

CONVICTED

How Corporations Exploit
the Thirteenth Amendment's
Loophole for Profit



Corporate Accountability Lab

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Dear Reader,

In the United States, only 2 percent of the population is born with green eyes, but 3 percent of us will spend time incarcerated in our lifetimes. In fact, this experience is statistically more American than making over \$300,000 per year, or being from Idaho or Rhode Island.

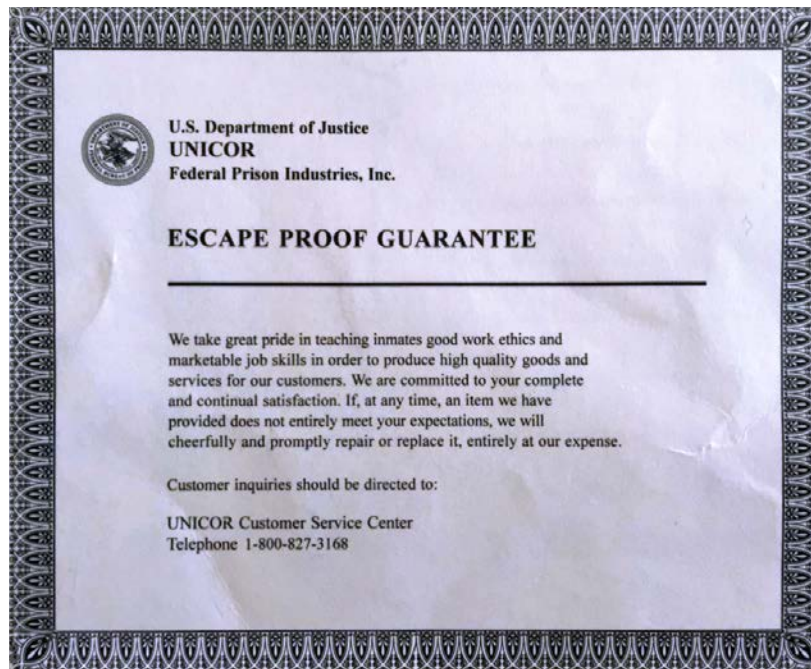
My own experience spending six months in federal prison reflected this reality. Like many Americans, incarcerated people are often people of color, lower income, and victims of violence. They also value family, build deep friendships, and, like all of us, crave connection and long to be cared for. At Pekin Federal Prison, the “long timers” formed a community of mutual care that was one of the few comforts we had. Just people, living our lives, enduring daily hardships, but on the inside.

This report seeks to illuminate another less-discussed aspect of this common experience: that incarcerated workers in this country are not merely permitted or encouraged to work, but are forced to work. The facility that housed me was a work camp, and anyone who refused to work would be sent to county jail. The penalty of being sent to county, where turnover was high and community nonexistent, was no small threat.

And so, if we were able-bodied, we worked. I earned \$0.12 per hour, which, after an eight-hour shift, would allow me to buy a single tampon. Some women cleaned the men’s prison next door or worked in the kitchen or laundry. Many of us worked in the UNICOR factory, or in factory-adjacent jobs like my own. Most of my job involved metals — aluminum and steel, in large and small pieces. This metal was a byproduct of the prison factory, which built metal cages for immigration agents to put in the back of their pickup trucks. To each cage was affixed a diagram, showing how eight grown men, likely picked up in the desert in the southern United States, could fit into the cage, and where their ankle and waist chains would connect to their handcuffs and to the cage itself. The cages also bore an “Escape Proof Guarantee,” which incarcerated workers affixed as the final step before loading the cages into semi-trailers.

As I worked, there were times when guards — also our bosses — shouted at me and mocked me. We all avoided the freezers, where the guards were rumored to sexually assault the inmates. The expectation was silent obedience, and for the most part, we complied. If a newcomer failed to do so, older women would say quietly to her “Just do your time. You will get through this. Keep your head down.”

Prior to my arrest, I was involved in the student anti-sweatshop movement, protesting for better conditions for workers around the world producing for Global North markets. I knew the value of organizing, and that an organized workforce is the best way to shield workers from abuse. But in prison, we couldn’t organize. We had no constitutional rights, we were explicitly prohibited from congregating in groups of more than five without prior approval, and we certainly lacked the right to bargain collectively.



A photo of the Escape Proof Guarantee, which was affixed to each of the cages assembled by incarcerated workers at Pekin Federal Prison when Charity Ryerson worked there in 2002.

The question this report responds to is whether the exception to the Thirteenth Amendment prohibition on slavery, permitting slavery and involuntary servitude as punishment for a crime, violates international law. The particular focus on companies and the flow of prison-made goods into domestic markets parallels countries like China, known for using incarcerated labor to produce apparel, toys, agricultural products, and even human hair. The free flow of prison-produced goods into markets perversely incentivizes incarceration and operates as an extension of the long history of race-based enslavement and convict leasing in the United States.

Even if prison abolition remains distant, there is much that can be done now to bring the United States into compliance with international standards. Work can be voluntary, workers can be allowed to organize unions and bargain collectively, they can be compensated at normal market rates and allowed to save money for their release, and they can be provided the same protections and rights as workers on the outside. The historical victims of slavery and convict leasing will never be made whole, and no form of reparation will be sufficient, but the opportunity to dismantle the vestige of these practices, and provide some remedy to the victims of today, stands before us now. Will we take it?

In solidarity,

A handwritten signature in cursive script that reads "Charity Ryerson".

Charity Ryerson

Executive Director and Founder
Corporate Accountability Lab

Executive Summary

Two million people — nearly a quarter of the global prison population — were incarcerated in US state and federal penal institutions in 2022. Federal and state governments, as well as the politics of white supremacy, are the primary beneficiaries and drivers of this carceral state. Yet throughout US history, there has been a driver behind the driver: private profit. The rules governing slavery and early-American private industry transformed into the rules governing Jim Crow and convict leasing, which were adapted to become today's modern penal system — an institution deeply influenced by the economic interests and political power of corporations, even as it disproportionately hurts Black, Brown, and low-income communities.

Today's prison system extracts labor from those who are incarcerated, often for little or no pay. This staggering injustice is possible — and legal — because of a single phrase in the Thirteenth Amendment to the US Constitution:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Those few words have allowed forced labor to continue in the United States since the Thirteenth Amendment's ratification in 1865. This exception to the prohibition on slavery and servitude has allowed private capitalists and entities to profit by exploiting a vulnerable, shackled, and disproportionately Black, Brown, and low-income workforce. This was true in the nineteenth and early twentieth centuries, when companies leased convicts from states for nearly nothing, and it remains true today.

This report highlights a variety of strategies the private sector uses to exploit incarcerated individuals for profit. It describes the varied ways that companies partner with state and federal prison industries to reap the benefits of a cheap and captive labor force. Companies legally exploit and profit from incarcerated workers, despite extensive regulation in the United States prohibiting the interstate sale of prison-made goods. The report then demonstrates the high risk of forced labor for incarcerated workers in the United States, based on the abusive conditions under which they so often work.

1 Federal law generally prohibits goods produced with prison labor from being transported across state lines, but the numerous exceptions to this prohibition erode its meaning substantially.

Corporations can legally hire incarcerated workers and buy goods produced in US prisons — despite a series of federal laws restricting the production and sale of goods produced in prisons both in and outside the United States. The Ashurst-Sumners Act of 1935 (as amended in 1940) prohibits any individual from “knowingly transport[ing] in interstate commerce ... any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners.” However, the many exceptions to this prohibition have rendered it moot. In myriad ways, companies legally contract, partner, and transact with state and federal prison systems, gaining access to a large labor force with very few labor rights.

2 The international legal prohibition on the use of forced labor, which prison labor often constitutes, is a well-established international human rights norm.

Since at least the 1948 Universal Declaration of Human Rights, there has been a clear prohibition on the use of forced labor under international law. While the International Labour Organization’s (ILO) Forced Labor Convention (No. 29) includes a narrow exception permitting incarcerated individuals to work, this is only permissible if public authorities supervise and control the incarcerated workers and the “person is not hired to or placed at the disposal of private individuals, companies or associations.” As a member of the ILO, the United States is bound by the standards enshrined in this law. The ILO Abolition of Forced Labor Convention (No.105), which the United States has ratified, obligates ratifying nations “to suppress and not to make use of any form of forced or compulsory labour [...] (e) as a means of racial, social, national or religious discrimination.” Mass incarceration in the United States, and the overwhelming impact it has had on communities of color, demonstrates that the United States is an ongoing violator of international legal norms.

3 Many of the ILO indicators of forced labor apply to incarcerated workers in the United States, and some — including abuse of vulnerability, restriction of movement, and isolation — are inherent qualities of incarceration, impossible to reform and addressable only by abolition.

The eleven ILO indicators of forced labor provide a guide to establishing whether a specific instance of abusive labor conditions meets the threshold for forced labor. The indicators are: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identify documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. Not all eleven indicators must be found for an



individual to be engaged in forced labor. Within the US prison system, in addition to abuse of vulnerability, restriction of movement, and isolation, incarcerated workers often face intimidation and threats, have their wages withheld, and are subject to abusive working and living conditions. Taken together, there is a high risk of forced labor for all incarcerated workers in the United States.

4 Companies like Hickman’s Family Farms, AM General, and Dickinson Frozen Foods represent some of the ways — and the extent to which — the private sector exploits and benefits from prison labor.

- For more than two decades, Hickman’s Family Farms (Hickman’s) has employed hundreds of incarcerated workers through a partnership with Arizona Correctional Industries (ACI). The workers labor — and some even live — on chicken farms, where the conditions are unsanitary and the machinery is dangerous.
- AM General, a world leader in the design of tactical vehicles and a frequent Defense Department contractor, subcontracted with Federal Prison Industries (also called UNICOR) on at least eight occasions between 2019 and 2021. UNICOR workers make between \$0.23 and \$1.15 per hour, before a portion of their wages are withheld under the Inmate Financial Responsibility Program (IFRP).
- Dickinson Frozen Foods (Dickinson) was one of Idaho’s largest private employers of incarcerated individuals in 2022, employing between 93 and 526 incarcerated workers (depending on the quarter) through the Prison Industry Enhancement Certification Program (PIECP). Conditions at Dickinson work sites were so dangerous in 2016 that the Occupational Safety and Health Administration’s (OSHA) Idaho director said it was “a miracle no Dickinson Frozen Foods employees were killed or hurt.”

Incarcerated individuals working for Hickman’s, AM General, and Dickinson suffer, at the very least, from abusive working and living conditions, withholding of wages, and isolation — all indicators of forced labor.

Mass incarceration in the United States is a critical issue of our time. While Corporate Accountability Lab’s (CAL) main focus is on human rights abuses committed by corporations in global supply chains, these harms cannot be separated from abuses occurring in the United States. The patterns of carceral abuse that have strangled the United States for hundreds of years continue to be shaped by the demands of global capitalism. To tackle the crisis of mass incarceration — and make strides toward abolition — the connection between capitalism and punishment must be taken seriously. With this report, CAL hopes to contribute to this endeavor.

Recommendations

The following recommendations are meant to be short-term goals. We believe that dismantling the carceral state is the only way to sever the link between profit and bondage; but the working conditions for those incarcerated must change as we fight to build a new social, political, and economic orientation — one divorced from race, class, and punishment. We recommend the following actions be a part of that process.

For Federal and State Government:

- 1 Congress and the states must eliminate the Thirteenth Amendment's exception to the prohibition on slavery and involuntary servitude for convicted persons.
- 2 Both the federal government and all state governments must prohibit corporations from hiring or contracting for the labor of incarcerated workers and from buying goods produced in prisons.
- 3 Both the federal government and all state governments must require that all work within prisons be offered voluntarily and that incarcerated workers be subject to the same working conditions and labor protections as free workers. Incarcerated workers must be paid the same amount as free workers for the same or similar work — without deductions — and be protected by the same health and safety standards that apply to free workers, have the right to form unions and bargain collectively, and work only under conditions that are consistent with all other federal and state regulations, including auditing requirements.

For Companies:

- 1 Companies must adopt policies prohibiting hiring incarcerated workers and buying any good produced by incarcerated workers along the entirety of their supply chains, encompassing both domestic and foreign suppliers.
- 2 Companies must demonstrate that suppliers are not using prison labor, by implementing due diligence standards that require tracing and reporting publicly on 100 percent of their supply chains — from the production of raw materials to the end product, including goods produced by subsidiaries — and adopting contract clauses, like the model provided below, in all supplier contracts.
- 3 Companies must certify that all corporate lobbying activities are consistent with the company's "no use of prison labor" policy.

“No Use of Prison Labor” in Supply Chains: Model Contract Language

The following model clauses can and should be adapted to fit the needs of particular buyers and suppliers. Note that existing contracts may include language that conflicts with or supersedes these clauses and should be reviewed in conjunction with this model language to ensure harmonization.

1. “No Use of Prison Labor” in Supply Chains Clauses

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

1.2 Third-party beneficiaries: Supplier acknowledges and agrees that the terms of [the Buyer’s Policy/Policies] are intended to benefit and protect not only Buyer and Supplier, but also incarcerated workers in and impacted by Buyer’s supply chain.

1.2(a) Any incarcerated worker who is injured or suffers damages, including but not limited to physical injuries, non-payment of the minimum wage, and discrimination, following breach of [the Buyer’s Policy/Policies] is an intended third-party beneficiary to this Agreement.

1.2(b) All third-party beneficiaries to this Agreement have the right to enforce the relevant provisions of [the Buyer’s Policy/Policies] against Supplier.

1.2(c) Assignment of rights: Third-party beneficiaries may assign their rights to a labor union, nongovernmental organization, or other organization(s) providing legal assistance they select.

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

1.4 Non-obstruction: Supplier shall not obstruct the efforts of Buyer or its designees to inspect for compliance, in accordance with [the Buyer’s Policy/Policies]. Buyer reserves the right to designate inspectors, auditors, and evaluators to conduct due diligence on Supplier’s operations at its discretion, and Supplier agrees to provide access to facilities, books and records upon reasonable notice.

1.5 Whistleblowers: Supplier or any party acting on behalf of Supplier shall not retaliate against any person who considers making or makes an internal report of violations of [the Buyer’s Policy/Policies], considers [making or makes an external report of violations to Buyer or its designees, brings or participates in any legal action against Supplier related to any issue including violations of [the Buyer’s Policy/Policies], or assists in an investigation pertaining to possible violations. Retaliation encompasses any action that would dissuade a reasonable person from taking any action referenced in this paragraph.

I. Introduction: “Prison Labor is Like a Pot of Gold”

“For private business prison labor is like a pot of gold. No strikes. No union organizing. No health benefits, unemployment insurance, or workers’ compensation to pay. No language barriers, as in foreign countries. New leviathan prisons are being built on thousands of eerie acres of factories inside the walls. Prisoners do data entry for Chevron, make telephone reservations for TWA, raise hogs, shovel manure, and make circuit boards, limousines, waterbeds, and lingerie for Victoria’s Secret – all at a fraction of the cost of ‘free labor.’”¹

Linda Evans & Eve Goldberg, The Prison Industrial Complex and the Global Economy (1997)

In 2022, there were two million people incarcerated in US state and federal penal institutions,² 2.9 million people on parole,³ and an average per day of 19,245 non-citizens and undocumented immigrants — often without charge or conviction — held in detention centers across the country.⁴ These individuals were stripped of their freedom to move, to be with family, to vote, and, in many cases, to *refuse* to work.

In this age of unprecedented mass incarceration and forced labor, much has been written about state violence, especially violence unleashed on majority Black and Brown communities.⁵ Governments at all levels, as well as the politics of white supremacy, are the primary beneficiaries and drivers of the racialized violence inherent in this carceral state.⁶ Yet throughout US history — including during slavery, convict leasing and Black Codes, Jim Crow, and the War on Drugs — there has been a driver behind the driver: private profit. Just as many of this nation’s eighteenth century constitutional framers had a vested economic interest in prolonging the institution of slavery, the modern US penal system is deeply influenced by the economic interests and political power of corporations. Mass incarceration and the forced labor extracted from those stripped of their rights during (and often after) incarceration is a direct outcome of immense state violence. As the state has continued its centuries-long pursuit of racial and social control, private industry has continued its centuries-long pursuit of economic control. These “mutually reinforcing systems of capitalism and racial domination” fuel the growth of prison industries today, just as they maintained the “slave plantation economy” for hundreds of years.⁷ Ultimately, only by fighting for a society in which state revenues and private capital are invested in communities — and never in prisons — can we cut ourselves loose from this violence. Abolitionist Angela Davis warned in 2003:

“Extensive corporate investment in prisons has significantly raised the stakes for antiprison work. It means that serious antiprison activities must be willing to look much further in their analyses and organizing strategies than the actual institution of the prison.”⁸

The fruit of US prison labor is in the restaurants we dine in, the offices we work in, the homes we live in, the government coffers we depend upon, and the bank accounts of small and large businesses around the world. This report aims to expose the extent of corporate interest in, and exploitation of, the US prison labor industry. Human rights lawyer Bryan Stevenson has argued convincingly that the institution of slavery did not end in 1865, but merely evolved.⁹ If we acknowledge that truth — and recognize both the public and private beneficiaries of this evolution — it follows that the nation’s economic dependence on the cheap and rights-deprived labor of shackled individuals also did not end, but merely evolved.



This report highlights the ways in which corporations exploit a captive labor force within the United States for profit. It begins with a short overview of the history of corporate exploitation of prison labor and then follows with an explanation of the legal framework governing prison labor — both under domestic and international law. The last section traces three supply chains of US companies that profit from forced prison labor: Hickman’s Family Farms, AM General, and Dickinson Frozen Foods.

II. Methodology

Corporate Accountability Lab’s (CAL) work on forced labor in global supply chains provided the impetus for, and helped to shape, this report. The United States has long recognized that forced and prison labor are exploitative forms of labor — but only when they take place outside of the United States. Section 307 of the Tariff Act of 1930 even prohibits the importation into the United States of all goods produced with forced or prison labor.¹⁰ For several years, CAL and partner organizations have submitted petitions to the US Government that include information about forced labor in specific international supply chains. These petitions have resulted in imports being blocked at the US border — incentivizing companies to modify their behavior to ensure that they retain access to the US market. Despite this prohibition on foreign-made goods produced with forced or prison labor, it remains legal — and quite normal — for those incarcerated in US prisons to have no choice but to work producing goods or providing services, including for companies.

The analysis here builds on CAL’s expertise mapping international supply chains and recognizes the hypocrisy of US policy toward domestic forced and prison labor. We have traced three supply chains of goods produced by incarcerated workers in the United States to demonstrate various forms of corporate exploitation. However, as the national narrative around prison labor has evolved, it is, as one asset management company wrote in 2018, “no longer desirable [for companies] to publicly acknowledge or highlight the use of prison labor,”¹¹ and many have begun to hide their relationships with prisons. This lack of transparency makes it difficult to confirm instances of prison labor in supply chains,¹² obscuring from view — and thus entrenching — corporate exploitation of incarcerated individuals.

This report is based on desk research, as well as on interviews with non-governmental organizations, journalists, and academics that have made invaluable contributions to this field. We have relied in large part on the fantastic work of Worth Rises, which has documented corporate exploitation of incarcerated individuals for years. Other key sources include Verité’s 2022 report, *Work Behind Bars: Analysis of Prison Labor in the United States Based on International Labor Standards*;¹³ and the American Civil Liberties Union (ACLU) and University of Chicago Law School Global Human Rights Clinic’s 2022 report, *Captive Labor: Exploitation of Incarcerated Workers*.¹⁴ We would like to thank Professor Andrea Armstrong, Jamila Johnson and the Promise of Justice Initiative, Genevieve LeBaron, and Claire Brown for their insights. Local newspapers provided outstanding reporting as well, including *The Arizona Republic’s* work investigating Hickman’s Family Farms.¹⁵

In addition to the organizations and individuals listed above, we encourage readers to support the Abolish Slavery National Network and its #EndtheException Campaign, Prison Policy Initiative, Forward Justice, and Critical Resistance — all leaders in the fight to reform and abolish the US prison system.



III. Private Use of Prison Labor, from Emancipation to the Present

The history of slavery in the United States is inextricably bound to the history of US economic dominance, and both are bound to the modern structure of prison industries, which play a pivotal role in the contemporary US economy. The rules governing slavery and early-American private industry were transformed into the rules governing Jim Crow and convict leasing, which were adapted to become today's carceral state — a state sustained by mass incarceration and a growing prison economy open to corporate exploitation.¹⁶

This ongoing preservation of staggering injustice is possible — and legal — because of fourteen words in the Thirteenth Amendment to the US Constitution:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

That single phrase has allowed forced labor to continue in the United States since the Thirteenth Amendment's ratification in 1865. By the time the Civil War was over, the economic, political, and social infrastructures of the slaveholding states were “in shambles.”¹⁷ Plantation owners — without enslaved labor — were suddenly indigent, large swaths of real estate had been destroyed, state governments were deeply indebted, and the loss of a *formal* racial hierarchy presented an “extraordinary dilemma for Southern white society.”¹⁸ And yet, the Thirteenth Amendment's loophole presented an opportunity: those who had lost power and profit due to the eradication of slavery could preserve their privilege by means of the criminal justice system.

In the words of a former slave owner in Alabama: “We have the power to pass stringent police laws to govern Negroes — that is a blessing — for they must be controlled in some way or white people cannot live among them.”¹⁹ A new form of control arrived in the form of vagrancy laws, which Southern states enacted in various forms and applied selectively to Black citizens.²⁰ These laws criminalized unemployment, resulting in an early iteration of mass incarceration²¹ and allowing for the emergence of a robust convict leasing system across the Southern states.²² Huge prison populations — mostly Black men — were leased as laborers to private capitalists for the duration of their sentences or until they had been worked to death.²³ For states and the entities leasing these populations, this system was wildly successful. Incarcerated workers were up to 50 percent more productive than free workers, and the leasing fees paid by corporations to states amounted to nearly 400 percent of the cost of maintaining such a large prison system.²⁴ Southern penitentiaries thereby supplanted Southern plantations as the economic engines for the region.

In fact, Southern penitentiaries often *were* Southern plantations. Rather than build prisons, states sent incarcerated Black men to sugar and cotton plantations or to coal mines, log forts, and sawmills.²⁵ For corporations, leased convicts and prison factory workers were a replenishable resource — most profitable if worked to death. Convicts were tortured with whips and shotguns, starved, plagued by disease, shackled in crowded iron cages, and deprived for years of sunlight.²⁶ In Texas, a convict during this period lived, on average, for seven years.²⁷ In Mississippi, over the course of seven decades, not one convict survived for more than ten years.²⁸

“He Is For the Time Being the Slave of the State...”

In 1871 — just eight years after President Lincoln issued the Emancipation Proclamation and six years after the Thirteenth Amendment purportedly set all individuals in the United States free — the Supreme Court of Virginia issued an opinion stating that,

“[D]uring [a prisoner’s] term of service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State. He is civiliter mortuus; and his estate, if he has any, is administered like that of a dead man.”²⁹

This landmark decision — which in 2001 the US Supreme Court cited unfavorably, without explicitly overturning³⁰ — erased any legal distinction between an incarcerated and an enslaved individual.³¹

At the time, corporations, some of which still exist today, thrived under the convict leasing system. In 1908, the United States Steel Company (known today as the US Steel Corporation) leased out every person arrested in Jefferson County, Alabama that year.³² Many died while working for US Steel and were either buried in unmarked graves or burned in the company’s Alabama coal mine.³³ An owner of a coal mining operation in Dade County, Georgia was said to have turned “a coal mine into a gold mine”³⁴ after leasing every convict in the entire state for a period of twenty years.³⁵ In 1886, the US Bureau of Labor described the convict leasing system as the “most remunerative” of any labor system.³⁶ Some of this corporate profit was due to the wage-suppressing impact of prison labor on free labor. When convicts arrived at a work site, conditions deteriorated for all workers. Convict labor — cheap and reliable — was used to bust free labor organizing and drive down wages.³⁷ Douglas Blackmon explained in 2008:

“The utility of forced labor as a bulwark against disruptions of the South’s biggest enterprises was obvious. Coal mines, timber camps, and farms worked by imprisoned men couldn’t be shut down by strikers, or have wages driven up by the demands of free men. The new slave labor provided an ideal captive workforce: cheap, usually docile, unable to organize, and always available when free laborers refused to work.”³⁸



The Impact of Prison Labor on Free Labor

Since the 1920s, labor leaders and manufacturers have voiced their concerns that they are unable to compete with an unfree labor force.³⁹ In 1928, the American Federation of Labor (the AFL-CIO today) requested that both national political parties endorse federal legislation prohibiting interstate sales of prison-made goods, calling competition between incarcerated and free labor a “menace.”⁴⁰

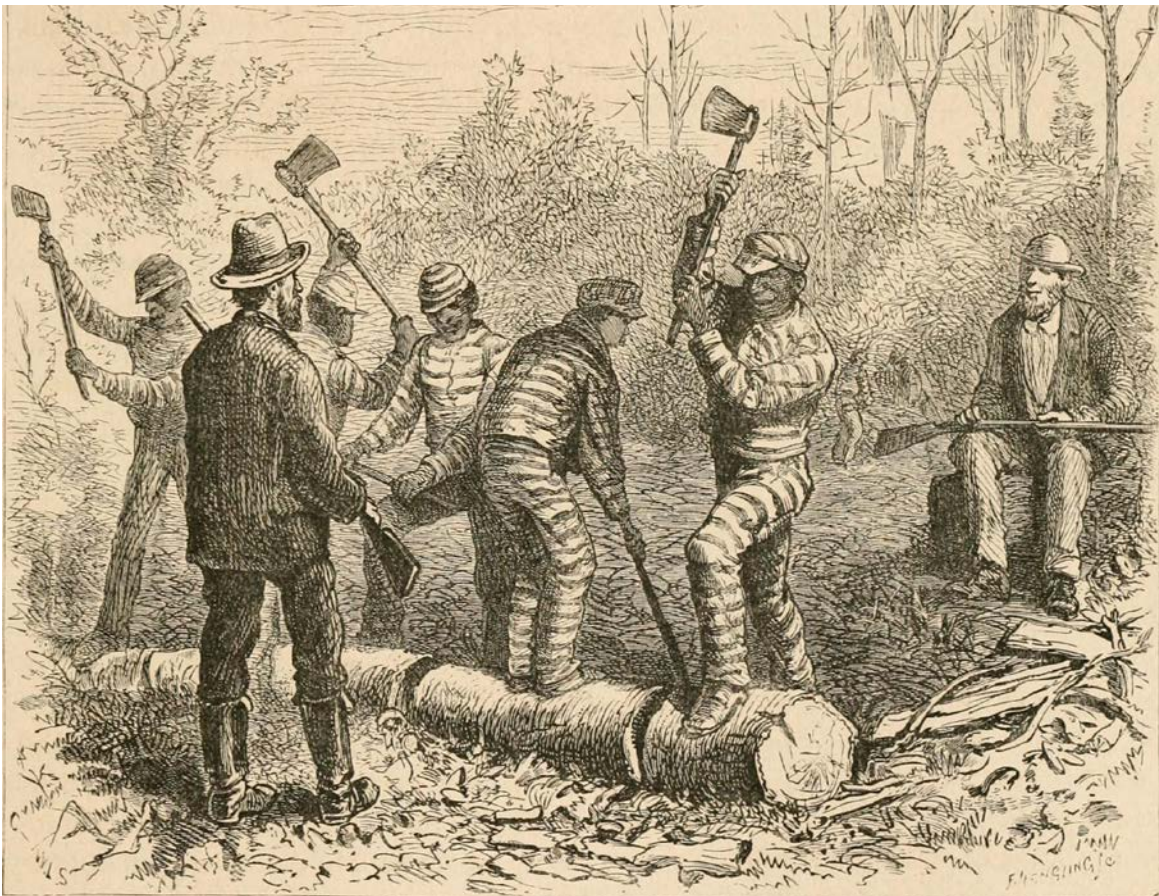
Today, companies around the United States continue to complain that Federal Prison Industries (FPI), also called UNICOR, hurts their sales and uses unfair methods of competition — in the form of incarcerated workers — to undercut them. American Apparel, Inc., a small business in Alabama that manufactures military uniforms and frequently bids on government contracts (separate from the well-known clothing company), laid off between 150 and 175 workers over the course of several years and several contract losses to UNICOR.⁴¹ Kurt Wilson, an executive at American Apparel, Inc., said in 2012: “We pay employees \$9 on average... They get full medical insurance, 401(k) plans and paid vacation. Yet we’re competing against a federal program that doesn’t pay any of that.”⁴²

Convict leasing was richly remunerative for states as well. By the end of the nineteenth century, just decades after being decimated by war and forced to retool entire economies, many Southern states derived the majority of their annual revenue from renting incarcerated individuals out to private entities.⁴³ This system was profitable, and it was soon flourishing in Northern states as well. By the early and mid-1800s, the Industrial Revolution was booming and labor organizing and debate over labor regulations had increased.⁴⁴ States had an interest in discipline, and companies had an interest in cheap, compliant labor — a public-private synergy that resulted in the rapid, massive growth of the prison population and the emergence of the industrial prison-contracting system.⁴⁵ Between 1855 and 1885, prison populations in the North expanded by 400 percent.⁴⁶ The same new production and manufacturing processes taking root throughout the Northern states were also used in Northern prisons.⁴⁷ In the late nineteenth century, Northern prison factories produced the equivalent of over \$45 billion in goods in today’s dollars — more than ten percent of total gross domestic product at the time.⁴⁸

While prison factories could be beacons of technological advancement in the late nineteenth century,⁴⁹ methods of controlling incarcerated workers were medieval. The ever-quickening pace of production took its toll on bodies: in one Indiana state prison, nearly 65 percent of incarcerated workers were permanently disabled or killed while working in a single year.⁵⁰ Workers were whipped, water-boarded, and hung from the ceiling by their thumbs — all the while never being permitted to learn “even a fragment of a trade”⁵¹ (and thus, if ever released, likely unable to find employment in the new, hyper-specialized economy that their bodies helped to create).

Prison industries remain extensive and economically influential today. Across the United States, incarcerated individuals work in a variety of jobs for which they earn wages that, when paid at

all, are as low as a few cents per hour and top off at a few dollars per hour once a percentage of the wage is paid back to the state as reimbursement for room and board.⁵² Nor has the price paid for a captive workforce changed very much in the last 150 years. On at least one documented occasion in the late nineteenth century, incarcerated workers were rented by a private capitalist for less than seven cents per day.⁵³ Adjusted for inflation, most incarcerated workers earned the equivalent of between 30 percent and four times that amount in 2022 (between two cents and 27 cents per day).⁵⁴



“We frequently passed large gangs of the convicts chopping logs in the forest by the roadside.” [Page 120.]

While many incarcerated individuals perform jobs that keep prison facilities operating — from cooking to cleaning to electrical work — others work for companies, are engaged in agricultural work, or work for federal and state entities. In these jobs, incarcerated workers are not entitled to the same conditions, protections, or rights considered fundamental for free workers. They are not entitled to the minimum wage or safety and health protections, do not enjoy the right to form labor associations, are often restricted from managing (or even retaining) the meager wages they do make, are generally unable to bring or succeed on claims against employers or state officials after being injured while working, often cannot receive workers’ compensation, and are frequently punished — often severely — for refusing to work or requesting a safer position.⁵⁵ This extreme lack of rights is tolerated only in the context of a prison system that has disproportionately consumed Black, Brown, and low-income communities.

Although the number of incarcerated workers who operate internal prison facilities dwarfs the number working for companies⁵⁶ (or producing goods that will ultimately be purchased by companies), one asset management company recently told investors, there is “very little oversight or disclosure on what inmates are making and whether these products enter the open market.”⁵⁷ This makes it “nearly impossible to determine how many people in state prisons are producing products for resale by private sector companies.”⁵⁸ What is clear, however, is that there is a large captive workforce and a slew of legal avenues available to, and used by, corporations that wish to exploit this vulnerable population for profit.

The High Financial Cost of Incarceration To Incarcerated Individuals

Being incarcerated is expensive. Prisons do not always provide incarcerated populations with basic necessities, such as toilet paper, soap, or sanitary products.⁵⁹ In some cases, the food in prisons is so meager and inedible that those incarcerated need to supplement their meals with food purchased from the canteen.⁶⁰

Yet many incarcerated people cannot rely on their family members and friends to support them and must instead earn money to pay for basic necessities. While incarcerated individuals earn far below the federal and state minimum wage, the necessities available for purchase are often sold for the same or higher than the prices charged in the free world.⁶¹ As a result, workers must labor for hours — or days — to be able to afford the basic necessities. For example, a 12.5 oz bottle of shampoo in Illinois costs between \$1.25 and \$1.69,⁶² which would take incarcerated workers between one and nine and a half hours to earn, depending on their job and pay.⁶³

Phone calls made from prisons are often so expensive that one in three families dealing with incarceration goes into debt trying to stay connected to their incarcerated loved one — all while the correctional telecom industry, which consists of only a handful of corporations, makes well over \$1 billion in revenue each year.⁶⁴ According to Worth Rises, a leader in the fight against prison exploitation, these corporations charge as much as \$1 per minute to speak on the phone,⁶⁵ meaning an incarcerated worker making twenty cents per hour would have to work five hours to talk with a loved one for 60 seconds.

These prices, combined with the low wages incarcerated workers earn, mean that individuals are often unable to pay for basic necessities, remain connected to their communities and families, or save any money for their release.

IV. The Legal Framework Governing Prison Labor

A. The US Legal Framework Governing Private Use of Prison Labor: One Prohibition Swallowed by Exceptions

Corporations' ability to hire incarcerated workers and buy goods produced in US prisons is governed by a patchwork of state and federal laws. Prior to 1929, states were free to regulate their own incarcerated workforces.⁶⁶ But beginning in 1929 — at the onset of the Great Depression — Congress passed a series of laws restricting the production and sale of goods produced in prisons. These laws were intended to prevent direct competition between prison industries and the free market at a time when unemployment was high.⁶⁷

The laws applied to goods produced by incarcerated people both in and outside the United States. Section 307 of the Tariff Act of 1930 prohibited the importation of all goods produced with forced or prison labor into the United States,⁶⁸ and the Ashurst-Sumners Act of 1935 (as amended in 1940)⁶⁹ criminalized the transportation of goods produced in US prisons across state lines for private use.⁷⁰ The Ashurst-Sumners Act includes a broad prohibition, restricting any individual from “knowingly transport[ing] in interstate commerce... any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners.”⁷¹ However, there are numerous exceptions to this prohibition — rendering it, at times and certainly for some industries and companies, moot — including:

- 1 An exception for intrastate commerce:** If goods do not cross state lines, the Ashurst-Sumners Act does not apply.⁷² Such goods can be produced by incarcerated workers, in accordance with state laws.
- 2 An exception for services:** The Ashurst-Sumners Act does not regulate the provision of services.⁷³ Services encompass a broad range of activities, from cleaning meat packing plants to working at call centers.⁷⁴
- 3 An exception for agricultural goods:** The Ashurst-Sumners Act does not apply to “agricultural commodities or parts for the repair of farm machinery.”⁷⁵ Such goods can be produced by incarcerated workers and transported in interstate commerce.
- 4 An exception for goods used by governments and non-profit organizations:** The Ashurst-Sumners Act does not apply to goods sold to federal or state governments, to the Washington, D.C. government, or to certain non-profit organizations.⁷⁶ Such goods can be produced by incarcerated workers and transported in interstate commerce.

- 5 An exception for goods produced by UNICOR, a federally owned corporation:** Federal Prison Industries, Inc. (FPI), which operates under the trade name UNICOR, is a wholly owned US Government corporation created by Congress in 1934.⁷⁷ With a few exceptions, UNICOR is restricted to selling goods to the federal government.⁷⁸ Corporations can partner with UNICOR on contracts to provide goods or services to public entities or nonprofits, or they can purchase from or subcontract with UNICOR when competing for government contracts.⁷⁹
- 6 An exception for companies reshoring in conjunction with UNICOR:** The Ashurst-Sumners Act includes an exception for reshoring the production of goods, authorizing UNICOR to contract with companies to manufacture, produce, mine, or assemble goods “that are currently, or would otherwise be, produced outside the United States.”⁸⁰
- 7 An exception for joint ventures between states and private entities:** In 1979, Congress introduced the Prison Industry Enhancement Certification Program (PIECP),⁸¹ which allows companies to establish joint ventures with certified state departments of corrections and be exempt from restrictions on the interstate sale of prison-made goods.⁸²

Thus, while US law generally prohibits goods produced with prison labor from being transported across state lines, the numerous exceptions to this prohibition erode its meaning substantially. With these seven exceptions, state and federal prisons, as well as companies that rely on low-cost prison labor, can — and do — almost always find legal ways to sell prison-made goods across state lines.

B. The International Legal Framework Governing Forced and Prison Labor: Never for Companies

The international legal prohibition on the use of forced and compulsory labor is one of the most well-established norms of international human rights,⁸³ dating back to the 1948 Universal Declaration of Human Rights.⁸⁴ It is enshrined in treaty law — two fundamental International Labour Organization (ILO) Conventions, No. 29 and No. 105, prohibit forced labor⁸⁵ — and in customary international law.⁸⁶

“[T]he term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

ILO Convention No. 29, Article 1

The ILO Forced Labor Convention (No. 29)⁸⁷ prohibits “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁸⁸ Convention No. 29 includes a narrow exception permitting incarcerated individuals to work, but only if public authorities supervise and control incarcerated workers and the “person is *not hired to or placed at the disposal of private individuals, companies or associations.*”⁸⁹ International law thus explicitly forbids private entities from employing or controlling prison labor.⁹⁰

A key indicator for free consent is whether the conditions of employment are comparable to those of free labor relationships

Additionally, to ensure that incarcerated workers are not engaged in forced labor, all prison labor must be undertaken freely.⁹¹ A key indicator for free consent is whether the conditions of employment are comparable to those of free labor relationships.⁹² This means that incarcerated workers are paid the same amount as free workers, are paid directly, are not threatened with a “loss of privileges or an unfavourable assessment of behaviour which could jeopardize any reduction in his or her sentence,” are afforded working hours and health and safety conditions as regulated by law, and are “included in the social security scheme for accident and health coverage.”⁹³

Although the United States is only one of seven countries that has not ratified Convention No. 29,⁹⁴ as a member of the ILO it is nevertheless bound by the principles underlying it. Convention No. 29 is one of the eight fundamental ILO conventions. All ILO members, “even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: ... (b) the elimination of all forms of forced or compulsory labour.”⁹⁵

The United States is in violation of Convention No. 29 in numerous ways — one reason it has not ratified the convention.⁹⁶ US law explicitly permits prison labor under the Thirteenth Amendment and many states have similar laws. Yet the PIECP program, UNICOR programs that contract with companies, and all state-run programs that lease incarcerated workers to companies are blatant violations of Convention No. 29.⁹⁷

Moreover, the conditions for most employment for incarcerated workers are not the same as they would be in the free world. Neither the Fair Labor Standards Act (FLSA) nor the National Labor Relations Act (NLRA) apply to incarcerated workers.⁹⁸ Nor do incarcerated workers generally receive the same pay as free workers, and in some cases occupational health and safety standards do not apply.⁹⁹ Most glaringly, incarcerated workers are often subject to the threat of “loss of privileges or an unfavourable assessment of behaviour” if they refuse specific jobs.¹⁰⁰



“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—[...] (e) as a means of racial, social, national or religious discrimination.”

ILO Convention NO. 105, Article 1(e)

A second fundamental ILO convention that the United States has ratified, the ILO Abolition of Forced Labor Convention (No.105),¹⁰¹ obligates each ratifying Member State “to suppress and not to make use of any form of forced or compulsory labour [...] (e) as a means of racial, social, national or religious discrimination.”¹⁰² The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) explained that “This covers prison labor as well as other forms of forced labour involving discrimination.”¹⁰³ The CEACR recalled in its 2021 comments on the United States that “if the penal punishment is meted out more severely to certain groups defined in racial, social, national or religious terms, and this punishment involves compulsory labour, the situation is in violation of Article 1(e) of the Convention [No. 105].”¹⁰⁴

Racial minorities, in particular Black and Brown individuals, constitute a vastly disproportionate percentage of those subjected to compulsory prison labor in the United States.¹⁰⁵ This is the result of the broader phenomenon of racially discriminatory law enforcement, which is in turn the result of a long history of racialized violence by state and private entities, and which has resulted in dramatically disproportionate rates of incarceration of Black and Brown individuals across the country.¹⁰⁶ This manifests in the form of racial minorities being arrested at higher rates and receiving longer sentences than white defendants for the same crimes.¹⁰⁷

In 2015, the United Nations General Assembly adopted the Mandela Rules, which provide minimum guidelines for how governments should treat incarcerated persons. Under the Mandela Rules, “[t]he interests of the prisoners and of their vocational training... must not be subordinated to the purpose of making a financial profit from an industry in the prison.”¹⁰⁸ The rules further state that it is “preferabl[e]” that “institutional industries and farms should be operated directly by the prison administration and not by private contractors.”¹⁰⁹ However, it also provides that incarcerated workers “shall always be under the supervision of prison staff.”¹¹⁰

The United States is in violation of these Mandela Rules. For instance, across the country incarcerated workers in the United States are placed in jobs overseen by companies rather than by the prison administration.¹¹¹ Moreover, many jobs available to incarcerated workers provide no vocational training, but instead allow companies to profit while incarcerated workers often carry out manual labor.¹¹²

Taken together, the United States’ high incarceration rate — the highest in the world — and the prevalence of companies hiring incarcerated (and disproportionately Black, Brown, and low-income) workers demonstrate that the United States is an ongoing violator of international

legal norms. The United States must prohibit companies from hiring or contracting for the labor of incarcerated workers and from buying goods produced in prisons, and the United States must become compliant with basic and fundamental prohibitions on forced labor.

C. ILO Forced Labor Indicators

As explained above, under ILO Convention No. 29 “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself [or herself] voluntarily” constitutes forced labor.¹¹³ The ILO indicators of forced labor are guidelines that can help to establish whether a specific instance meets the threshold of forced labor.

The Eleven ILO Indicators of Forced Labor¹¹⁴

1  Abuse of vulnerability	2  Deception	3  Restriction of movement	4  Isolation
5  Physical and sexual violence	6  Intimidation and threats	7  Retention of identity documents	8  Withholding of wages
9  Debt bondage	10  Abusive working and living conditions	11  Excessive overtime	

The ILO's Special Action Programme to Combat Forced Labor has stated that not all eleven indicators must be found for an individual to be engaged in forced labor: "[t]he presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case."¹¹⁵ While the ILO indicators are meant to assess whether an individual is engaged in forced labor, the conditions experienced by individual incarcerated workers across states, prisons, and work sites have enough similarities to be analyzed as a whole for the purpose of this report.

In the case of incarcerated individuals in the United States, many of the forced labor indicators are often present. Indicators such as abuse of vulnerability, restriction of movement, and isolation are inherent in a system of incarceration, and cannot be sufficiently mitigated so as to eliminate the risk of forced labor. Other indicators, such as intimidation and threats, withholding of wages, and abusive working and living conditions are not necessarily embedded in a carceral system of control and yet are found, to varying degrees, across states and prisons.

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



Abuse of vulnerability: Incarcerated individuals are in vulnerable situations in part by virtue of being cut off from the outside world and under the state's control. Once incarcerated, individuals are reliant on the prison system for their jobs as well as for food, necessities, and basic privileges, putting them in a vulnerable position. Prisons and corporations abuse this vulnerability by forcing or coercing incarcerated individuals to work or to work in jobs they do not want.



Restriction of movement: Prisons, as institutions, exert control over where incarcerated individuals can and cannot be at all times. Incarcerated workers are not able to choose when to enter and exit their workspace. Their movements into, out of, and within work areas are often controlled by the state or by the private employer partnering with or buying from the state or federal government.



Isolation: Incarcerated workers are isolated from the free population and, for the most part, are not authorized to leave the prison or the work site. While prisons are often located in isolated, rural areas, prisons in urban centers still succeed at isolating their incarcerated population from the outside world.



Intimidation and threats: Threats, such as the loss of privileges, loss of time earned, and the threat of solitary confinement are often made against anyone who refuses to work. A recent report found that “[m]ore 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.”¹¹⁶



Withholding of wages: US federal and state laws permit correctional facilities to withhold wages earned by incarcerated workers, and this practice occurs across the country. In some states, incarcerated workers are not paid for their work at all. In others, they earn mere cents per hour, often for arduous work. Even in PIECP, which requires companies to pay the “prevailing wage” in the area and for the work performed, 80 percent of wages (and in some cases even more) can be withheld from incarcerated workers.¹¹⁷



Abusive working and living conditions: Many of the jobs that incarcerated workers are engaged in are dangerous or demeaning. Workers have reported working in dangerous conditions and being subjected to verbal abuse. Prison facilities are also notorious for abusive living conditions, often subjecting incarcerated populations to conditions that are dirty, dangerous, and not fit for humans.



Excessive overtime: Although a less common indicator, some incarcerated workers have complained that they are forced to work excessively long hours. For example, during the spring of 2020, incarcerated workers in Pennsylvania had to work for twelve hours each day, six days a week, manufacturing personal protective equipment (PPE).¹¹⁸



Punitive State Laws: Threats and Intimidation

Several states have laws that require incarcerated individuals to work, punish refusals to work, or criminalize attempts by incarcerated individuals to avoid work.¹¹⁹

North Carolina's constitution declares that "all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them" and "the failure to do so may result in disciplinary action."¹²⁰ If an incarcerated worker "willfully and intentionally" injures themselves, "resulting in a permanent or temporary incapacity to perform work or duties assigned," the state can charge the incarcerated worker with a felony.¹²¹ In other words, an individual who is so opposed to working in the conditions forced upon them that they opt to self-injure can be charged with commission of another serious crime.

In Colorado, where the state constitution prohibits involuntary servitude, even after conviction, an appellate court upheld in 2022 the denial of specified privileges as punishment for refusing to work.¹²² The court found that, so long as the incarcerated individuals were not physically compelled or threatened with legal sanctions, the mandated work did not constitute forced labor.¹²³ Also in Colorado, an incarcerated worker's request to be placed in a less risky job while suffering ongoing symptoms from COVID-19 was denied — and the worker was ultimately stripped of earned time.¹²⁴ Lawyers filed a class action on behalf of this worker and others in February 2022, arguing that imposing severe penalties, such as longer prison sentences, for refusal to work "amounts to servitude."¹²⁵

In the short term, ensuring that incarcerated workers receive the same compensation, are protected by the same regulations, and are guaranteed the same rights as free workers is imperative. Even if this were accomplished, the existence of companies profiting from prison labor creates a perverse incentive to incarcerate. As a practical matter, if incarcerated workers and free workers are protected by and guaranteed the same rights, the incentives motivating companies to partner with prisons will decrease substantially. However, there are forced labor indicators that cannot be eliminated within the context of a prison system. Abuse of vulnerability, restriction of movement, and isolation are inherent qualities of incarceration. As long as these qualities are present, a worker cannot be said to be free from coercion. Private profit derived from the prison system, and the mass incarceration that drives it, will thus never be acceptable.

V. Corporate Exploitation of the US Carceral State: Three Examples

“It’s really hard to be used and used and used... And it sucks because it should be for a greater good [rather] than a greater profit. But that’s all it is. It’s just a profit.”¹²⁶

Marlo Kobylarek, an incarcerated worker for Arizona Correctional Industries

Corporations and governments together benefit from the labor of incarcerated workers. Governments often receive large remittances for “hiring out” incarcerated workers¹²⁷ — reminiscent of convict leasing — while companies often pay far less to these workers than they would for free labor. Within a narrow subset of prison/private relationships, companies are legally required to pay a “prevailing wage” to incarcerated workers, but they still frequently avoid paying social security and workers’ compensation and are not subject to liability for injuries incarcerated workers sustain on the job (even when compliance with safety standards is subpar). While many of these jobs pay more than work maintaining internal prison facilities, take home pay is minimal — frequently only a fraction of wages earned — and the work can be dangerous and occur in a coercive environment. In these circumstances, many ILO indicators of forced labor are present. Withholding of wages and abusive working conditions combine with abuse of vulnerability, isolation, and restrictions on movement — inherent qualities of incarceration — to create conditions in which incarcerated workers are at a high risk of forced labor, and from which companies profit.¹²⁸

In the following section, we focus on a handful of companies and their supply chains to illustrate three methods private entities leverage to make legal use of the forced labor of incarcerated individuals.¹²⁹ First, we examine the agricultural exception to the restriction on interstate commerce of prison-made goods. We highlight Hickman’s Family Farms in Arizona, a leading producer of eggs and egg products and a long-time partner of Arizona Correctional Industries. Second, we discuss AM General, a defense contractor that has contracted with UNICOR. Third, we trace the supply chain of an Idaho company, Dickinson Frozen Foods, that has partnered with the Idaho Department of Corrections through the federal PIECP program. All three companies legally contract with correctional industries and, under US law, legally sell their goods across state lines. Yet the working conditions in all three examples also carry a high risk of forced labor.

A. The Agricultural Exception: Hickman’s Family Farms

18 USC § 1761(b): The Ashurst-Sumners Act does not apply to “agricultural commodities or parts for the repair of farm machinery.”¹³⁰ Such goods can be produced by incarcerated workers and transported in interstate commerce.

Arizona Correctional Industries

Arizona Correctional Industries (ACI) has embraced prison labor as a profitable business model. ACI, which manages the Arizona Department of Corrections, Rehabilitation and Reentry's (ADCRR) collaboration with companies, touts itself as fulfilling its "mission to aid in the successful reentry of offenders by providing [them with] training and support" for more than three decades.¹³¹ However, rehabilitation does not appear to be ACI's primary purpose — or even, in most cases, one of its outcomes.

According to ACI's 2020 Annual Report, prior to the COVID-19 pandemic, ACI "was projecting the highest financial results in its history."¹³² While the pandemic slowed this revenue growth,¹³³ Arizona continues to profit from hiring out its captive workforce. In 2022, roughly 2,000 incarcerated individuals in Arizona worked for companies, while another 1,000 incarcerated workers performed jobs for state municipalities and agencies.¹³⁴

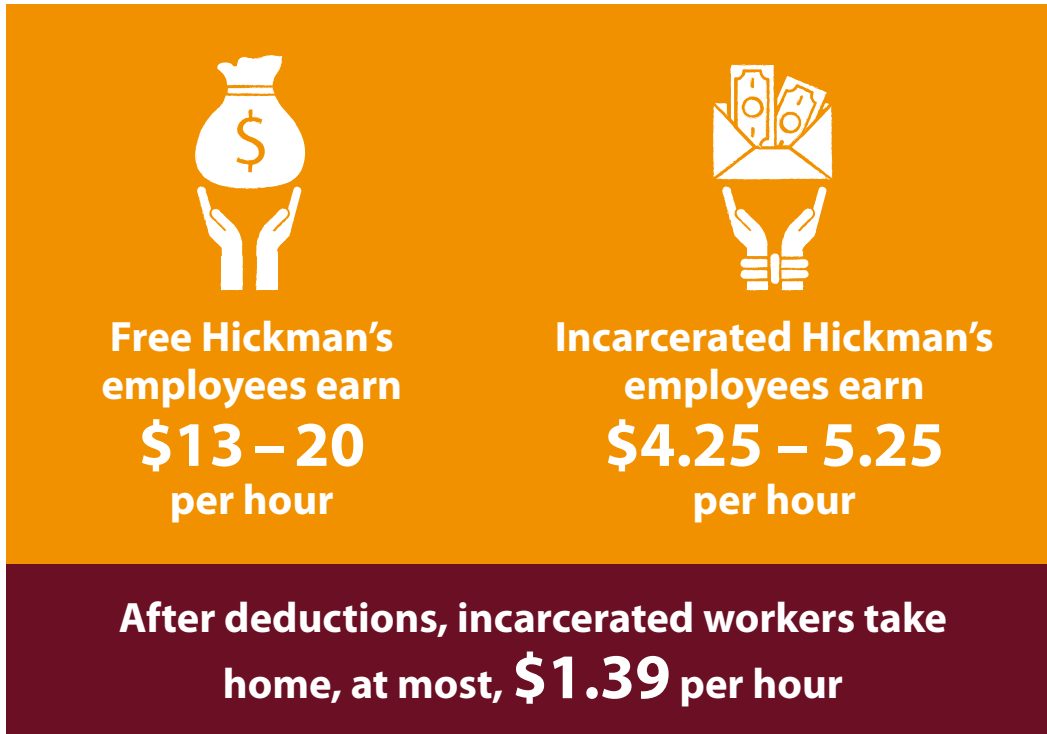
Hickman's Family Farms: ACI's Top Customer

Hickman's Family Farms (Hickman's), a privately held Arizona-based corporation, has relied on incarcerated workers in Arizona for more than twenty years and is ACI's top customer.¹³⁵ In 2020, Hickman's partnership with ACI accounted for 15 percent of ACI's total revenue and nearly 30 percent of its revenue from labor contracts.¹³⁶ Hickman's is the largest egg producer in the Southwest,¹³⁷ with annual sales of over \$53 million.¹³⁸ The company owns nearly five million birds¹³⁹ and processes more than 750,000 eggs every hour.¹⁴⁰ Hickman's eggs are sold across the United States, in grocery stores such as AJ's, Albertsons, Bashas', Food City, Fry's Food Stores, Safeway, and Sprouts.¹⁴¹ These national sales are legal because Hickman's produces eggs, an agricultural product, which it can sell across state lines under the agricultural exception in the Ashurst-Sumner Act. Hickman's is in many ways typical — if on the larger side — of the type of US corporation that uses prison labor: the company is not a well-known brand, yet its eggs and egg products make it into millions of homes every year.

Hickman's began in 1944 with a flock of only 50 chickens, but in 1995 expanded its operations dramatically.¹⁴² According to co-owners Glenn and Billy Hickman, this expansion required a "growing reliable workforce," but "it was very difficult to keep folks around long enough to really learn the business."¹⁴³ Hickman's found a solution in Goodyear, Arizona, where the Perryville state prison facility — and a growing, reliable (and incarcerated) workforce — is located.¹⁴⁴ At first, only ten incarcerated workers from the Perryville facility were transported to Hickman's farms to work each day,¹⁴⁵ but the relationship with the prison system has since expanded. Just prior to the onset of the COVID-19 pandemic, nearly 300 incarcerated workers from three different Arizona state prisons worked at three separate Hickman's locations.¹⁴⁶ Incarcerated workers carry out a wide range of tasks for Hickman's, including managing much of the egg production, maintaining barn facilities, taking care of chickens, and packaging eggs.¹⁴⁷

Withholding of Wages

According to public data, Hickman’s pays free employees between \$13 and \$20 per hour.¹⁴⁸ Yet the company’s incarcerated workforce earns much less, between \$4.25 and \$5.25 per hour,¹⁴⁹ well below Arizona’s \$12.80 minimum wage.¹⁵⁰ After the ADCRR takes mandatory deductions, a worker may receive up to \$1.39 per hour — or, in some cases, nothing, as deductions can easily amount to the entire wage if the worker is subject to court-ordered dependent care.¹⁵¹ Most of the money the worker retains is only made available to the worker upon release.¹⁵²



Abusive Working and Living Conditions

While working at Hickman’s allows incarcerated workers to earn more than they would working within prison facilities — where the pay ranges from ten cents to 45 cents per hour¹⁵³ — the job comes with an array of dangers. For years, incarcerated workers have received insufficient training and have been subjected to dangerous working conditions on Hickman’s farms, often suffering injuries.¹⁵⁴ Workers told *The Arizona Republic* that they “kept getting numb hands from accidentally injecting themselves with antibiotics, chest pains from the feces in the air, and had no choice but to drink water from a contaminated well.”¹⁵⁵ Workers also reported that “they work under sweatshop-like conditions and are immediately replaced when injured or sick.”¹⁵⁶

Incarcerated workers have filed numerous lawsuits against Hickman’s for injuries on the job. In September 2019, Mary Stinson, an incarcerated worker, filed a federal lawsuit against Hickman’s after losing part of a finger while operating machinery on a Hickman’s farm.¹⁵⁷ According to

Stinson, she received little training before beginning to operate the machinery.¹⁵⁸ Just one month later, in October 2019, another incarcerated worker filed a lawsuit after his left hand became trapped in a machine with “no safety mechanism, guard, or emergency shut-off,” for which the worker had received no training “on the safe and proper way to use [the] machinery.”¹⁵⁹ These lawsuits are only a sampling: incarcerated workers at Hickman’s filed a total of nine claims against the company in 2019 and 2020.¹⁶⁰

“Figure it out — that’s pretty much what they tell you.”¹⁶¹

Mary Stinson, an incarcerated worker who lost part of a finger while working at Hickman’s, describing Hickman’s training standards

Many of these working conditions worsened during the COVID-19 pandemic. In spring 2020, public health officials around the world stressed the importance of isolation and distance. In response, local and state officials closed schools, restaurants, and offices across the United States. The response from Hickman’s and ACI, however, differed considerably. In late March 2020, ACI moved 140 incarcerated individuals from the Arizona State Prison Complex – Perryville to a 6,000 square foot warehouse building on Hickman’s property,¹⁶² where the workers slept in bunk beds that — according to a photo in ACI’s 2020 Annual Report — were lined up in rows touching one another.¹⁶³ In a joint letter announcing that incarcerated workers would be living at Hickman’s facilities, Glenn Hickman and the ADCRR Director David Shinn described the move as necessary “to ensure a stable food supply” for the nation.¹⁶⁴ An email obtained by the *Phoenix New Times*, written in March 2020 by a worker impacted by the move to the Hickman’s site, said that officials were “concerned about the media finding out and our families.”¹⁶⁵

Workers told The Arizona Republic that they “kept getting numb hands from accidentally injecting themselves with antibiotics, chest pains from the feces in the air, and had no choice but to drink water from a contaminated well.”

At least nine of the workers living at the Hickman’s facility subsequently tested positive for COVID-19.¹⁶⁶ Carlos Garcia, Executive Director of the Arizona Correctional Peace Officers Association, told reporters that, because “the inmates are on top of each other, literally... [i]f these inmates had it, they’ve all been exposed.”¹⁶⁷ Incarcerated workers also described excrement filling up the toilets — placed next to their living space — and having water that was not always potable. There were, in fact, signs on water fountains warning pregnant women not to drink the water.¹⁶⁸ Workers reported that “[c]orrections officers brought in fans to circulate fresh air,

but instead of respite from the smell and heat, the fans just stirred up dust, bacteria, dirt and chicken feces.”¹⁶⁹

While Hickman’s does make an effort to hire formerly incarcerated workers¹⁷⁰ — more than many companies that use prison labor do — the public relations rhetoric surrounding the hiring program may be more impressive than its implementation. According to *The Arizona Republic*, “the job [at Hickman’s] is not enjoyable, even for civilian farmworkers, who often leave the job after just a few days. One of the men who worked at Hickman’s while incarcerated said people on the outside sometimes come in for work, but don’t last even a few days.”¹⁷¹ Hickman’s leverages its exploitation of a captive workforce and the fact that few employers will hire workers with criminal records to maintain a full staff when no “civilian farmworkers” will choose the work.

Isolation and Intimidation and Threats

Incarcerated workers are inherently isolated, and the 140 workers from the Perryville correctional facility were isolated further from the broader prison population — and opportunities to connect with family and friends — when they were moved to the Hickman’s farm in spring 2020. At least one woman was forced to stop taking GED classes after being told by a corrections officer that “the job at Hickman’s was more important”¹⁷² — this occurred despite Hickman’s purported requirement that all incarcerated workers have a GED or be working towards a GED.¹⁷³ Another woman reported not wanting to move to the farm, for fear she would lose access to phone calls and tablets — her connections to the world outside prison.¹⁷⁴ Incarcerated workers understood, however, that refusing to work at a chosen site could mean losing the right to work for three to six months, and work is a necessity in a system that does not always provide enough food.¹⁷⁵ One worker, who claims to have not even applied for a Hickman’s job but was nonetheless forced to work for the company, told *The Arizona Republic* that she was put on “a six month [work] hold” after quitting.¹⁷⁶

“You work at Hickman’s... It doesn’t matter if you’re in school.”¹⁷⁷

Tianna Boswer’s recollection of what she was told when she asked to finish her GED classes, rather than move to the Hickman’s farm in 2020

Hickman’s extensive support for the prison labor system — and its openness about its exploitation of incarcerated workers — may be a bit of an outlier. But its desire for a cheap, malleable, and replenishable workforce is not. Hickman’s merely exemplifies one method companies use to exploit an incarcerated labor force: to pay lower wages and yet retain workers despite dangerous working conditions.

Incarcerated Workers Were Housed Within A Private Entity – How Is This Legal?

When asked by Phoenix New Times about whether the Arizona Department of Corrections had legal authority to move the incarcerated women to Hickman's facilities, the ADCRR spokesperson responded that the "Director has both general and specific legal authority under Title 31 and Title 41 of the Arizona Revised Statutes to act in the event of a public health emergency."¹⁷⁸ Title 41 Section 1609(E) authorizes the ADCRR Director to "confine persons who are committed to the department in... a private institution" when an emergency has been declared.¹⁷⁹ Section 1609 places various time limits on this type of emergency situation.¹⁸⁰

Hickman's seems to have been interested in amending this authority to allow incarcerated workers to live on the farm indefinitely. Glenn Hickman wrote an email in May 2020, just weeks after the women were "temporarily house[d]" in the Hickman's warehouse, suggesting the creation of a "permanent work camp":¹⁸¹

*"I'm not the expert, but am guessing that legislation and regulations might be needed in order to have any chance of being able to break ground on a permanent facility around this time next year."*¹⁸²

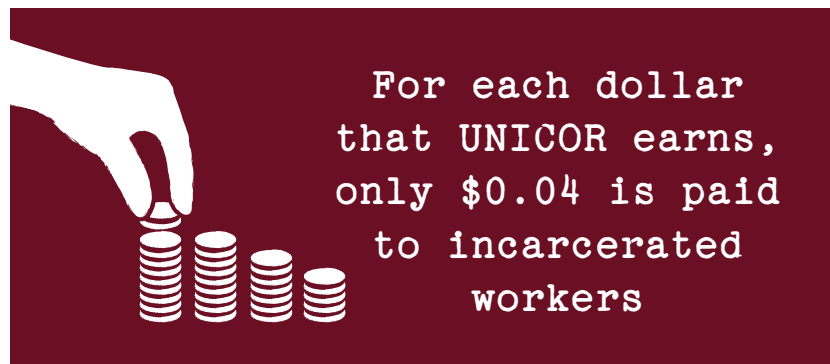
B. The UNICOR Exception: AM General

Federal Prison Industries

Federal Prison Industries, Inc. (FPI), which operates under the trade name UNICOR, is a wholly owned US government corporation Congress created in 1934.¹⁸³ In 2022, UNICOR operated in 51 prisons through 63 factories and two farms across seven business segments: clothing and textiles, electronics, agribusiness, office furniture, fleet, recycling, and services.¹⁸⁴ The Federal Bureau of Prisons requires all medically able incarcerated individuals to work, whether for UNICOR or maintaining internal prison facilities.¹⁸⁵ In fiscal year 2021, UNICOR employed 16,315 incarcerated workers.¹⁸⁶ Currently, only 8 percent of work-eligible individuals participate in UNICOR, though there are approximately 25,000 on a waitlist for the program, likely a consequence of UNICOR's paltry wages still being higher than wages for many other jobs.¹⁸⁷ Any work assignment above entry level requires a high school diploma or GED.¹⁸⁸

By statute, with a few exceptions discussed below, UNICOR is restricted to selling goods made by incarcerated workers to the federal government.¹⁸⁹ Moreover, federal agencies are generally required to purchase goods from UNICOR, provided the products meet the agency's quality, price, and delivery standards.¹⁹⁰ UNICOR's biggest customer is the Department of Defense, accounting for 56 percent of its total revenue.¹⁹¹ In fiscal year 2021, UNICOR reported net sales

totaling \$404,065,000 with earnings of \$43,732,000.¹⁹² Yet for each dollar that UNICOR earns, only \$0.04 is paid to incarcerated workers.¹⁹³



While UNICOR has historically produced goods for the federal government, more recently it has expanded its partnerships with the private sector. The UNICOR website boasts that “just about any company can team with UNICOR to take advantage of our modern manufacturing capabilities, diverse product line, talented labor pool, and nationwide locations.”¹⁹⁴ For instance, “[p]rivate firms that compete for government contracts might be allowed to purchase manufacturing time and subcontract parts and services directly through UNICOR.”¹⁹⁵ Under its reshoring initiative, UNICOR allows companies to contract with it in a variety of ways, as long as each contracting company “signs an agreement with UNICOR certifying that the company would have otherwise produced its product(s) outside of the United States.”¹⁹⁶

Reshoring: Made in America

UNICOR has promoted its reshoring initiative by emphasizing the benefits companies can accrue by producing US-made goods. As of 2022, it appears that numerous companies recognize the benefit of this UNICOR program. For example, in 2015, Suniva, a Georgia-based solar panel manufacturer, moved some of its operations from Asia to the United States to contract with UNICOR.¹⁹⁷ Suniva’s decision to manufacture some solar panels in UNICOR prison factories in Oregon and New York allowed the company to market such products as “American-made” and to avoid tariffs on Chinese-made solar panels.¹⁹⁸ Defending this decision, Matt Card, Suniva’s Vice President of Global Sales and Manufacturing at the time, explained that the company had no “visibility” into what UNICOR workers were paid — although this information was publicly available — and that “[i]t costs us more to manufacture through Unicor than it does in China.”¹⁹⁹

This shift towards using incarcerated workers has become increasingly common. In 2018, Professor Lan Cao argued that “[u]tilizing incarcerated people that work for low or no pay, instead of low-wage foreign workers that labor in unsafe working

conditions, is a cynical channeling of the rising awareness of the domestic American worker's plight in the age of globalization."²⁰⁰ Companies like Suniva seem to move from one vulnerable worker population to another, while trying to reap the rewards of labeling their products as Made in America.

AM General: Winning Defense Contracts with UNICOR

Companies frequently take advantage of the benefits offered by UNICOR, but these partnerships are shrouded in secrecy. UNICOR — a government entity that is subject to the Freedom of Information Act (FOIA) — has denied requests to release the names of companies it contracts with, claiming the data is privileged communication between or within government agencies.²⁰¹ Despite this lack of transparency, public information is available about certain partnerships.

AM General is a world leader in the design, engineering, and manufacturing of tactical vehicles, such as the High Mobility Multipurpose Wheeled Vehicle (known as the "Humvee").²⁰² The company, headquartered in South Bend, Indiana, was awarded its first contract with the US Army in 1861,²⁰³ and this close relationship with the Department of Defense has continued ever since. In the last 25 years, the company has been awarded nearly 300 defense contracts, together worth several billion dollars.²⁰⁴ AM General competes for each of these opportunities, and over the last four years there is evidence that it has done so successfully on at least eight occasions with UNICOR's help.²⁰⁵ According to HigherGov.com, an online database that "provides comprehensive market intelligence and business development tools for federal government contractors, grant recipients, consultants, and agencies,"²⁰⁶ AM General subcontracted with UNICOR to provide mounting bases and loudspeakers as part of contracts between AM General and the US Army Contracting Command in Detroit in 2019, 2020, and 2021 (with six such contracts in 2021).²⁰⁷ The contracts obligated AM General to provide Humvees to the Department of Defense and the Army National Guard.²⁰⁸ UNICOR advertises on its website both its capacity to refurbish Humvees and its expertise manufacturing speakers for military tactical vehicles.²⁰⁹ AM General was awarded nearly \$900 million for the contracts for which it used UNICOR as a subcontractor, and UNICOR was awarded over \$2.5 million²¹⁰ — only 4 percent of which was likely paid to the incarcerated workers performing the subcontract.²¹¹

AM General's Code of Conduct promises a "safe and healthy work environment"²¹² and explicitly states its expectation that all "joint venture partners, contractors, and suppliers [] be guided by these standards."²¹³ KPS Capital Partners, which acquired AM General in 2020, commits on its website to "hold[] itself, its portfolio companies and their employees to the highest standards of ethical and principled conduct," and claims to "demonstrate[] the power that results from labor and capital working together constructively."²¹⁴ We found no evidence to suggest that the use of prison labor is a major or long-standing strategy for either AM General or KPS Capital Partners. However, any instance of profiting from forced labor is sufficient to taint a supply chain. Incarcerated workers have repeatedly reported dangerous conditions and abusive environments in UNICOR factories.²¹⁵ This reality cannot be reconciled with AM General's and KPS Capital Partners' claims of safety, high standards, and ethical conduct.

Withholding of Wages

While in some cases UNICOR pays more than prison facilities, the pay is quite low and has not increased since at least the early 1990s.²¹⁶ Incarcerated workers receive between \$0.23 and \$1.15 per hour, divided into five pay grades.²¹⁷

Table 1: UNICOR Pay Grades and Deductions²¹⁸

UNICOR Pay Grades and Hourly Pay	Minimum Inmate Financial Responsibility Program (IFRP) Payment for UNICOR
1 = \$1.15 per hour	50%/monthly pay
2 = \$.92 per hour	
3 = \$.69 per hour	
4 = \$.46 per hour	
5 = \$.23 per hour	\$25/quarter

Nor do incarcerated workers actually retain the small hourly wage they earn, as their pay is subject to deductions under the Inmate Financial Responsibility Program (IFRP).²¹⁹ The IFRP is meant to “encourage” incarcerated individuals “to meet his or her legitimate financial obligations” by developing financial plans with staff who subsequently review the worker’s compliance in making payments according to the plan.²²⁰ IFRP payments go toward court-ordered fines, child support, incarceration fees, victim restitution, and other monetary judgments.²²¹ For incarcerated workers earning \$0.23 per hour, the minimum quarterly IFRP payment is \$25, while workers at grades 1–4 are required to allot at least 50 percent of their income to IFRP payments.²²² If a grade 5 worker employed by UNICOR works 40 hours per week for three months, and then forfeits \$25 to the government, the worker’s effective rate of pay is \$0.18 per hour — a staggering 2.5 percent of the federal minimum wage.²²³

Although the IFRP is considered a “voluntary” program, incarcerated workers face repercussions for not participating,²²⁴ including notifications to the parole board of the worker’s failure to participate; denial of furlough; denial of assignments to work outside the prison or participate in UNICOR; subjection to more stringent commissary spending limits; placement at the lowest housing status; denial of placement in community-based programs; and denial of incentives for participating in residential drug treatment programs.²²⁵ As a result, there is little that is truly “voluntary” about this program.

Little Evidence of Rehabilitation

UNICOR claims that “[r]esearch shows that offenders who participate in the UNICOR program are 24% less likely to return to criminal activity and 14% more likely to obtain employment upon release from prison compared to those without similar experience.”²²⁶ However, in a July 2020 report, the United States Government Accountability Office (GAO) found that the Bureau of Prisons (BOP) “relies on outdated studies that assessed the impact of FPI on inmates released in the 1980s.”²²⁷ While the “BOP made a plan to evaluate FPI,” it ignored its own timeline and does not appear to have ever done so.²²⁸

A 2009 study on the impact of UNICOR’s program on incarcerated workers in federal prisons found that “no significant differences emerge in terms of rearrest or recommitment to federal prison” and that “existing evaluations of prison industries programs are limited and often plagued with serious methodological concerns.”²²⁹

Abusive Working Conditions and Intimidation and Threats

UNICOR boasts that it is “self-sustaining and operates at no cost to the taxpayer”²³⁰ — but it accomplishes this by exploiting incarcerated individuals for profit. A 2006 report by the Center for Environmental Health on incarcerated workers who were exposed to toxic materials while working at UNICOR’s electronic recycling plants found that UNICOR “failed to adequately protect prisoners and staff from exposure to toxics.”²³¹ A worker anonymously quoted in the report said that when he and others asked for information on hazardous materials they were told “‘If you are not happy here, you can quit,’ meaning ‘Shut up. Don’t ask us for anything. Do your job, or we’ll replace you by pushing you out or forcibly retiring you.’”²³²

The COVID-19 pandemic exacerbated the abusive conditions suffered by UNICOR workers. Despite knowledge that COVID-19 was spreading in prisons, many UNICOR workers were made to work in crowded factories and without face masks throughout spring 2020.²³³ Patrick Jones, the first documented federally incarcerated individual to die from COVID-19, worked in a prison textile factory in Louisiana — without a mask — until he collapsed and was taken to a hospital, where he passed away less than two weeks later.²³⁴ Jones’ death caused the US Bureau of Prisons to implement a fourteen-day lockdown, but several UNICOR factories remained open.²³⁵ Workers continued to report to work at a license-plate prison factory in Maryland through at least mid-April 2020, even after someone at the factory had tested positive for the virus.²³⁶ These pandemic risks existed in workplaces that were already rife with danger and fueled by fear of punishment for refusal to work. Prison labor expert Heather Ann Thompson explained that “Working conditions [in prisons] are always terrible and super-oppressive... You add onto that the possibility of disease and you realize that those things that are already bad become worse.”²³⁷

“We were completely overworked like slaves. We were completely underpaid and it showed that the value of what we manufactured was undervalued. Sometimes the pay for the entire day was \$1. The supervisors were strict and not compassionate.”

*Former UNICOR worker*²³⁸

C. The PIECP Exception: Dickinson Frozen Foods

The Prison Industry Enhancement Certification Program

The Prison Industry Enhancement Certification Program (PIECP) is the most well-known program through which companies hire incarcerated workers. Congress established PIECP in 1979 to allow companies to set up joint ventures with certified state departments of corrections and be exempt from restrictions on the interstate sale of prison-made goods.²³⁹ Despite being the flagship corporate program for prison labor, PIECP employs only 5,000 incarcerated workers across the country.²⁴⁰

Numerous laws regulate PIECP, yet they are primarily meant to ensure that the program does not undercut free labor — rather than meant to protect incarcerated workers.²⁴¹ First, PIECP requires that companies pay their workers the “prevailing wage” in the area, which cannot be lower than the jurisdiction’s minimum wage.²⁴² Second, the Department of Corrections and PIECP employers must document “that employment of inmates will not result in the displacement of employed workers within the locality.”²⁴³ Third, the program prohibits companies from hiring incarcerated workers “to be used in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality or [when it will] significantly impair existing contracts.”²⁴⁴ Lastly, departments of corrections and PIECP employers are required to consult “with representatives of local labor organizations and local businesses prior to the use of inmate workers in the production of goods for sale in interstate commerce or to the federal government.”²⁴⁵

Yet companies have been known to ignore these regulations without repercussion. There are numerous allegations of companies circumventing the requirement that corporations contracting with state carceral facilities pay incarcerated workers the prevailing wage. Companies have allegedly delineated incarcerated workers who are involved in final assembly of a product (paid PIECP wages) from those involved in the production of pieces of the product (paid non-PIECP wages).²⁴⁶ Some state PIECP programs undercut the prevailing wage requirements by having long training periods — during which prevailing wages are not required — with multiple levels, which may be extended if an incarcerated worker moves to another position.²⁴⁷

PRIDE: PIECP in Florida

In 2010, the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE), Florida's authorized state-level PIECP program, was criticized for requiring incarcerated workers to complete an initial 480-hour training course, before completing three more training "levels" over the course of two years. Only after these trainings did the worker have "the potential of making the prevailing wage."²⁴⁸ At any time during the four-tiered training program the worker could be (and often was) moved to another position to begin training on different equipment, further extending the training period and the period of depressed wages.²⁴⁹

Moreover, instead of consulting with local labor organizations and local businesses, companies have sometimes "simply advertised in local papers or notified the local Chamber of Commerce of their intent to establish such programs."²⁵⁰ Companies' ability to circumvent these regulations is less surprising given that, in 1995, the US Bureau of Justice Assistance outsourced management of PIECP to the National Correctional Industries Association (NCIA),²⁵¹ a nonprofit professional association for members from correctional industry agencies and corporate suppliers and partners in work programs.²⁵² This structure creates a conflict of interest that has led to abuses of the program because the NCIA is composed of "the very PIECP participants that it is charged with monitoring; in effect, it is overseeing itself."²⁵³


Dickinson Frozen Foods: A PIECP Company

In Idaho, Dickinson Frozen Foods (Dickinson), a subsidiary of privately owned Oregon Potato Company,²⁵⁴ is one of the largest private employers of incarcerated workers. Depending on the quarter, Dickinson employs between 93 and 526 incarcerated workers to process potatoes, onions, and peppers.²⁵⁵ Dickinson has two processing plants in the state, in Sugar City and in Fruitland.²⁵⁶ The company employs incarcerated workers in St. Anthony and Kuna, presumably from the St. Anthony Work Camp and the Idaho State Corrections Center located near these facilities.²⁵⁷

As is true of many companies that use prison labor, available information on buyers of Dickinson products is scant. Companies that hire incarcerated workers are often not well-known brands, but they supply key products — like onions, peppers, and potatoes — to consumer-facing brands. As a result, little is publicly known about which companies ultimately sell Dickinson's products to consumers. However, there is evidence that as of 2005, Dickinson distributed products to "household food brands" like Pillsbury and Campbell's Soup.²⁵⁸ In 2007 then-company-president Paul Fox told the Oregon-based *Argus Observer* that Dickinson supplied onions to Wendy's for its chili.²⁵⁹ More recently, a truck driver reported delivering Dickinson's products to a Stouffer's plant.²⁶⁰ While Dickinson does not provide information on who it sells to, it touts itself as "the premier [individually quick frozen] onion supplier in the United States,"²⁶¹ implying that it sells to many consumer-facing companies.

Withholding of Wages

Between 2015 and 2020, Dickinson earned between \$150 million and \$254 million in annual revenue,²⁶² yet its incarcerated workforce takes home far less than the minimum wage.²⁶³ In 2018-2020, Dickinson paid incarcerated workers between \$7.80 and \$10.68 per hour,²⁶⁴ compared to between \$9.62 and \$22.87 per hour (plus benefits) to its free workers.²⁶⁵ For incarcerated workers at Dickinson, take home pay was often significantly less than the purported wage. Under PIECP, the Idaho Department of Corrections is authorized to retain 25 percent of incarcerated workers' "total gross wages for room and board, and garnish[] an additional 31 percent of the money for 'victims programs,' including court-ordered restitution. More [can be] withheld for family support and taxes."²⁶⁶ As a result, a worker who technically earns \$7.80 per hour might only receive \$1.95 per hour, with another \$1.15 deducted and placed into a mandatory savings account, meaning the worker takes home only \$0.80 per hour.²⁶⁷



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The Idaho program is not an outlier. Within all PIECP programs, state correctional institutions can deduct money for taxes, room and board, court-ordered and voluntary family support, and contributions to victim funds.²⁶⁸ While these deductions cannot exceed 80 percent of the gross wages, court-ordered family support and court-ordered victim restitution may be taken from net wages after the 80 percent deduction from gross wages if provided for in the Worker's Voluntary Participation form.²⁶⁹ PIECP also allows mandatory savings accounts, which are not considered deductions.²⁷⁰ While the incarcerated worker may someday receive this money, most workers need income in the present to be able to buy basic necessities, such as tampons or food.

Abusive Working Conditions

Working conditions at Dickinson's facilities in Idaho have been found to be dangerous on numerous occasions. The Occupational Safety and Health Administration (OSHA), under the US Department of Labor, has found that Dickinson has committed both "serious" and "willful" OSHA violations that put incarcerated workers at risk.²⁷¹ For example, in 2016, OSHA cited Dickinson for its inadequate preparation and response during a 13,000 pound ammonia leak and fined the company \$273,000.²⁷² The ammonia levels at the plant were not measured, despite this being the typical procedure during a response. As a result, the level of employee exposure remains unknown.²⁷³ Although no one was seriously injured, OSHA's Idaho director stated it is "a miracle no Dickinson Frozen Foods employees were killed or hurt last year."²⁷⁴ OSHA subsequently issued the company nineteen serious citations and two willful citations.²⁷⁵

Dickinson has had a number of other "major ammonia releases" that have hospitalized employees,²⁷⁶ pointing to systemic safety issues at Dickinson's facilities.²⁷⁷ In 2018, OSHA again cited the company for a "serious" violation due to compressor room doors not being tightly sealed and for inadequate process safety management of highly hazardous chemicals.²⁷⁸ Although not all of the injured employees were incarcerated, the fact remains that incarcerated workers employed by Dickinson are exposed to unsafe working conditions.

Dickinson highlights that even "good" prison jobs are problematic. While take home pay from PIECP jobs is often higher than the pay for prison facility jobs, external incentives drive companies to ignore detrimental impacts on incarcerated workers. For example, Idaho companies have openly been looking for workers to replace the often undocumented migrant workers in the state who used to work in agriculture.²⁷⁹ Turning to prison labor allows corporations to shift from one vulnerable, exploitable population to another.

VI. Conclusion: Looking Forward

One hundred and fifty years after the end of the Civil War, it is past time that the United States close the Thirteenth Amendment's exception to the constitutional prohibition of slavery and servitude. This loophole permits the state to force the "duly convicted" to work under abusive and even dangerous conditions. Moreover, federal and state policies that allow private entities to use and profit off prison labor forever fasten the United States to "the wedding of slavery, the plantation economy, and capitalism."²⁸⁰

Discourse in the United States all too easily falls into the (often) racist and dehumanizing tropes that the incarcerated are somehow less human, less important, and less deserving of rights. These tropes allow state and federal governments to incarcerate millions of people, disproportionately from Black, Brown, and low-income communities, and it allows companies — together with governments — to generate wealth off the backs of a captive and vulnerable workforce without needing to answer to public sentiment or mitigate political fallout. The United States is certainly not the only country to allow prison labor, nor is it the only country to allow private markets to benefit from domestic prison industries. This, however, does not excuse the blatant hypocrisy of the United States' treatment of domestic and foreign forced labor. As long as the United States continues to protect its own racist institutions of forced labor, it will remain in violation of international human rights norms. No amount of leadership in the global fight against forced and prison labor will save the United States from this status.

In the immediate term, the Thirteenth Amendment's loophole must be eliminated, and incarcerated workers must be guaranteed the same protections and rights as all other workers. This includes paying incarcerated workers at least minimum wage, eradicating state and federal programs that allow wages to be withheld (even temporarily), and prohibiting all forms of threats and punishment for refusing to work. Incarcerated workers must have the right to organize and must be protected by the same health and safety standards that all other workers are subject to.

Moreover, private entities must never be authorized to use prison labor in their supply chains. Many incarcerated individuals want to work, and the highest paying jobs have often been those working for the private sector. We recognize incarcerated workers' need to earn the higher — and yet still paltry — income from these jobs in the current system, yet reject that this is, or ever could be, the answer. When corporations are allowed to benefit from the existence of vulnerable labor groups, whether in the United States or elsewhere, more and more egregious exploitation will always follow.

These reforms — although imperative — are insufficient. No amount of protection can rid the prison system of forced labor indicators like abuse of vulnerability, restriction of movement, and isolation. These are inherent qualities of incarceration in the United States, impossible to reform and addressable only by abolition. While we must fight for improved labor conditions and basic rights for the incarcerated, we cannot settle for incremental change. Rather, we must push — through legal, policy, and social means, and with as much creativity as possible — for an entirely new system free of all forms of exploitation.



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- 41 Derek Gilna, *Businesses, Members of Congress Not Happy with UNICOR*, PRISON LEGAL NEWS, March 15, 2014, <https://www.prisonlegalnews.org/news/2014/mar/15/businesses-members-of-congress-not-happy-with-unicor/> [*hereinafter Businesses, Members of Congress Not Happy with UNICOR*]; Emily Jane Fox, *Factory Owners: Federal Prisoners Stealing our Business*, CNN BUSINESS, Aug. 14, 2012, <https://money.cnn.com/2012/08/14/smallbusiness/federal-prison-business> [*hereinafter Factory Owners: Federal Prisoners Stealing our Business*].
- 42 *Businesses, Members of Congress Not Happy with UNICOR*, *supra* note 41; *Factory Owners: Federal Prisoners Stealing Our Business*, *supra* note 41.
- 43 See *Prison Labor and The Private Sector: The Corporate Exploitation of Prison Labor Reaches Deep into the Supply Chain*, WORTH RISES, Dec. 9, 2021, <https://worthrises.org/blogpost/the-corporate-exploitation-of-prison-labor-reaches-deep-into-the-supply-chain> [*hereinafter Prison Labor and The Private Sector*].
- 44 See *Rethinking Prison Labor*, *supra* note 23, p. 333.
- 45 See generally *id.*
- 46 See generally *id.*
- 47 *Id.*
- 48 Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*, p. 90 (2008); *Rethinking Prison Labor*, *supra* note 23, p. 334. \$45 billion (in 2022) is equivalent to \$1.47 billion in 1885. US GDP in 1885 was roughly \$15.76 billion (as reported on *Our World In Data*, which lists 1885 GDP as \$365.4 billion in 2011 dollars). \$1.47 billion is approximately 10 percent of \$15.76 billion. If this calculation is done based on 2008 dollars/inflation (rather than 2022), which is when the relevant source was written, the percentage is closer to 13 percent of GDP. As this difference in years leaves some room for ambiguity, we chose to say “more than 10 percent.” *Our World In Data*, *GDP, 1820-2018*, <https://ourworldindata.org/grapher/gdp-world-regions-stacked-area?country=~USA>; *The Inflation Calculator*, <https://westegg.com/inflation/>; see also *Inflation Calculator*, <https://www.in2013dollars.com/>.
- 49 See Rosalind Petchesky, *At Hard Labor: Penal Confinement and Production in Nineteenth-Century America*, in David F. Greenberg (ed.), *Crime and Capitalism Readings in Marxist Criminology*, pp. 569–611 (1993); see also *Rethinking Prison Labor*, *supra* note 23, p. 333 (citing *At Hard Labor*).
- 50 See Glen A. Gildemeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840–1980*, PhD Dissertation in History, Dekalb: Northern Illinois University, p. 96 (1987); see also *Rethinking Prison Labor*, *supra* note 23, p. 334 (citing *Prison Labor and Convict Competition with Free Workers*).

- 51 *Report of the Joint Special Committee of the Legislature of Pennsylvania on Contract Convict Labor, with Accompanying Testimony*, Pennsylvania Legislature, Jan. 16, 1878, p. 28; see also *Rethinking Prison Labor*, *supra* note 23, p. 335 (citing Pennsylvania Legislature).
- 52 See, e.g., 18 U.S.C. 1761(c); A.R.S. § 31-254(E).
- 53 *Rethinking Prison Labor*, *supra* note 23, p. 339.
- 54 In the late nineteenth century, Joseph Brown rented incarcerated workers in the state of Georgia for less than seven cents per day. In 2022, an incarcerated individual in a federal prison working for UNICOR makes at most \$1.15 per hour; assuming an 8-hour workday, this values a worker's labor at \$9.20 per day. Many incarcerated workers in state and federal prison working to maintain internal facilities make as little as \$0.10 per hour (and in at least six states some workers are paid nothing); assuming an 8-hour workday, this values a worker's labor at \$0.80 per day. Based on the Consumer Price Index statistics from Historical Statistics of the United States (for data before 1975) and the annual Statistical Abstracts of the United States (for data post 1975), \$9.20 today (October 19, 2022) is equivalent to \$0.27 in 1894 and \$0.80 is equivalent to \$0.02 in 1894 (the year of Joseph Brown's death). See *Rethinking Prison Labor*, *supra* note 23, p. 339; *The Legacy of Slavery is Why Prisoners Make 10 Cents an Hour*, FREEDOM UNITED, Sept. 2, 2019, <https://www.freedomunited.org/news/the-legacy-of-slavery-is-why-prisoners-make-10-cents-an-hour/>; Beth Schwartzapel & Lawrence Bartley, *What People Really Make (and Spend) Behind Bars*, THE MARSHALL PROJECT, Aug. 16, 2022, <https://www.npr.org/sections/money/2022/08/16/1117123303/what-people-really-make-and-spend-behind-bars>; U.S. Department of Justice Office of the Inspector General, *The Federal Bureau of Prisons' Inmate Financial Responsibility Program*, Report No. I-2000-023, 2000, <https://oig.justice.gov/reports/BOP/e0023/intro.htm#:~:text=The%20purpose%20of%20the%20IFRP,BOP%20institutions%2C%20including%20contract%20facilities>; *The Inflation Calculator*, <https://westegg.com/inflation/>; see also *Inflation Calculator*, <https://www.in2013dollars.com/>.
- 55 *Captive Labor*, *supra* note 14, p. 48; Natalie Hurst, *Prisoners Are Not For Sale: Incarcerated Workers Deserve Employee Status*, UNIVERSITY OF CINCINNATI LAW REVIEW BLOG, Nov. 24, 2020; Sessi K. Blanchard, *Labor Law Doesn't Apply If You're in Prison*, TRUTHOUT, March 30, 2019, <https://truthout.org/articles/labor-law-doesnt-apply-if-youre-in-prison/> [*hereinafter* *Labor Law Doesn't Apply If You're in Prison*]; Keri Blakinger, *Some Prison Labor Programs Lose Money — Even When Prisoners Work for Pennies*, NBC NEWS, Sept. 2, 2021, <https://www.nbcnews.com/news/us-news/some-prison-labor-programs-lose-money-even-when-prisoners-work-n1278326>; see e.g., Fla. Stat. Ann. § 946.002(5) (categorically excluding incarcerated individuals from workers' compensation); *Vereen v. North Carolina Dept. of Correction*, 168 N.C. App. 588, 608 S.E.2d 412 (2005) (holding that when a state does extend workers' compensation to incarcerated workers, tort suits are then barred); *Koprowski v. Baker*, 822 F.3d 248 (6th Cir. 2016) (finding that an incarcerated worker must show the injury was caused by "deliberate indifference").
- 56 *Captive Labor*, *supra* note 14, p. 17 (citing *Survey of Prison Inmates, United States, 2016*, U.S. Department of Justice, Bureau of Justice Statistics, Inter-University Consortium for Political and Social Research [distributor], Sept. 2021, <https://doi.org/10.3886/JCPSR37692.v4>). This figure is based on the ACLU's analysis of the raw survey data: "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."
- 57 *Prison Labor in the United States: An Investor Perspective*, *supra* note 11, p. 28.
- 58 *Id.*
- 59 See, e.g., Beatrix Lockwood & Nicole Lewis, *The Hidden Cost of Incarceration*, THE MARSHALL PROJECT, Dec. 17, 2019, <https://www.themarshallproject.org/2019/12/17/the-hidden-cost-of-incarceration> [*hereinafter* *The Hidden Cost of Incarceration*]; Tiana Herring, *For the Poorest People in Prison, it's a Struggle to Access Even Basic Necessities*, PRISON POLICY INITIATIVE, Nov. 18, 2021, <https://www.prisonpolicy.org/blog/2021/11/18/indigence>; Kimberly Haven, *Why I'm Fighting for Menstrual Equity in Prison*, ACLU, Nov. 8, 2019, <https://www.aclu.org/news/prisoners-rights/why-im-fighting-for-menstrual-equity-in-prison>.
- 60 See, e.g., Alysia Santo & Lisa Iaboni, *What's in a Prison Meal?* THE MARSHALL PROJECT, July 7, 2015, <https://www.themarshallproject.org/2015/07/07/what-s-in-a-prison-meal>; Elizabeth Weill-Greenberg, *Prison Food is Straight Out of a Nightmare*, THE APPEAL, July 6, 2022, <https://theappeal.org/prison-food-virginia-fluvanna-correctional-center/>.
- 61 *The Hidden Cost of Incarceration*, *supra* note 59.
- 62 Stephen Raheer, *The Company Store: A Deeper Look at Prison Commissaries*, PRISON POLICY INITIATIVE, May 2018, <https://www.prisonpolicy.org/reports/commissary.html>.
- 63 In Illinois, incarcerated individuals earn between \$0.13 and \$0.39 per hour for non-industry jobs and \$0.30 and \$2.40 per hour at jobs in state-owned correctional industries. *Captive Labor*, *supra* note 14, p. 102.
- 64 *Worth Rises & Connecting Families*, <https://connectfamiliesnow.com/>.
- 65 *Id.*
- 66 See Derek Orr, Alison Spock & Michael Vaughan, *Private Sector Prison Industries: A Report to the States*, The Council of Governors' Policy Advisors and The Thomas Jefferson Program in Public Policy: The College of William & Mary, p. 6 (n.d.), <https://www.wm.edu/as/publicpolicy/documents/prs/prison.pdf> [*hereinafter* *Private Sector Prison Industries*].
- 67 Mary Bosworth, *Encyclopedia of Prisons and Correctional Facilities*, p. 43 (2005) (The Ashurst-Sumners Act of 1935 "sought to stop inmate-manufactured goods from flooding the market and undermining free labor."); *Private Sector Prison Industries*, *supra* note 66, p. 6. Notably, Congress began passing these laws at the outset of the Great Depression. Manufacturers, labor leaders, and employers advocated for such legislation out of concern that they would not be able to compete with a free labor force that lacked the ability to strike. *State Imposed Forced Labor*, *supra* note 39.

- 68 Section 307 of the Tariff Act of 1930 is codified as 19 U.S.C. § 1307. At the time it was passed, Section 307 included a consumptive demand loophole, which allowed goods produced with forced or prison labor to be imported into the United States if goods that were not “mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.” 19 U.S.C. §1307. The Trade Facilitation and Trade Enforcement Act of 2015 (2016), 2016-Pub. L. 114–125, struck this out.
- 69 The Ashurst-Sumner Act is codified as 18 USC § 1761(a).
- 70 The first law passed was the Hawes-Cooper Act of 1929, which required that the laws of the destination state controlled when prisoner-made goods were transported across state lines. The Ashurst-Sumners Act of 1935 made it a federal offense for carriers to transport prisoner-made goods to states that, under the Hawes-Cooper Act, had banned the receipt of those goods. As a result, railroads refused to transport prisoner-made goods across state lines. The Summers-Ashurst Act of 1940 superseded state laws and made it a federal crime to transport prisoner-made goods in interstate commerce for private use. *Private Sector Prison Industries*, *supra* note 66, p. 7.
- 71 18 USC § 1761(a).
- 72 *See generally* 18 USC § 1761(a).
- 73 *Id.*; Department of Justice, Bureau of Justice Assistance, *Prison Industry Enhancement Certification Program (PIECP): Compliance Guide*, Dec. 2021, p. 12, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PIECP-Compliance-Guide.pdf> [*hereinafter Prison Industry Enhancement Certification Program (PIECP): Compliance Guide*].
- 74 *See, e.g.*, Joseph Neff, *North Carolina Prisoners Still Working in Chicken Plants, Despite Coronavirus Fears*, THE MARSHALL PROJECT, March 19, 2020, <https://www.themarshallproject.org/2020/03/19/north-carolina-prisoners-still-working-in-chicken-plants-despite-coronavirus-fears> (explaining that incarcerated workers provide cleaning services for a sub-contractor at a Tyson plant in North Carolina); Arizona Correctional Industries, *Call Center*, <https://aci.az.gov/labor-partnerships/call-center/>.
- 75 18 USC § 1761(b).
- 76 *Id.*
- 77 Federal Bureau of Prisons, *UNICOR: Program Details*, Federal Bureau of Prisons, https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp [*hereinafter UNICOR: Program Details*].
- 78 UNICOR, *Customer and Private Sector Frequently Asked Questions*, https://www.unicor.gov/FAQ_Market_Share.aspx [*hereinafter Customer and Private Sector Frequently Asked Questions*].
- 79 UNICOR, *State and Local Government Customers*, <https://www.unicor.gov/FSACustomers.aspx>; UNICOR, *Commercial Customers*, <https://www.unicor.gov/CommercialCustomers.aspx> [*hereinafter Commercial Customers*].
- 80 UNICOR, *Work with UNICOR and Help Make Repatriation a Reality*, p. 4, <https://www.unicor.gov/publications/corporate/RepatriationWithUNICOR.pdf> [*hereinafter Work with UNICOR and Help Make Repatriation a Reality*].
- 81 *See* The Justice System Improvement Act of 1979 (Public Law 96-157, Sec. 827); The Crime Control Act of 1990 (Public Law 101-647).
- 82 National Correctional Industries Association, *About PIECP*, <https://www.nationalcia.org/about-piecp> [*hereinafter About PIECP*]. Under the Crime Control Act of 1990, the program is indefinitely authorized. *Id.*; The Crime Control Act of 1990 (Public Law 101-647).
- 83 Susan Kang, *Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States*, Vol. 31:2, NEW POLITICAL SCIENCE, June 2009, p. 143 [*hereinafter Forcing Prison Labor*].
- 84 Universal Declaration of Human Rights, Dec. 10, 1948, art. 23 paras. 1 and 3, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- 85 International Labor Organization, *Abolition of Forced Labour Convention*, 1957, No. 105, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105 [*hereinafter Abolition of Forced Labour Convention, 1957, No. 105*]; International Labor Organization, *Forced Labour Convention*, 1930, No. 29, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029 [*hereinafter Forced Labour Convention, 1930, No. 29*].
- 86 *See generally* Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1 Rules (2005) (identifying the prohibition on “uncompensated or abusive forced labour” as a norm of customary international law.); *See also* Philip Alston & Ryan Goodman, *The Human Rights Regime: Background and Birth in International human rights: The Successor to International Human Rights in Context* 78 (2013) (stating that while there are very few “preemptory norms” of international law, “[s]ome writers suggest that there is considerable agreement on the prohibition on the use of force, of genocide, slavery, of gross violations of the right of people to self-determination, and of racial discrimination.”).
- 87 Although the United States has not ratified Convention No. 29, as an ILO member it has “an obligation, arising from the very fact of membership in the Organization, to respect, to promote and realize, in good faith and in accordance with the Constitution, the principles concerning fundamental rights.” ILO Declaration on Fundamental Principles and Right at Work (1998), as amended in 2022, art. 2, https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO.
- 88 *Forced Labour Convention*, 1930, No. 29, art. 2 para. 1, *supra* note 85.
- 89 *Id.*, No. 29, art. 2.
- 90 *See Forcing Prison Labor*, *supra* note 83, pp. 144-45; *Work Behind Bars*, *supra* note 13, p. 3; *Captive Labor*, *supra* note 14, p. 83; International Labor Organization, *Q&As on Business and Forced Labour – Use of Prison Labor*, https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm#Q3 [*hereinafter Q&As on Business and Forced Labour*].

- 91 Q&As on Business and Forced Labour, *supra* note 90.
- 92 *Id.*
- 93 *Id.*
- 94 In addition to the United States, Afghanistan, Brunei Darussalam, the Marshall Islands, Palau, Tonga, and Tuvalu have not ratified Convention No. 29. International Labour Organization, C029 - Forced Labour Convention, 1930 (No. 29), Countries that have not ratified this convention, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310_INSTRUMENT_ID:312174.
- 95 International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work*, art. 2(b), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf.
- 96 *Work Behind Bars*, *supra* note 13, p. 3.
- 97 The fact that the United States permits companies to run prisons is also a violation of Convention No. 29, specifically art. 2(2)(c).
- 98 Megan Russo, *Regulating Prison Labor*, THE REGULATORY REVIEW, Oct. 20, 2021, <https://www.theregreview.org/2021/10/20/rucco-regulating-prison-labor/> [hereinafter *Regulating Prison Labor*]; *Labor Law Doesn't Apply If You're in Prison*, *supra* note 55; see also *If Prison Workers Are Essential, We Should Treat Them Like It: Prison Labor in the US, Part I*, CORPORATE ACCOUNTABILITY LAB, Aug. 5, 2020, <https://corpaccountabilitylab.org/calblog/2020/8/5/if-prison-workers-are-essential-we-should-treat-them-like-it-prison-labor-in-the-us-part-i>.
- 99 *Regulating Prison Labor*, *supra* note 98.
- 100 See Q&As on Business and Forced Labour, *supra* note 91. This report highlights examples of instances when incarcerated workers were threatened with a loss of privileges for refusing to work.
- 101 The United States ratified in 1991, see International Labor Organization, Ratifications of C105 - Abolition of Forced Labour Convention, 1957 (No. 105), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312250.
- 102 Abolition of Forced Labour Convention, 1957, No. 105, art. 1 (e), *supra* note 85.
- 103 International Labour Conference, Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 230, para. 138, 1962, [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1962-46-IV\)191-289.pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1962-46-IV)191-289.pdf).
- 104 Committee of Experts on the Application of Conventions and Recommendations, Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021), Abolition of Forced Labour Convention, 1957 (No. 105) - United States of America (Ratification: 1991), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4046585.
- 105 *Work Behind Bars*, *supra* note 13, p. 5.
- 106 See generally *The New Jim Crow*, *supra* note 5; *Stamped from the Beginning*: *supra* note 5.
- 107 Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance Regarding Racial Disparities in the United States Criminal Justice System, March 2018, p. 1, <https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf> ("African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences."); *The New Jim Crow*, *supra* note 5, p. 123.
- 108 Mandela Rules, Rule 99(2), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement>.
- 109 Mandela Rules, Rule 100(1).
- 110 Mandela Rules, Rule 100(2).
- 111 Two of the three companies highlighted in this report, Hickman's Family Farms and Dickinson Frozen Foods, oversee incarcerated workers. Workers labor on at least three different Hickman's Family Farm's locations. In PIECP (the federal program that allows state prison systems to form joint ventures with companies), of which Dickinson Frozen Foods is a part, workers frequently work outside the prison on company property. See Arizona Correctional Industries, *Hickman's Family Farms*, Buckeye, AZ, <https://aci.az.gov/casestudy/hickman%E2%80%99s-family-farms-buckeye-az> [hereinafter *Hickman's Family Farms*, Buckeye, AZ]; *Prison Industry Enhancement Certification Program (PIECP): Compliance Guide*, *supra* note 73, p. 5.
- 112 Dani Anguiano, *US Prison Workers Produce \$11bn Worth of Goods and Services a Year for Pittance*, THE GUARDIAN, June 15, 2022, <https://www.theguardian.com/us-news/2022/jun/15/us-prison-workers-low-wages-exploited>; Leah Wang, *The State Prison Experience: Too Much Drudgery, Not Enough Opportunity*, PRISON POLICY INITIATIVE, Sept. 2, 2022, https://www.prisonpolicy.org/blog/2022/09/02/prison_opportunities/.
- 113 International Labour Organization, ILO Forced Labour Convention (No. 29), art. 2, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.
- 114 ILO Indicators of Forced Labor, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.
- 115 *Id.*
- 116 *Captive Labor*, *supra* note 14, p. 5 (citing the U.S. Department 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 ACLU and University of Chicago Law School's Global Human Rights Clinic's analysis of the published raw survey data.)

- 117 *Prison Industry Enhancement Certification Program (PIECP): Compliance Guide*, *supra* note 73, p. 23.
- 118 *Captive Labor*, *supra* note 14, p. 70.
- 119 See e.g., Code of Ala. § 14-9041 (creates a categorical class system where prisoners who “are able to work and refuse” are Class IV which results in the person not accruing any good time for a deduction in sentence term. Basically, unless a person works, they are not able to start accruing time off for good behavior); A.R.S. § 41-1604.07(D) (“On reclassification of a prisoner resulting from the prisoner’s failure to adhere to the rules of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the director may declare all release credits earned by the prisoner forfeited. In the discretion of the director, forfeited release credits may subsequently be restored. The director shall maintain an account of release credits earned by each prisoner.”); 11 Del. C. § 6532(h) (“The Department is authorized to revoke previously earned good time (whether such good time was earned pursuant to this section or other provisions of this title) from inmates who refuse to perform labor as required by the Department pursuant to this section.”); MCLS § 801.85 (requires a prisoner to “cooperate with the county in seeking reimbursement under this act for expenses incurred by the county for that prisoner” and a refusal disqualifies them from “a reduction in his or her term”); T.C.A. § 41-2-123 and T.C.A. § 41-2-146 (Those who refuse to work will lose two days of sentence reduction credit for every day refused, or if there are no such credits, can be confined in solitary confinement or other such punishment.).
- 120 N.C. GEN. STAT. §148-26 (a) (2022).
- 121 N.C. GEN. STAT. § 148-46.1. (2022).
- 122 *Lamar v. CDOC*, 21CA0511, (Colo. App. 2022).
- 123 *Id.*
- 124 Allison Sherry, *Prisoners Allege Forced Labor Violates Colorado’s Anti-Slavery Law*, CPR NEWS, Feb. 15, 2022, <https://www.cpr.org/2022/02/15/prisoners-allege-forced-labor-violates-states-anti-slavery-law/>.
- 125 *Id.*
- 126 *Arizona Changed How it Sells Prisoners to Companies*, *supra* note 15; see also *Rehabilitate Prisoners? Actually, Arizona’s Prison Labor Program is More Like Slavery*, AZ CENTRAL, July 31, 2022, <https://www.azcentral.com/story/opinion/editorial/2022/07/31/arizona-prison-labor-system-like-modern-day-slavery/10166194002/> [hereinafter *Rehabilitate Prisoners? Actually, Arizona’s Prison Labor Program is More Like Slavery*].
- 127 See, e.g., Arizona Correctional Industries, *Achieving Balance: 2020 Annual Report*, 2020, p. 20, https://aci.az.gov/sites/default/files/ACI_AR_2020.pdf [hereinafter *Achieving Balance: 2020 Annual Report*]. However, some programs operate at a loss.
- 128 See generally *Captive Labor*, *supra* note 14, pp. 47-50.
- 129 Agricultural and food products constitute a major sector of goods produced with prison labor. This is reflected in the choice of two companies that we highlight: Hickman’s Family Farms and Dickinson Frozen Foods. However, while food supply chains proved to be some of the more feasible to trace, prison labor exists within many domestic industries, including call centers, meat packing, defense production, textiles, appliances, and furniture production.
- 130 18 USC § 1761(b).
- 131 Arizona Correctional Industries, *Thinking Forward: 2021 Annual Report*, 2021, p. 3, <https://aci.az.gov/sites/default/files/2021%20Annual%20Report.pdf> [hereinafter *Thinking Forward: 2021 Annual Report*].
- 132 *Achieving Balance: 2020 Annual Report*, *supra* note 127, p. 20.
- 133 See *id.*, p. 20; *Thinking Forward: 2021 Annual Report*, *supra* note 131, p. 3.
- 134 *Rehabilitate Prisoners? Actually, Arizona’s Prison Labor Program is More Like Slavery*, *supra* note 126.
- 135 See *Captive Labor*, *supra* note 14, p. 33; *Achieving Balance: 2020 Annual Report*, *supra* note 127, p. 21.
- 136 *Achieving Balance: 2020 Annual Report*, *supra* note 127.
- 137 Hickman’s Family Farms, *About*, <https://hickmansegg.com/about>.
- 138 Hickman’s Egg Ranch, Inc., Mergent Intellect, <https://www.mergentintellect.com/index.php/search/companyDetails/35864263>.
- 139 *Id.*
- 140 Chad Marks, *Hickman’s Egg Farm Puts Prisoners to Work at High Cost to the Community, Residents Say*, PRISON LEGAL NEWS, Dec. 10, 2019, <https://www.prisonlegalnews.org/news/2019/dec/10/hickmans-egg-farm-puts-prisoners-work-high-cost-community-residents-say> [hereinafter *Hickman’s Egg Farm Puts Prisoners to Work at High Cost to the Community*].
- 141 Hickman’s Family Farms, *Find Our Eggs*, <https://hickmansegg.com/find-our-eggs>.
- 142 *Hickman’s Family Farms*, *Buckeye, AZ*, *supra* note 111.
- 143 *Id.*
- 144 *Id.*; Arizona Department of Corrections Rehabilitation & Reentry, *Perryville*, <https://corrections.az.gov/location/19/perryville>.
- 145 *Hickman’s Family Farms*, *Buckeye, AZ*, *supra* note 111.
- 146 *Id.*
- 147 Hickman’s Family Farms, *How It Works*, <https://hickmansegg.com/rch/how-it-works> [hereinafter *How It Works*].
- 148 Indeed, Hickman’s Family Farms, *Hickman’s Family Farms salaries: How much does Hickman’s Family Farms pay?*, <https://www.indeed.com/cmp/Hickman%27s-Family-Farms/salaries>.

- 149 *Captive Labor*, *supra* note 14, p. 42; Arizona Auditor General, Arizona Department of Corrections, Rehabilitation and Reentry, Capital Projects Funding and Department Finances, Performance Audit, Oct. 2020, pp. 20-21, 23, https://www.azauditor.gov/sites/default/files/20-109_Report.pdf. According to the 2020 ACI Audit report, Hickman's must pay ACI a "minimum wage surcharge," which is the difference between the state minimum wage and the amount paid to incarcerated workers, and an 11 percent fee on all gross wages paid. These profits go to ACI, not to workers.
- 150 Industrial Commission of Arizona, Labor Department – Minimum Wage, <https://www.azica.gov/labor-minimum-wage-main-page>.
- 151 A.R.S. § 31-254(E). For wages over \$2 per hour, \$0.50 per every hour is put in the worker's "spendable account" (plus another 10 percent of the amount left after mandatory deductions. Mandatory deductions include: 25 percent of the gross wage until the "discharge account" equals \$250 (\$50 if serving for life), 20 percent of the gross wage if the worker initiates a lawsuit (not included in the calculation made here), 5 percent of the gross wage for the "transition program," 30 percent of the gross wage for room and board, and 30 percent for court-ordered dependent care.
- 152 A.R.S. § 31-254(F)-(H).
- 153 *Most Prisoners in Arizona Work for Pennies*, *supra* note 15.
- 154 *Captive Labor*, *supra* note 14, p. 63; *Hickman's Blames Inmates for Injuries They Suffer While Working on Its Egg Farms*, PHOENIX NEW TIMES, <https://www.phoenixnewtimes.com/news/hickmans-cfo-says-inmates-are-to-blame-for-work-injuries-11363596>.
- 155 *Arizona Changed How it Sells Prisoners to Companies*, *supra* note 15.
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- 157 *Hickman's Egg Farm Puts Prisoners to Work at High Cost to the Community*, *supra* note 140; Elizabeth Whitman, *Barely Trained Inmate Loses Finger Working at Hickman's Egg Farm*, PHOENIX NEW TIMES, Sept. 12, 2019, <https://www.phoenixnewtimes.com/news/inmates-maricopa-county-arizona-injured-labor-hickman-egg-farms-11354362>.
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- 162 Arizona Department of Corrections Rehabilitation & Reentry, *COVID-19 Management Updates*, March 25, 2020, <https://corrections.az.gov/covid-19-management-updates?page=2>; *Achieving Balance: 2020 Annual Report*, *supra* note 127, pp. 33-34; see also Jimmy Jenkins, *Emails Show Hickman's Lobbied Arizona Department of Corrections For 'Permanent Work Camp' To House Inmate Laborers*, KJZZ, Aug. 19, 2020, <https://kjzz.org/content/1610962/emails-show-hickmans-lobbied-arizona-department-corrections-permanent-work-camp> [hereinafter *Emails Show Hickman's Lobbied Arizona Department of Corrections For 'Permanent Work Camp'*]; Elizabeth Whitman, *Hickman's Family Farms to House Arizona Inmate Workers During COVID-19 Pandemic*, PHOENIX NEW TIMES, March 25, 2020, <https://www.phoenixnewtimes.com/news/hickmans-egg-farm-to-house-its-prison-workers-during-pandemic-11460873> [hereinafter *Hickman's Family Farms to House Arizona Inmate Workers*]; *Captive Labor*, *supra* note 14, p. 71; *Arizona Changed How it Sells Prisoners to Companies*, *supra* note 15.
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- 168 *Arizona Changed How it Sells Prisoners to Companies*, *supra* note 15.
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- 176 *Id.*
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- 204 The HigherGov Docs, <https://docs.highergov.com/> (search filtered for defense contracts awarded to AM General since 1997).
- 205 Highergov.com search. The contracts and subcontracts are listed in the public database, Highergov.com. Beyond this record of a relationship between UNICOR and AM General, we found the following information: ACC-Detroit, the agency that awarded the primary contracts to AM General, “provides comprehensive acquisition, contracting, business advisory, production support and depot-level maintenance services” and “supports Warfighters by procuring systems, research and development, repair parts and services, including, but not limited to: Combat and tactical vehicles/trailers.” U.S. Army, *Army Contracting Command*, Detroit Arsenal, <https://acc.army.mil/files/ACC-DTA%20Fact%20Sheet%202021.pdf>; see also U.S. Army, *Army Contracting Command: Subcontracting*, https://acc.army.mil/smallbusiness/sub_contracting.html. ACC-Detroit is also the headquarters for the Red River Army Depot, which has entered into a partnership with AM General “to refurbish and upgrade older Humvee models.” Lincoln Wright, *AM General soldiers on after losing federal contract: Company adapts after losing bid for JLTV contract*, SOUTH BEND TRIBUNE, Sept. 27, 2015, <https://www.southbendtribune.com/story/business/2015/09/27/am-general-soldiers-on-after-losing-federal-contrac/46412351/>. On its website, the Red River Army Depot states that it works to refurbish Humvees and has signed over 40 teaming agreements and 200 partnering contracts since 2002. Red River Army Depot website, <https://redriver.army.mil/radsite/pages/aboutrrad.html>. In addition to this, the Detroit Army Corps of Engineers admits to using UNICOR for equipment recycling and refurbishment, including for vehicles. Emily Schaefer, *Logistics team removes area offices’ excess equipment*, USACE, Detroit District, Sept. 16, 2021, <https://www.lre.usace.army.mil/Media/News-Stories/Article/2777062/logistics-team-removes-area-offices-excess-equipment/>.
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- 207 The HigherGov Docs, <https://docs.highergov.com/> (contract numbers: W56HZV18C0177, W56HZV17D0071-W56HZV19F0018, W56HZV17D0071-W56HZV20F0246, W56HZV17D0071-W56HZV20F0302, W56HZV18D0084-W56HZV20F0260, and W56HZV17D0071-W56HZV20F0398 (three awards under this contract) / subcontract numbers: 968116970 (five awards under this subcontract), 0968116970-0071-0398-08, 0968116970-0071-0398-12, and 0968116970-0071-0398-11). On October 18, 2022, a CAL staff member spoke with the management office for UNICOR’s Vehicle Uplift, Remanufacturing, and Fleet Services program. When asked whether UNICOR worked with AM General, the program manager could not say for sure but confirmed that he/she/they thought UNICOR *did* work with AM General.

- 208 The HigherGov Docs, <https://docs.highergov.com/> (contract numbers: W56HZV18C0177, W56HZV17D0071-W56HZV19F0018, W56HZV17D0071-W56HZV20F0246, W56HZV17D0071-W56HZV20F0302, W56HZV18D0084-W56HZV20F0260, and W56HZV17D0071-W56HZV20F0398 (three awards under this contract)).
- 209 UNICOR, *Fleet Heavy Equipment Remanufacturing Services*, <https://www.unicor.gov/Product.aspx?idproduct=3896>; UNICOR, *Speakers*, <https://www.unicor.gov/Category.aspx?idCategory=291>.
- 210 The HigherGov Docs, <https://docs.highergov.com/> (contract numbers: W56HZV18C0177, W56HZV17D0071-W56HZV19F0018, W56HZV17D0071-W56HZV20F0246, W56HZV17D0071-W56HZV20F0302, W56HZV18D0084-W56HZV20F0260, and W56HZV17D0071-W56HZV20F0398 (three awards under this contract) / subcontract numbers: 968116970 (five awards under this subcontract), 0968116970-0071-0398-08, 0968116970-0071-0398-12, and 0968116970-0071-0398-11). AM General was awarded \$59.9 million, \$207.1 million, \$23.5 million, \$124 million, \$107.3 million, and \$365 million for these contracts, respectively (totaling \$886.8 million). UNICOR was awarded \$274.4K, \$102.4K, \$194.3K, \$423.6K, \$30.3K, \$1.4 million, \$51.3K, and \$97.3K for these subcontracts, respectively (totaling \$2.57 million).
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- 220 *Id.*
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- 222 28 C.F.R. § 545.11(b)(1)–(2). Minimum payments may be higher based upon the inmate's particular circumstances. Staff are to exclude a certain amount from this assessment, deposited into the inmate's trust fund account for telephone communications. 28 C.F.R. § 545.11(b).
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- 226 *Work with UNICOR and Help Make Repatriation a Reality*, p. 5, *supra* note 80.
- 227 United States Government Accountability Office, Report to Congressional Committees, *Federal Prison Industries: Actions Needed to Evaluate Program Effectiveness*, July 2020, <https://www.gao.gov/assets/gao-20-505.pdf>.
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- 243 South Dakota Department of Corrections, *Department of Corrections Policies and Procedures*, June 1, 2022, <https://doc.sd.gov/documents/1.5.A%20%20Prison%20Industry%20Enhancement%20Certification%20Program612022.pdf>.
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- 246 *Prison Labor in the United States: An Investor Perspective*, *supra* note 11, p. 22. For example, a prison could have various facilities that make sub-assembly pieces that are sold to the prison industry itself where inmates may be paid the standard prison wage for their labor (such as one facility producing legs for a chair, one facility producing chair cushions), and then inmates who assemble the final product for the final PIECP customer are paid PIECP wages. Bob Sloan, *PIECP, Prison Labor, Prison Industries Violations*, PIECP PROGRAM VIOLATIONS WEB SITE, http://prison-labor.50megs.com/rich_text_1.html.
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- 250 *Made in the USA: Race, Trade, and Prison Labor*, *supra* note 200, pp. 27-28 (citing *The Prison Industries Enhancement Certification Program: Why Everyone Should be Concerned*, *supra* note 247).
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- 253 *The Prison Industries Enhancement Certification Program: Why Everyone Should be Concerned*, *supra* note 247.
- 254 Oregon Potato Company, *Dickinson Frozen Foods*, <https://www.oregonpotato.com/companies/dickinson-frozen-foods/> [hereinafter *Dickinson Frozen Foods*].
- 255 National Correctional Industries Association, *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending March 31, 2022*, p. 11, https://www.nationalcia.org/files/ugd/569cf7_f35ce93f268641018ad08c58f2230c28.pdf [hereinafter *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending March 31, 2022*]. In the third quarter of 2021, the two plants collectively employed 93 incarcerated workers. That number then soared to 526 in the first quarter of 2022, before dropping to 100 in the second quarter of 2022. See National Correctional Industries Association, *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending September 30, 2021*, 11, https://www.nationalcia.org/files/ugd/569cf7_0ab8d011f21b4127b18d15c77d104f45.pdf; *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending March 31, 2022*, *supra* note 255, p. 11; *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending: Statistics for the Quarter Ending June 30, 2022*, *supra* note 240.
- 256 *Dickinson Frozen Foods*, *supra* note 254.
- 257 See *Prison Industry Enhancement Certification Program Certification & Cost Accounting Center Listing: Statistics for the Quarter Ending March 31, 2022*, *supra* note 255, p. 11.
- 258 *Prison Labor and The Private Sector*, *supra* note 43.
- 259 H. Claire Brown, *This Under-the-Radar Supply Chain Routes Food From Prisons to Hospitals, Food Banks, and Even Schools*, THE COUNTER, May 25, 2021, <https://thecounter.org/this-under-the-radar-supply-chain-routes-food-from-prisons-to-hospitals-food-banks-and-even-schools/> [hereinafter *This Under-the-Radar Supply Chain Routes Food From Prisons to Hospitals, Food Banks, and Even Schools*].
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- 261 *Dickinson Frozen Foods*, *supra* note 254.
- 262 *Dickinson Frozen Foods, Inc.*, Mergent Intellect, <https://www.mergentintellect.com/index.php/search/companyFinancials/153972922>.
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- 271 U.S. Department of Labor, *OSHA Cites Idaho Potato Processor for Major Safety and Health Violations: Dickinson Frozen Foods to Pay \$273K After December 2015 Ammonia Release*, May 31, 2016, <https://www.osha.gov/news/newsreleases/region10/05312016> [*hereinafter OSHA Cites Idaho Potato Processor for Major Safety and Health Violations*].
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- 276 *Id.*
- 277 *Potato Processor Dickinson Frozen Food Fined 273K for Health and Safety Violations Related to Ammonia Leak*, POTATO PRO, June 2, 2016, <https://www.potatopro.com/news/2016/potato-processor-dickinson-frozen-food-fined-273k-health-and-safety-violations-related>.
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