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

Hearing on
“An Examination of Prison Labor in America”
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Chairman Senator Booker, Ranking Member Senator Cotton, and Members of the Subcommittee:

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

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

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

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

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

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

The Coercive Aspects of Incarcerated Labor

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

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

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

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

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

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

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

⁶ TANGIPAHOA SHERIFF'S OFF., LOCAL JAIL INMATE DEATH REP.: BOBBY EARL (2015), <https://www.incarcerationtransparency.org/wp-content/uploads/2021/02/Earl-Bobby-Tangipahoa-2015-CJ9.pdf>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁰ *Id.* at 232.

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

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

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

²⁴ See *id.* at 272–73.

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

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

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

Failure to Protect and Provide Remedies for Incarcerated Workers

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

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

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

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

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

²⁹ 29 U.S.C. §§ 151–169.

³⁰ 29 U.S.C. §§ 201–219.

³¹ 42 U.S.C. § 2000e *et seq.*

³² 29 U.S.C. §§ 651–678.

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

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

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

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

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

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

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

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

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

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

³⁹ *Id.*

⁴⁰ Anastasia Christman & Han Lu, *Workers Doing Time Must Be Protected by Job Safety Laws*, NATIONAL EMPLOYMENT LAW PROJECT, at *19 (Apr. 2024), https://www.nelp.org/app/uploads/2024/04/Report_Incarcerated_Workers_Disasters_v2.pdf.

⁴¹ *Id.* at *19–21.

⁴² *See id.*

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

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

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

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

⁴⁷ LAURA M. MARUSCHAK & JENNIFER BRONSON, BUREAU OF JUST. STATISTICS, U.S. DEP’T OF JUST., NCJ 252642, SURVEY OF PRISON INMATES: DISABILITIES REPORTED BY PRISONERS, 2016, 2 (Mar. 2021) <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>.

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

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

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

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

Potential Reforms to Enhance Fairness

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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