<sup>97</sup> Data is calculated from the three-state survey conducted by the ACLU and the Global Human Rights Clinic.

<sup>98</sup> Spencer Woodman, *California Blames Incarcerated Workers for Unsafe Conditions and Amputations*, THE INTERCEPT (Dec. 28, 2016).

<sup>99</sup> Written survey response by [Name withheld to preserve anonymity, at survey respondent’s request], incarcerated at Menard Corrections Center, IL (on file with authors).

<sup>100</sup> Written survey response by [Name withheld to preserve anonymity, at survey respondent’s request], incarcerated at Stateville Correctional Center, IL (on file with authors).

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

<sup>102</sup> Data is calculated from the three-state survey conducted by the ACLU and the Global Human Rights Clinic.

<sup>103</sup> *Kulkay v. Roy*, 847 F.3d 637, 643-645 (8th Cir. 2017).

<sup>104</sup> *Jackson v. Birkey*, No. 1:14-cv-01108-MMM, 2019 WL 2305135 (C.D. Ill. May 30, 2019).

<sup>105</sup> Trial Tr. Vol. 1 at 100, *Jackson v. Birkey*, No. 1:14-cv-01108-MMM, 2019 WL 2305135 (C.D. Ill. May 30, 2019).

<sup>106</sup> *Rhodes v. Michigan*, 10 F. 4<sup>th</sup> 665 (6<sup>th</sup> Cir. 2021).

<sup>107</sup> Elizabeth Whitman, *Barely Trained Inmate Loses Finger Working at Hickman's Egg Farm*, PHX. NEW TIMES (Sep. 12, 2019), <https://www.phoenixnewtimes.com/news/inmates-maricopa-county-arizona-injured-labor-hickman-egg-farms-11354362>.

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<sup>110</sup> *Buckley v. Barbour County, Ala.*, 624 F. Supp. 2d (M.D. Ala. 2008); *Buckley v. Barbour County, Ala.*, 2010 WL 1993066 (M.D. Ala. 2010).

<sup>111</sup> *Buckley v. Barbour County, Ala.*, 624 F. Supp. 2d (M.D. Ala. 2008).

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<sup>113</sup> *Id.*

<sup>114</sup> *Brown v. State*, N.Y. Ct. Cl., Claim No. 125765, #2018-054-097 (Sept. 11, 2018).

<sup>115</sup> Spencer Woodman, *California Blames Incarcerated Workers for Unsafe Conditions and Amputations*, THE INTERCEPT (Dec. 28, 2016).

<sup>116</sup> See, e.g., Kristi Graunke and Will Tucker, *Why Incarcerated People At Poultry Plants Deserve Better*, MARSHALL PROJECT (Aug. 13, 2018), <https://www.themarshallproject.org/2018/08/13/why-incarcerated-poultry-workers-deserve-better>; Elizabeth Whitman, *More Arizona Inmates Report Serious Injuries While Working at Hickman's Egg Farm*, PHX. NEW TIMES (Oct. 4, 2019), <https://www.phoenixnewtimes.com/news/arizona-inmates-report-serious-injuries-hickmans-egg-farm-osha-11367976>; Southern Policy Law Center, *The Kill Line*, by Will Tucker (July 26, 2018), <https://www.splcenter.org/news/2018/07/26/kill-line>.

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<sup>180</sup> See Ji Hyun Rhim, *Left at the Gate: How Gate Money Could Help Prisoners Reintegrate Upon Release*, 106 CORNELL LAW REV. 783 (March 27, 2021); Daniel Munczek Edelman, *Cash for Leaving Prison: A New Solution to Recidivism?*, STANFORD SOCIAL INNOVATION REV., (Aug. 15, 2017), [https://ssir.org/articles/entry/cash\\_for\\_leaving\\_prison\\_a\\_new\\_solution\\_to\\_recidivism](https://ssir.org/articles/entry/cash_for_leaving_prison_a_new_solution_to_recidivism). See also Kristin Toussaint, *This Program is Testing What Happens When You Give Cash to People Leaving Prison*, FAST COMPANY (Sept. 28, 2021), <https://www.fastcompany.com/90680420/this-program-is-testing-what-happens-when-you-give-cash-to-people-leaving-prison>.

<sup>181</sup> See, e.g., Center for Economic and Policy Research, *Ex-offenders and the Labor Market*, by John Schmitt and Kris Warner (Nov. 2010), <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>; Eugene M. Hyman, *The Scarlet Letter and Other Roadblocks to Redemption for Female Offenders*, 54 SANTA CLARA L. REV. 119, 123 (2014); Urban Institute, *Employment after Prison: A Longitudinal Study of Releasees in Three States*, by Christy Visher, Sara Debus-Sherrill, and Jennifer Yahner (Oct. 20, 2008), <https://www.urban.org/research/publication/employment-after-prison-longitudinal-study-releasees-three-states>; American Bar Association, Commission on Effective Criminal Sanctions, *Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies* (2007).

<sup>182</sup> American Bar Association, Commission on Effective Criminal Sanctions, *Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies* (2007); Steven D. Bell, *The Long Shadow:*

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

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

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

<sup>185</sup> See Federal Bureau of Prisons, *FPI and Vocational Training Works: Post-Release Employment Project (PREP)*, [http://www.bop.gov/resources/pdfs/prep\\_summary\\_05012012.pdf](http://www.bop.gov/resources/pdfs/prep_summary_05012012.pdf); see also Federal Bureau of Prisons, *UNICOR: Preparing Inmates for Successful Reentry through Job Training*, [http://www.bop.gov/inmates/custody\\_and\\_care/unicor.jsp](http://www.bop.gov/inmates/custody_and_care/unicor.jsp); Federal Bureau of Prisons, *UNICOR Program Details*, [https://www.bop.gov/inmates/custody\\_and\\_care/unicor\\_about.jsp](https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp). The share of UNICOR jobs (8 percent) is shrinking, down from 25 percent in 2009. See House Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, Federal Bureau of Prisons Oversight Hearing (July 21, 2009).

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

<sup>187</sup> American Correctional Association (ACA), *Supporting Repeal of the "Exclusion Clause" in Section I of the Thirteenth Amendment of the U.S. Constitution* (adopted by the ACA Delegate Assembly at the 146<sup>th</sup> Congress of Correction, Aug. 9, 2016), <https://www.house.leg.state.mn.us/comm/docs/469186d6-bf9d-4a9d-9211-fdfedb48bcee.pdf>.

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

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

<sup>190</sup> Jailhouse Lawyers Speak, *National Prison Strike Call To Action—August 21<sup>st</sup> 2018 to September 9<sup>th</sup> 2018* (June 2, 2018), <https://supportprisonerresistance.noblogs.org/post/2018/06/02/national-prison-strike-call-to-action-august-21st-2018-to-september-9th-2018/>. See also Mitch Smith, *Prison Strike Organizers Aim to Improve Conditions and Pay*, N.Y. TIMES (Aug. 26, 2018), <https://www.nytimes.com/2018/08/26/us/national-prison-strike-2018.html>.

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