



ORAL STATEMENT OF

The American Civil Liberties Union (ACLU)

For the Interactive Dialogue on the Report of the

UN Special Rapporteur on Contemporary Forms of Slavery, Prof. Tomoya Obokata, on

Contemporary Forms of Slavery as Affecting Currently and Formerly Incarcerated People

Delivered to the 57th Session of the UN Human Rights Council

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On behalf of the American Civil Liberties Union (ACLU), we thank the Special Rapporteur for his timely and critical report.

The roots of modern-day prison labor programs in the United States can be traced to the end of the Civil War and the passage of the 13th Amendment to the Constitution, which outlawed slavery and involuntary servitude, “except as a punishment for crime.” Given this gaping loophole, states turned to incarcerated labor as a means of partially replacing chattel slavery and the free labor force slavery provided.

Today, the United States incarcerates over 1.2 million people in state and federal prisons, and two out of three of these incarcerated people are also workers. There are two crucial differences that distinguish these workers from those working on the outside: Incarcerated workers are under the complete control of their employers, and they have been stripped of even the most minimal protections against labor exploitation and abuse.

From the moment they enter the prison gates, they can be forced to work. More than 76 percent of incarcerated workers report that they are required to work or face additional punishment such as solitary confinement, denial of opportunities to reduce their sentence, and loss of family visitation. Illness, injury, disability, or a physical inability to work often does not relieve them of work duties.

U.S. law explicitly excludes incarcerated workers from the most universally recognized workplace protections including health and safety laws. Incarcerated people sometimes work dangerous jobs that would be closely regulated and monitored if they were not incarcerated. They work in unsafe conditions without the standard training or protective gear provided in workplaces outside prisons, and they suffer preventable serious injuries and deaths as a result.

Incarcerated workers are not covered by minimum wage laws and are paid on average 13 to 52 cents per hour in non-industry jobs. More than 80 percent have maintenance jobs that support the operation of the prison facilities and are compensated at the lower end of prison pay scales. In seven states, incarcerated people are paid nothing at all for most jobs. Across the country, prisons deduct as much as 80 percent from incarcerated people's paychecks for room and board and legal financial obligations.

The promise of providing incarcerated people with transferable skills and work experience for their eventual reentry into society often proves illusory. In reality, the vast majority of work programs in prisons involve menial and repetitive tasks that provide workers with no marketable skills or training.

It does not have to be this way. Work in prisons could be truly voluntary. Conditions could be safe. Jobs could provide incarcerated people with marketable skills and vocational training that will help them to find employment after release. Incarcerated workers should be paid a fair wage that enables them to save for the future, support their families, and sets them up for a successful reentry.

To move in this direction, the United States must first end forced labor without exceptions by repealing federal and state constitutional exception clauses and guarantee incarcerated workers the standard labor protections available to other workers in the United States including minimum wages, overtime pay, health and safety standards, unionization and collective bargaining, and protection from discrimination and retaliation.

These recommendations are incorporated into pending federal legislation led by Senator Booker and Representative Cleaver, and we call on Congress to pass each of these bills. In addition, the Biden Administration can take immediate steps to right these wrongs. The Department of Labor's Wage and Hour Division should issue an Administrator Interpretation applying the protections of the Fair Labor Standards Act to prison workplaces, thereby ensuring adequate wages, and begin using its enforcement powers to enforce these protections for incarcerated workers. The Department of Labor's Occupational Safety and Health Administration should prevent injuries and deaths of incarcerated workers by enforcing the Occupational Safety and Health Act within prison workplaces. The Equal Employment Opportunity Commission should revise the agency's guidance to ensure that Title VII of the Civil Rights Act protects incarcerated workers from discrimination in the workplace.