

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

**Response to Question for the Record**

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

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

The Americans with Disabilities Act<sup>3</sup> applies to people incarcerated in prisons and jails.<sup>4</sup> The ADA defines “a disability” as a “physical or mental impairment that substantially limits one or more major life activities,” including but not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”<sup>5</sup> Prisons are required to provide reasonable accommodations to incarcerated people with disabilities who wish to work.<sup>6</sup>

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

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

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

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

<sup>3</sup> 42 U.S.C. § 12101 *et seq.* (1990).

<sup>4</sup> *See* 42 U.S.C. § 12132; Rehabilitation Act of 1973 § 504, 29 U.S.C. § 701; 29 U.S.C. § 794.

<sup>5</sup> 42 U.S.C. §§ 12102(1)(A), (2)(A).

<sup>6</sup> Rehabilitation Act of 1973 § 504, 29 U.S.C. § 701; *see* 42 U.S.C. § 12132.

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

Nevertheless, there is an abundance of individual accounts indicating that prisons have failed to accommodate a person's disability and even punished them when a person's disability prevented them from working. Examples of individuals who have been subjected to such treatment include an HIV-positive man who had difficulty standing<sup>10</sup>, a female kitchen worker with COVID-19<sup>11</sup>, an anemic, asthmatic man with degenerative discs in his spine<sup>12</sup>, and a woman who was unable to stand, as her leg had been amputated and she had yet to receive a prosthetic.<sup>13</sup>

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

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

<sup>8</sup> *Id.* at 2.

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

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

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

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

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

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

<sup>15</sup> *Id.* at 5–6.

<sup>16</sup> *Id.* at 29–30.

Prisons have also discriminated against incarcerated people by barring them from willful work on account of their disability status. Incarcerated people have been excluded from willful prison programs and work due to issues such as diabetes, hearing disabilities, vision disabilities, and HIV status.<sup>17</sup> Additional examples of incarcerated individuals subject to disability discrimination include a man barred from a motivational boot camp due to having hypertension<sup>18</sup>, a man denied access to his prison's work program as a result of being a quadriplegic<sup>19</sup>, and a man barred from participating in work release on account of walking with cane.<sup>20</sup>

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

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

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<sup>17</sup> Turner, *supra* note 2, at 53 n.460.

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

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

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

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

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

<sup>23</sup> Chao Xiong, *Lawsuit alleges misdiagnosis of inmate's prostate cancer, leading to death*, STAR TRIBUNE, (Sept. 27, 2019) <https://www.startribune.com/lawsuit-alleges-misdiagnosis-of-inmate-s-prostate-cancer-leading-to-death/561583182/>; Jim Brunner, *Wash. pays \$9.9M to woman who got terminal cancer in prison*, CORRECTIONS1, (Feb. 1, 2024) <https://www.corrections1.com/lawsuit/wash-pays-9-9m-to-woman-who-got-terminal-cancer-in-prison>.

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